

Inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Inquiry documents

Report No. 90

Parliamentary Crime and Misconduct Committee

April 2013

Parliamentary Crime and Misconduct Committee

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Acknowledgements

The Committee acknowledges the assistance provided by the Acting Parliamentary Commissioner, Mr Peter Davis SC; Counsel Assisting, Dr Kerri Mellifont SC; and Mr Mitchell Kunde, Principal Legal Officer, Office of the Parliamentary Crime and Misconduct Commissioner. The Committee also acknowledges the assistance provided by the Queensland Parliamentary Library.

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Abbreviations

CJA	Criminal Justice Act 1989
CJC	Criminal Justice Commission (now Crime and Misconduct Commission)
CM Act	Crime and Misconduct Act 2001
CMC Commission	or Crime and Misconduct Commission (formerly Criminal Justice Commission)
PCMC Committee	or Parliamentary Crime and Misconduct Committee
Dissemination Policy	CMC's Policy for the Dissemination of Intelligence Information, Information and Evidence
Fitzgerald Inquiry	The Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct established pursuant to Orders in Council dated 26 May 1987, Chaired by Tony Fitzgerald QC
LSU	Crime and Misconduct Commission Legal Services Unit
Parliamentary Commissioner	The Parliamentary Crime and Misconduct Commissioner
PRA	Public Records Act 2002
QSA	Queensland State Archives
R&D Schedule	QSA's Retention and Disposal Schedule
RAP	Restricted Access Period
RTI	Right to Information
the Act	Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Act 2013

Chair's Foreword

Late on 5 March 2013, the Acting Chairperson of the Crime and Misconduct Commission, Mr Warren Strange advised me that two pressing matters had emerged:

1. The public release of confidential Fitzgerald Commission of Inquiry documents; and
2. The destruction of original Commission of Inquiry documents held by the CMC which were required to be perpetually preserved.

The Committee immediately responded to this information and set in train an investigation. To this end the Committee met with the CMC and caused a summons to be issued to the Queensland State Archives for information and held in camera meetings on 6 and 7 March 2013.

However, the resolution of the Queensland Parliament, passed in the early hours of Friday morning (8th March) further defined the direction of the Committee's investigation. Additionally, the resolution required the Committee to report by 5 April 2013. By any measure, the committee's task was large when compared to the time within which it was to be achieved. The Committee was charged to establish the framework for the hearings, require witness attendance, take evidence and form both a clarity of events and consequential recommendations.

The format for this inquiry was unprecedented in Queensland and if not unique, rare in Westminster democracies. We appreciated the opportunity given by the Legislative Assembly to utilise this new format of inquiry. We were determined to make it a successful model for the future. The committee affirmed at the commencement of its hearings that we were not afraid of positive reform of either the CMC or the Committee. We remain of that view and are open to new and more effective methods of parliamentary oversight. Such change must however be done with the public interest as foremost and notions of accountability at its heart.

The Committee held 14 public hearings and has spent many more days and hours in private deliberation considering evidence, compiling the report and formulating recommendation.

A significant amount of information was gathered by summons of witnesses, documents and other records which both contributed to a clearer understanding of events and identified concerning shortcomings in process, corporate structure and delegations within the CMC, in relation to this matter.

This report presents a snapshot of the decision making processes, or lack thereof by three operational units within the CMC as they relate to the release and /or destruction of Fitzgerald documents. These units are Executive, Corporate Services (Information Management) and Legal Services Unit. However, the snapshot has given the Committee some understanding of administrative issues within the CMC.

The Committee acknowledges those witnesses whose positive contribution assisted us to gain a clearer understanding of the events which led to the release of Fitzgerald Inquiry information as well as the unlawful destruction of other original Fitzgerald Inquiry documents. The Committee has regrettably also had to manage circumstances where witnesses were, in the Committee's opinion uncooperative, evasive or obstructive. These issues are dealt with in the Report.

Given the time constraints, the Committee has, by necessity, made recommendations for further investigation of certain important matters. One such investigation recommended by the Committee is to consider whether any disciplinary or legislative breaches have occurred as a result of the circumstances considered during the inquiry.

I refer again, in respect of the Committee's findings and comments in this report, to a quote from the Fitzgerald Report:

The community would be badly served by any unnecessary departure from the fundamental presumption of innocence to which each citizen is entitled unless and until tried and

convicted. Every person who was adversely mentioned in evidence before this Inquiry (or who is mentioned in material held by the Commission) is innocent unless and until proven guilty in a court or other appropriate tribunal, which must make such a finding in the proper discharge of its functions.

....

Findings, whether favourable or unfavourable, which ignored that material would be unsatisfactory, and unfavourable findings which took that material into account without providing the individuals affected an opportunity to be heard would be unfair.

The Committee acknowledges the invaluable assistance given by Mr Peter Davis SC, Acting Parliamentary Commissioner and Dr Kerri Mellifont SC, Counsel Assisting. The use of the Commissioner and Counsel Assisting in hearings was a new model in the Queensland Parliament. I believe the model was a success.

The research into and collation of a significant quantity of documents and information required by or provided to the Committee for use by the Committee, The Acting Parliamentary Commissioner and Counsel Assisting could not have been done without the tireless work of an expanded committee secretariat, including:

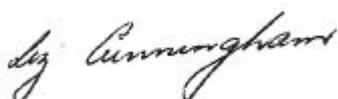
- Mr Neil Laurie, Clerk of the Parliament
- Mr Stephen Finnimore, Committee Office Manager
- Mr Mitchell Kunde, Principal Legal Officer, Office of the Parliamentary Commissioner
- Ms Amanda Honeyman, Acting Research Director, PCMC
- Mr Peter Rogers, Principal Research Officer, PCMC
- Mrs Gail Easton, Executive Assistant
- Ms Melissa Cook, Exhibits Officer
- Mrs Lyn Whelan, Executive Assistant

Hansard staff, Parliamentary Attendants, Property Services, IT and other Parliamentary staff all contributed to the Committee's work. On behalf of the Committee I thank each one.

In conclusion I would like to make the following brief observations. There is no doubt that the past four weeks has been very difficult for the CMC and individual officers of the CMC. No organisation or individual is necessarily happy to have their actions scrutinised in detail in a public forum. There are many CMC officers who have expressed their dismay and regret at what has come to light. To their credit, some have taken responsibility for their actions. Some have not. This has been a painful process for the CMC and there is no doubt that there will be more pain in the coming days.

But the process was necessary. The CMC is an important institution. There is very great support for that institution to continue to play its vital role in the administration of government in Queensland. The challenge for the CMC and its individual officers is to learn from the inquiry, reform and move forward as a better institution.

I commend the Committee's report to the House.



Mrs Liz Cunningham MP

Chair

April 2013

Committee Findings

Committee Finding 1

15

The Committee appreciates that the formal summonses to the CMC authorised by the Committee and issued by the Clerk of Parliament required a considerable amount of material to be identified and compiled by the CMC in a relatively short period of time.

Overall, whilst CMC officers cooperated with the Committee in terms of arrangements for their appearances before the Committee, the Committee considers the CMC's provision of documents and other materials pursuant to summonses to have been less than satisfactory.

Emails initially provided under summons were apparently only sourced from the existing "in", "out", "draft", and "archive" boxes of individuals.

This meant that emails which had been deleted were not initially provided.

Later, the Committee summonsed emails from 'server data' whereby emails that had been received, sent or drafted were recovered.

This resulted in further emails not provided under the original summons being discovered by the Committee.

Committee Finding 2

19

The Committee considers the LSU to have an extremely important role within the CMC. The LSU, in particular by providing the Commission and the Chairperson with legal advice independent of other operational units (such as Crime and Misconduct), provides an important element in the overall internal Corporate Governance of the CMC. However, evidence before this Committee revealed a unit in which its two most senior officers were both very narrowly task orientated and "reactive".

Committee Finding 3

22

Whilst the Commission delegated its power to disseminate CMC information under section 62 of the *Crime and Misconduct Act 2001* to the Chairperson, the authorisation by the Chairperson under section 18 of the *Public Records Act 2002* does not override the Commission's authority under section 62 of the *Crime and Misconduct Act 2001*.

The Committee found that former CMC Chairpersons had signed Authorisation Access forms. Mr Martin was not called upon to consider an authorisation, as the authorisation signed by the previous Chairperson was, on its face, still in place.

Any delegation then of these powers to Mr Duell was not a delegation of the Chairperson's power, but should have been a delegation by the Commission of Commission power to disseminate. There is no evidence of the Commission granting a delegation under section 62 to Mr Duell.

Therefore, it appears that there was no proper authority vested in Mr Duell to reclassify the documents. This is because there was no delegation by the Commission of a power which vested in it. The Chairperson did not hold the power, except as delegate and therefore could not delegate it to Mr Duell.

The Fitzgerald Inquiry material was, therefore, unlawfully disseminated. Of course, persons acting pursuant to the purported authority may have been acting on an honest, but mistaken belief that it was correct.

Committee Finding 4**24**

Mr Duell, Ms Wood, Mr Hutchings and Mr Martin, all very senior officers, failed in May 2012 to adhere to CMC internal corporate policies and procedures by not forwarding to the Corporate Governance area within 48 hours the fact that Fitzgerald Inquiry material had been inappropriately publically disseminated via the QSA.

This meant that the matter was not placed on the CMC's risk incident register along with details of how the risk arose, the description of the risk, the action taken to address the risk, the further action required, and who was managing the risk, and follow up action required were not also actively identified.

This was a very serious failing in corporate governance. If proper procedures had been followed, it is likely that the matter would have been properly resolved in May 2012 and risk minimised.

Committee Finding 5**24**

Mr Duell, a senior officer, failed in September 2012 to adhere to CMC internal corporate policies and procedures by not forwarding to the Corporate Governance area within 48 hours the fact that Fitzgerald Inquiry material had been inappropriately publically disseminated via the QSA.

This meant that the matter was not placed on the CMC's risk incident register along with details of how the risk arose, the description of the risk, the action taken to address the risk, the further action required, and who was managing the risk, and follow up action required were not also actively identified.

This was a very serious failing in corporate governance. If proper procedures had been followed, it is likely that the matter would have been properly resolved in September 2012 and risk minimised.

The Committee believes that Mr Duell failed to report the matter in accordance with policy. An internal investigation of the matter may have exposed not only his original error in February 2012, but his failure to fix the matter in May 2012.

Committee Finding 6**28**

Testimony to the Committee suggested that a motivation for transferring the Fitzgerald Inquiry material (approximately 250-300 linear metres) to the QSA was because of the imminent relocation of the CMC to new premises.

The lack of documentation available to the Committee means that the circumstances are unclear around when and why the decision was made for the Fitzgerald Inquiry material held at the CMC to become the responsibility of the Director of Information Management rather than the responsibility of an officer who would better understand the nature and sensitivity of the information. There was no written evidence provided to the Committee to explain the decision making process around this important decision of the CMC.

This mistake was compounded by the failure on the part of the successive Directors of Information Management to sufficiently acquaint themselves with the information, a task they needed to undertake to effectively deal with the Fitzgerald Inquiry material for which they were responsible. Mr Rigby and Mr Duell both advised the Committee that at no point did they undertake a comprehensive, or even a cursory audit of the Fitzgerald Inquiry material they were charged with.

Committee Finding 7**29**

The project to transfer the Fitzgerald Inquiry documents to the QSA was fundamentally flawed. There was no real appreciation by any of the, relatively junior, CMC officers directly involved in the transfer of the Fitzgerald Inquiry records to the QSA of the sensitive nature of the material they were cataloguing. Whilst the Records Manager, Ms Legg, understood that the information in the catalogue required by the QSA would be uploaded into the QSA search engines, there was no evidence of any understanding by those officers, or their superior officers, that the data they were inputting into the spread-sheets would become publicly searchable through the QSA catalogue. Had there been any appreciation of this, more care would likely have been taken to assess the sensitivity of the material, or the issue would have been progressed to the higher management to deal with appropriately.

The Committee was unable to determine why the assessment and transfer of the Fitzgerald Inquiry holdings was allocated to the Records Management team, without input from other CMC divisions such as the Intelligence Division. The Committee considers it was inappropriate for relatively junior records/property management staff to manage and undertake the task of cataloguing the Fitzgerald Inquiry records held by the CMC. Rather, CMC officers with experience of dealing with, and disposing of, confidential surveillance and other investigative material should have been involved in the project. The Committee expects the CMC to address how it will handle sensitive historical information in future.

Committee Finding 8**30**

The Committee finds that the successive delegations under section 19 of the *Public Records Act 2002* were to officers who may not have had sufficient appreciation of the sensitivity of the information contained in the Fitzgerald Inquiry material. Again, there is no documentation to show the decision-making processes to determine the appropriate officers to hold the purported authorisations under section 19 of the *Public Records Act 2002*. There is also no apparent appreciation that section 19 of the *Public Records Act 2002* does not vitiate the requirements of section 62 of the *Crime and Misconduct Act 2001*.

Committee Finding 9**33**

Metadata serves to summarise the content of documents. In this instance, the metadata included detailed information on informants, and untested and scandalous allegations about individuals, including some high profile Queenslanders, which could just from their description damage the reputations of these people.

The State Archivist advised the Committee that the QSA advises agencies that the metadata will become publicly available upon the application of a RAP to the records held by the QSA. This important information was clearly unappreciated by the CMC staff, or not properly communicated by the QSA, during the transfer of the CMC's Fitzgerald Inquiry records to the QSA.

As soon as Mr Martin became aware in March 2013 that the metadata was publicly available, despite the RAP, he acted swiftly to close it.

The Committee notes the advice from the State Archivist that she is contacting agencies who have closed records and open metadata to bring the open metadata to their attention. The Committee considers that the State Archivist needs to review the advice from the QSA to agencies to ensure it appropriately advises them that the metadata will be publicly available despite the RAP applied to those records, unless the agency requests the metadata also be closed.

Committee Finding 10**36**

Informal nature of decision-making

The Committee finds that the informal nature of the decision making and consultation processes utilised by CMC officers in this matter allowed the incorrect assumptions and knowledge gaps to prevail. There were no formal meetings; there was no formal documentation, such as a detailed submission to identify the information to be released and seeking authority from the requisite authority; and there was no substantive, formal legal advice to clearly spell out the issues. The brief memorandum drafted by Ms Sweeper, and significantly altered by Mr Duell, was insufficient for this purpose.

The CMC Code of Conduct states that advice should be in writing wherever possible, and where the advice is not in writing, officers should keep well documented notes about the advice provided. The Committee considers this informal approach to the decision making in this matter is contrary to the Code of Conduct and wholly inappropriate and a failing on the part of the CMC and its senior officers.

Mr Duell

Mr Duell's primary motivator was to provide access to the Fitzgerald Inquiry records held by the QSA to relieve him of what he considered to be a bureaucratic headache of requests from journalists and researchers for access to the documents. The Committee did not receive evidence to suggest an unreasonable amount of requests for access to the Fitzgerald Inquiry material to support this motive.

The Committee is concerned that Mr Duell's and Ms Legg's requests for legal advice from General Counsel went unanswered, or were not answered in a timely manner. The failure on the part of the CMC General Counsel and Legal Services Unit was yet another missed opportunity to prevent the release of this information.

Mr Duell's change to the RAP in February 2012 allowed the public release of the full Series of Fitzgerald Inquiry records held by the QSA, except those items subject to a 100 year RAP. Mr Duell made the change to the RAP, knowing it would result in public access to the documents without satisfying himself as to the content of the information he was to release, nor the appropriateness of public access to that information.

Mr Duell, in his position of responsibility and seniority within the CMC, should have taken steps to satisfy himself that the material he was authorising for release by changing the RAP was suitable for public dissemination. He did not do so and instead relied on a memorandum drafted by his subordinate, at his direction and later amended by him; an email from General Counsel who promises further, detailed advice that was never provided; and a brief, informal 'doorway' chat with the Acting Chairperson as the basis for his, largely undocumented, decision to release, under a blanket RAP change, the Fitzgerald Inquiry records.

Access to Mr Reeves in October 2011

The Committee finds that Mr Duell signed an authorisation access form to enable Mr Reeves to access material when his authorisation under the *Public Records Act 2002* had expired. Further, the QSA allowed Mr Reeves to access the Fitzgerald Inquiry records held at the QSA without proper authorisation from the CMC, or from Mr Duell, as his authorisation had expired.

No evidence was provided to the Committee to suggest there was an authorisation in this regard provided by the Commission or the Chairperson of the CMC.

The QSA did not provide information on why this access was allowed by the QSA when Mr Duell's authorisation had expired.

The Committee considers that the State Archivist should review QSA processes and procedures in relation to ensuring individual access authorisations are valid prior to providing access.

CMC corporate responsibility

The release of the CMC Fitzgerald Inquiry documents in February 2012 was a result of a culmination of events and failings on the part of the CMC on numerous occasions and over a number of years including:

- the passage of time since the Fitzgerald Inquiry and, consequentially, the de-sensitisation of CMC officers to the gravity of the Fitzgerald Inquiry and its material;
- the removal of the material from the responsibility of the Intelligence Division;
- responsibility for the material transferring to the Director, Information Management without any apparent consideration of the knowledge required to properly deal with the material, and no steps taken by the CMC to ensure the required knowledge was gained by those officers now responsible for the material;
- a continuing reduction in corporate knowledge of the contents of the material;
- no effective policies or procedures to ensure that the material was dealt with appropriately;
- a lack of audit, by appropriate officers, of the material or of the metadata, prior to public release; and
- a total lack of informed decision-making around the release of the material.

Committee Finding 11

46

There was an ineffective response within the CMC following the realisation that material from the Fitzgerald Inquiry at the QSA that should not be disseminated was in fact being disseminated.

There was no proper investigation in May 2012 to:

- Determine exactly what material from the Fitzgerald Inquiry at the QSA was available for public dissemination;
- How the dissemination came about (who was responsible);
- Whether the dissemination was lawful; and
- Whether the issue had been properly resolved.

Unfortunately, the description by Mr Duell of the error as being “administrative” or a “misunderstanding” may have coloured the responses of Ms Wood, Mr Martin and Mr Hutchings.

However, Mr Duell’s trivialising of the issue should not mitigate their lack of effective response: collectively, the lack of recognition by Mr Duell, Ms Wood, Mr Hutchings and Mr Martin, all very senior officers, of the importance of sensitive Fitzgerald Inquiry material being in the public domain and their collective failure to properly investigate the issue is totally unacceptable. It would have only taken one of them to take the issue seriously and to react with some level of industry, such as validating Mr Duell’s assertions, for the problem to have been properly identified and solved in May 2012. They are all collectively responsible for the failure to properly investigate and solve the matter.

Mr Duell’s assumption that his actions taken in May 2012 to rectify the “misunderstanding” solved the problem was simply a continuation of his ineptitude. Once again, Mr Duell did nothing to ensure that all series which could have contained sensitive information were returned to the 65 year RAP. Instead, he made exceptions to the reversal, such exceptions not being based on any knowledgeable basis whatever. Once again, he did not engage with the relevant considerations to reduce the RAP. That series 18651 could remain unchanged, when it was described merely as “documentation”, and when there was no effort to ascertain content, was a critical omission.

The Committee was unable to determine, from any CMC witness during this inquiry, why the documentary evidence stopped, seemingly along with any proposed actions to investigate this matter further, on 30 May 2012.

Committee Finding 12**49**

The follow up to the revelations in May 2012 by Mr Martin and Ms Wood in July 2012 was totally inadequate.

There was no proper investigation as to what material from the Fitzgerald Inquiry at the QSA remained available in the public domain and there was no requirement for a written report of investigations.

Ms Wood did not undertake the task set for her by Mr Martin to ensure the matter had "been fixed" with the required level of due diligence. As detailed in section 3.4, the Legal Services Unit let the Chairperson down by not diligently ensuring the matter had been fixed.

On the evidence available, it also appears that Mr Martin also failed to follow up on the matter by requiring any written report.

Committee Finding 13**49**

The Committee finds that, at best, Mr Duell failed to inform his superiors of this incident in September 2012 pursuant to established CMC policies.

Committee Finding 14**53**

Having regard to the dearth of evidence before it, the Committee finds that original Fitzgerald Inquiry records destroyed which were to be retained permanently, were destroyed unlawfully in 2007 in breach of the *Public Records Act 2002*. However, the Committee considers that they were probably destroyed under the honest and mistaken belief that the records sentenced at the time did not contain Fitzgerald Inquiry records which were required to be retained permanently. The Committee also finds that there is nothing to suggest that the protocols for the destruction of documents were inappropriate at the time. It was simply an error to have the original Fitzgerald Inquiry documents on the files which were destroyed and that this was due to the actions of unidentified officers when the files were created sometime in 1989 or 1990.

However, of immediate concern to the Committee is that more original Fitzgerald Inquiry records may still remain on CMC files which, unless identified and removed, are likely to meet the same regrettable fate. Clearly, this is unacceptable.

Evidence suggests that even though the CMC has processes in place to verify that documents ready for destruction can in fact be destroyed, these checks were not sufficient to identify that the files to be destroyed contained original Fitzgerald Inquiry documents. Had the responsible person and Records Management staff been more familiar or aware of Fitzgerald Inquiry records, then it is possible that the loss of these historical documents may have been minimised.

Committee Finding 15**60**

The evidence from all part-time Commissioners was that they were unaware of any issues concerning the dissemination or destruction of Fitzgerald Inquiry material until March 2013.

The Chairperson was made aware of the release of the material, by email from Mr Hutchings, General Counsel, at 10:31am on 29 May 2012. This advice should have initiated an assessment and a risk report under the Risk Management Framework, and the matter should have been brought to the immediate attention of the Committee.

It is wholly inappropriate that, despite multiple opportunities to do so in writing and in person at various joint meetings, the CMC did not advise the Committee of this matter until March 2013, and only after the CMC was made aware that Mr Thomas and Ms Hart were to run an article in *The Australian*.

Adequate governance policies and procedures are in place to satisfy statutory risk management obligations. However, in this instance senior CMC staff, including the Chairperson did not adequately follow these policies and procedures.

The Chairperson of the CMC failed to report this matter to the Committee under either section 329 of the *Crime and Misconduct Act 2001* or under his general reporting obligations to assist the Committee in its oversight of the CMC.

The Chairperson of the CMC and each staff member involved since May 2012 failed to report this matter under the Code of Conduct, risk management framework discussed at section 4.2 and the corporate governance framework and policies discussed at section 5.5.

Committee Finding 16

63

The public interest lies in firstly protecting those persons who were the subject of the inappropriate release of sensitive Fitzgerald Inquiry documents by the CMC and, in the first instances, the protective provisions inserted into the CMA by the *Crime and Misconduct (Administrative Negligence Rectification) Amendment Act 2013* should be made permanent.

A scheme should be established, in the interim, whereby those persons who have accessed, copied and used the material (a) return the material to the CMC, (b) may make an application for a 'clearance' in respect to that usage, and (c) be entitled to be refunded any expenses paid to QSA to obtain the documents and their reasonable cost of compliance with (a) and (b) above.

The public interest lies secondly in allowing appropriate access to the documents of the Fitzgerald Inquiry. This should commence with the identification and public release of the records that were made public during the Fitzgerald Inquiry.

An appropriate mechanism to allow public access to the Fitzgerald Inquiry material could be through amendment of the RTI Act to allow RTI access to documents of historical commission of inquiry documents, subject to a range of appropriate exclusions and criteria.

Alternatively, the CMC could mirror the mechanisms of the RTI Act to allow access under section 18 of the PRA, with appropriate internal dissemination delegations, and strict protocols around the assessment of the requests for access.

Committee Finding 17

68

The Committee finds that the CMC did have a governance framework in place which was a lucid and worthwhile document that appropriately outlined existing statutory obligations and the obligations on all CMC Commissioners and Officers.

In particular, the Committee finds that there was an obligation on the Chairperson, Directors and other Senior Officers to ensure that the Commission was aware of 'significant matters'. The Committee further finds that alerts that there had been a public dissemination of Fitzgerald Inquiry material in May 2012 and September 2012 were 'significant matters'.

The Committee also finds that the Chairperson (Mr Martin), the Director of Information Services (Mr Duell), General Counsel (Mr Hutchings) and the Official Solicitor (Ms Wood) all failed in their obligations to report under the framework.

The Committee notes that, in this instance, there have been multiple failures by senior officers to comply with the various frameworks and policies of the Commission, the failure in respect of the Governance framework being just one example. The Committee believes that this inquiry has provided a limited opportunity for the Committee to assess CMC governance structures and review the implementation of improvements in 2010 and to make recommendations for the future. The Committee found failures and a poor culture of governance within the Executive Management, the LSU, and Information Management. In particular, the Committee is concerned that the role of

Chairperson, given its unique role as both CEO and Chairperson, is considered a proxy for the Commission by CMC staff. That is, CMC staff consider reporting to the Chairperson to be a report to the Commission and the delegation by the Chairperson to be a delegation by the Commission. There is, in the Committee's view, a disconnect between the governance within the CMA, the policies and frameworks approved by the CMC and the actual perceptions, reporting and actions by CMC staff.

The CMC as a Commission, which is constituted by the Chairperson and all four part-time Commissioners fails as an accountability mechanism if the internal culture simply regards the Chairperson as a proxy for the entire Commission.

Committee Finding 18**77**

The Committee appreciates that an organisation such as the CMC, which has a number of distinct functions separated for operational reasons into functional areas that reflect its various statutory duties (Misconduct, Crime, Research etc.) There are very sound reasons for the CMC to be organised in this manner, including effectiveness, efficiency and the need for walls of confidentiality. This is the healthy side of a "silo" organisation.

The current Committee inquiry has been focussed on only a few of those areas: Corporate Services (in particular Information Management), the Legal Services Unit and the Office of the Chairperson. What the Committee's inquiry has revealed was a weakness in these distinct functional areas of the CMC working together to conduct a major project: the transfer of the Fitzgerald Inquiry documents to the QSA and their proper classification.

The Committee heard testimony that the management of the Fitzgerald Inquiry material was not core business. The CMC, however, has a statutory obligation to maintain the Fitzgerald Inquiry records on behalf of Queenslanders and failed in its obligation. The view that the Fitzgerald Inquiry material was not core business may have played a part in:

- the various requests for access by third parties to the Fitzgerald Inquiry documents being delayed for a considerable time through a lack of advice from areas like the Legal Services Unit;
- failure of the organisation to identify people within the organisation who had a very good knowledge of the operations of the Fitzgerald Inquiry (such as Mr Kenzler) from being more involved in assessments relating to the material, thus enabling no discussion or consideration of the "third category of documents";
- enabling or forcing Mr Duell to act largely autonomously without proper advice and counsel of people with proper knowledge of the documents (such as Mr Kenzler);
- officers in position of authority failing to ensure that formal documented submissions were made and considered; and
- a failure for the organisation to respond appropriately to the alert by Mr Krosch in May 2012.

This particular inquiry has exposed the "unhealthy side" of a silo organisation.

The Committee notes the CMC's positive actions in establishing the Jameson review and the implementation of many of the recommendations of the report of that review.

However, the Committee is concerned that the distinction between core and non-core functions is being used by some in the CMC to diminish responsibility in respect of the Fitzgerald Inquiry material.

Committee Finding 19**80**

The Committee finds that the CMC's adoption of the Jameson Report's recommendation to appoint a "Deputy CEO", by appointing the Executive General Manager may have been consistent with the CMA but has not fulfilled the needs identified by the report in terms of corporate management and corporate governance. This is because the Executive General Manager position is, in reality, a Director of Corporate Services.

The current matter has highlighted that the structural change, of appointing a "Deputy CEO" has failed in this instance – because the "Deputy CEO", Ms Mendelle, responsible for Corporate Governance and Mr Duell's direct supervisor, was never informed of a major risk management issue. Repeated failures to follow the chain of command in this instance effectively meant that the Executive General Manager was by-passed. It also resulted in the Commission not being informed.

The Committee does not believe that an organisation such as the CMC can continue to be managed by a CEO who is a skilled lawyer, but has little experience in managing a larger organisation.

The Committee finds that the current model of a Chairperson/CEO is flawed because the Chairperson's role as "Chairperson of the board" and "CEO" is at odds. This dual personality of the Chairperson diminishes the role of the other part-time Commissioners and embeds the culture that the approval of the Chairperson alone is important.

Committee Finding 20**86**

The CMC's budget for 2011-12 was \$50.55 million which represents 0.107% of the State budget.

The Committee considers that the 2012-13 cut to the CMC's budget, which was about \$500,000 or about 1%, did not result in the job losses attributed to that budget cut (of up to 10% of staff positions). This was confirmed by the Chairperson of the CMC during a joint meeting on 16 November 2012, in response to the Chair's question as to how a 1% budget cut could result in such a high number of job losses at the CMC, the Chairperson of the CMC advised: "*...we have tried to make it plain that we have only lost one per cent and that these other figures [job losses] are not directly related to that one per cent.*"

Rather, it was the decisions of CMC management (successive groups of management) in using surplus funds resulting from vacant positions ("the Churn factor") to create additional unfunded permanent positions that resulted in a large number of job losses at the CMC in 2012 when the public service climate changed.

The CMC's management must work to ensure its workforce sits within its budgeted funding. Where the CMC considers that additional staffing is required to fulfil its functions, the CMC should proceed to request the additional funding through the established budgeting processes, such as the Cabinet Budget Review Committee process.

Committee Finding 21**89**

Section 329 in its current form leaves too much dependent upon the value assessments by the Chairperson. It is only upon the assessment by the Chairperson that an obligation arises to report to the Committee.

This section should be amended so that it places a clear duty on the CMC Chairperson to notify the Committee of improper conduct or conduct that might amount to improper conduct. The definition should also expressly include conduct that amounts to, or might amount to, serious maladministration.

Committee Finding 22**94**

The Committee accepts the evidence given by QSA that the QSA has received no complaints from other agencies. The Committee considers that if an agency is unaware that the metadata for its records is publicly available it cannot complain until it is informed.

The Committee considers that the QSA should clearly notify existing and future clients of the use and publication of metadata, and ensure that its policies and procedures are sufficiently clear in this regard. The Committee acknowledges that the State Archivist has already contacted agencies which have closed records but open metadata at the QSA to confirm they understand the metadata is open to the public. The State Archivist also advised that the QSA is reviewing its publications on the transfer of records to the QSA.

Recommendations

Recommendation 1

18

The Committee recommends that an appropriate, independent investigation of issues relating to the dissemination and destruction of the Fitzgerald Inquiry material be established with a view to identifying possible disciplinary action or breaches of the *Crime and Misconduct Act 2001*.

In accordance with normal protocols, the CMC and the Committee will liaise about the most appropriate mechanism for the investigation.

It is important that any inquiry be commenced *ab initio* (from the beginning) and that evidence gathered by the Committee not be used in such inquiry, in contravention of sections 8 and 9 of the *Parliament of Queensland Act 2001*.

Without limiting the inquiry, the inquiry should consider the following matters:

- Whether any breaches of section 62 of the *Crime and Misconduct Act 2001* has occurred (unlawful dissemination of material), by whom and if any defences exist for those breaches
- Whether any breaches of the *Public Records Act 2002* has occurred (such as destruction of permanent records) , by whom and if any defences exist for those breaches
- Whether any other breaches of the *Crime and Misconduct Act 2001* has occurred, including specific consideration of section 210 (fabrication of record, destruction or alteration of record with the intent to obstruct or delay a Commission function) or section 218 (providing a false or misleading document to the Commission);
- Whether any CMC officer has committed official misconduct or another disciplinary breach by:
 - Failing to follow a lawful directive;
 - Maladministration;
 - Negligently or deliberately failing to report matters in accordance with approved frameworks, charters or policies or in accordance with the general provisions of the Code of Conduct.

Recommendation 2

19

As a matter of urgency the Commission needs to review the operations of and address the culture within the Legal Services Unit and report back to the Committee.

Recommendation 3

28

That the CMC review and report to the Committee on proposed changes to how it handles sensitive historical information, including the Fitzgerald Inquiry records and records of both the CJC and CMC. The CMC's report to the Committee should include proposed procedures to determine the appropriate CMC officers to have responsibility for the information, training for those officers around their responsibilities in relation to the information, and appropriate accountability mechanisms for decisions and actions by the responsible CMC officers regarding dealings with that information.

Recommendation 4

29

That the CMC review its policies and procedures in relation to large scale projects, to ensure that:

- a) appropriate senior officers are appointed to lead important or significant projects;
- b) appropriate procedures to document and record decisions and actions are in place and adhered to; and
- c) appropriate mechanisms to report to management in relation to those projects are in place and adhered to.

Recommendation 5 **31**

That the CMC audit, review and report to the Committee on the appropriateness, and validity, of all delegations.

Recommendation 6 **33**

That the CMC review its records held by the QSA and the status of the metadata in relation to those records.

Recommendation 7 **33**

That the State Archivist review QSA policies, procedures and information provided to agencies in relation to transfer of an agencies records to the QSA, to ensure agencies are clearly informed of QSA procedures in relation to the metadata.

Recommendation 8 **38**

That the QSA review its processes and advice provided to agencies in relation to individual access authorisations to ensure authorisations are valid prior to providing individual access to an agencies closed records.

Recommendation 9 **38**

That the QSA advise relevant Chief Executive Officers of the extent of the authorisations under the Authorised Access forms will allow their delegates to set and change RAPs and provide access to closed documents upon application by researchers. This advice should include a recommendation that the agency has appropriate and effective internal controls in place to mitigate the risk of inappropriate disclosure.

Recommendation 10 **53**

The CMC formulate a project plan, and report to the Committee on the costs, resourcing and time required to implement the project, to:

- undertake an audit to identify whether there are any other original Fitzgerald Inquiry documents remaining on CJC/CMC files;
- take remedial steps to replace original records with duplicate records, sourced from electronic or external sources; and
- review its processes for the destruction of documents and provide training to relevant staff to enable them to identify potential Fitzgerald Inquiry records to minimise any future risk of the destruction of Fitzgerald Inquiry records.

Recommendation 11 **54**

The CMC, in consultation with QSA, review its record keeping practices to ensure they are current and provide ongoing training to all staff in respect of their record keeping obligations.

Recommendation 12 **60**

The CMC initiate immediate comprehensive training of all officers, particularly those within the LSU, to ensure the highest levels of compliance with corporate governance obligations under corporate frameworks, charters, policies and the Code of Conduct.

Recommendation 13 **64**

The Committee recommends that the provisions in the Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Act 2013 be given permanent effect.

Recommendation 14 **64**

The Committee recommends that the Government establish a scheme whereby persons who have accessed, copied and used the released Fitzgerald Inquiry material between 2 February 2012 and 4 March 2013:

- a) return the material to the CMC;
- b) make application for a 'clearance' in respect of any future use of the material; and
- c) be entitled to a refund of expenses paid to QSA to obtain the documents and reasonable costs of compliance with (a) and (b) above.

Recommendation 15 **64**

The *Right to Information Act 2009* be amended to allow RTI access to documents of historical commission of inquiry documents, subject to a range of appropriate exclusions and criteria.

Recommendation 16 **64**

In the interim, the CMC should ensure there are appropriate internal dissemination delegations, and develop strict protocols around the assessment of the requests for access under section 18 of the *Public Records Act 2002*.

Recommendation 17 **65**

The Attorney-General and the Minister for Science, Information Technology, Innovation and the Arts, consider whether a coordinated and centralised method of housing and managing Commission of Inquiry documents is a practical and worthwhile project.

Recommendation 18 **68**

The CMC needs to continually remind all staff of the CMC that the "CMC" is constituted by the Chairperson and all four part-time Commissioners. The internal culture that simply regards the Chairperson as a proxy for the entire Commission must change.

The CMC needs to take a proactive approach to ensuring that breaches of its legislation (especially regarding delegations) and frameworks and policies adopted by the Commission are identified, rectified and offenders are appropriately dealt with in order to enforce the cultural change required.

Recommendation 19 **80**

The Committee recommends that the *Crime and Misconduct Act 2001* be amended before the appointment of the next Chairperson to cause structural separation of the role of Chairperson and CEO.

Under this new model, the CEO (akin to a Director-General) will report directly to the Commission ("the board").

Recommendation 20**90**

The Committee recommends that the present, broad and subjective obligations on the Chairperson or the CEO under section 329 of the *Crime and Misconduct Act 2001* be increased to include:

- a) Any allegations of unauthorised disclosure of information or other material that is confidential;
 - i. Whether the dissemination breaches the CMC Act; or
 - ii. Breaches some other legislation; or
 - iii. Might not breach any legislation;
- b) Any instance of registers not being up to date and complete or required documentation is not on file and correctly noted on the registers;
- c) Any instance of required authorisations for the exercise of power not being properly obtained, regardless of whether acting without authority was inadvertent or deliberate;
- d) Any instance of any policy or procedural guidelines set by the Commission not being strictly complied with, regardless of whether the breach was inadvertent or deliberate;
- e) Any allegation of an inappropriate use of power;
- f) Any significant matters (as defined within the CMC's Corporate Governance Framework [see section 5.5 of this report]).

It is important that the redrafted section 329 is inclusive of all definitions required without reference to external documents such as the CMC's Code of Conduct or the provisions of others Acts.

Recommendation 21**92**

The Committee considers that the *Crime and Misconduct Act 2001* should be amended to provide that the Committee may refer a matter for the Parliamentary Commissioner to investigate and the report on a matter pursuant to section 295(2)(d) and the report of the investigation may, despite sections 8 and 9 of the *Parliament of Queensland Act 2001*, be forwarded to the Chairperson of the CMC who may use the Commissioner's investigation and findings in the report as grounds for disciplinary action and an indication of whether disciplinary action is warranted. Furthermore, the current impediments to the Parliamentary Commissioner holding hearings in section 318(1) are unduly restrictive in respect of matters already referred to the Commissioner by the Committee under section 295(2)(d) and should be changed.

It is noted that nothing in these recommendations seeks to derogate from the role of the Chairperson in determining if grounds for disciplinary action are established or what disciplinary action is warranted and imposed, or the Commission's authority to sanction the Chairperson's recommendation.

Recommendation 22**94**

That the State Archivist review all policies and procedures relating to the transfer of agency records to the QSA to ensure they are clear.

Recommendation 23**94**

That the QSA write to all agencies which has transferred closed records to the QSA where those closed records have publicly accessible metadata to advise those agencies of the public status of the metadata and to seek direction as to whether the metadata should be publicly accessible or not.

Recommendation 24**94**

That the Minister for Science, Information Technology, Innovation and the Arts, report to the Parliament on any other instances where public access to detailed metadata was incorrectly provided by the QSA and the agency involved was unaware.

1. Terms of Reference and Manner in which the Inquiry came before the Committee

On the evening of 5 March 2013, the Chair of the Parliamentary Crime and Misconduct Committee (Committee), Mrs Liz Cunningham MP, was contacted by the Assistant Commissioner of the Crime and Misconduct Commission's (CMC) Misconduct Division, Mr Warren Strange, and informed of the dissemination of former Fitzgerald Commission of Inquiry (Fitzgerald Inquiry) material through the CMC's holdings at the Queensland State Archives (QSA).

The Committee immediately began an inquiry into the matter, taking evidence from the Chairperson of the CMC, Mr Ross Martin SC, on 6 March 2013 and later that day approving that the Clerk of the Parliament issue a summons to the State Archivist to give evidence before the Committee and produce material relevant to the matter the following day (7 March 2013).

On 7 March 2013, from approximately 12.20pm, the Committee took *in camera* evidence from officers of the QSA, including the State Archivist, and took possession of a large quantity of material relating to the QSA's holdings of the Fitzgerald Inquiry. At 2.36pm that day, the Chair of the Committee reported to the Assembly as to its inquiry to date.¹ The Chair's statement to the Assembly is attached as **Appendix 1**.

On the afternoon of 7 March 2013, correspondence and discussion ensued between the Committee, CMC and the Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice (Attorney-General) regarding urgent protective legislation to prohibit republication of material lawfully obtained from the QSA by third parties. This correspondence is attached as **Appendix 2**.

Early in the morning of 8 March 2013 protective legislation was passed by the Legislative Assembly.² The Assembly also passed a resolution requiring further inquiry by the Committee.³ The Assembly's full motion is attached as **Appendix 3**.

The Assembly's motion required the Committee to:

report upon the incorrect classification of documents transferred from the CMC between 2007 and 2009;

report upon the CMC's failure to remedy the incorrect classification of the above documents in a timely and effective manner;

report upon the destruction of records;

report upon the failure by the CMC to account to the PCMC in a timely and effective manner regarding (a) to (c);

report on how the issues arising from the incorrect classification of documents can be remedied in the longer term, including whether some or all of those documents have to remain confidential; and

report on any other matters and make any other recommendations the PCMC believes necessary to address issues raised in its inquiry.

¹ Queensland Parliament, *Record of Proceedings*, 7 March 2013, pages 502-503.

² *Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Act 2013*.

³ Queensland Parliament, *Record of Proceedings*, 7 March 2013, page 616.

2. Overview

The evidence before the Committee of what happened and when in terms of access to the documents is largely uncontroverted. The focus of the Committee was on the how and why the documents became publically disseminated. Firstly, how responsible CMC office holders and systems of governance enabled the documents to become disseminated from February 2012, secondly why there was a failure to properly address the improper dissemination of the documents when Executive Management became aware of their dissemination in May 2012 and, thirdly, why documents were apparently destroyed in 2007.

2.1 The Fitzgerald Inquiry documents

The story necessarily begins with the activities of the Fitzgerald Inquiry.

On 26 May 1987, pursuant to Orders in Council,⁴ the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (the Fitzgerald Inquiry), Chaired by Tony Fitzgerald QC was established. This most famous Commission of Inquiry would run for over two years and marked an historic turning point for the administration of government in Queensland. The Fitzgerald Inquiry's Report, tabled in June 1989, indicates that the Commission took evidence over 238 days and 2304 exhibits were tendered.⁵ Of these 2304 exhibits, 67 'restricted access' and 345 'not for publication' orders were issued.⁶

Prior to the Fitzgerald Inquiry report, steps were underway to establish a more permanent intelligence, misconduct and research body - the Criminal Justice Commission (CJC). On 31 October 1989 the CJC came into official existence and the legislation establishing the CJC also transferred the holdings of the Fitzgerald Inquiry to the CJC.⁷ The Committee concludes that somewhere in the vicinity of 23,000 to 25,000 documents were transferred from the Fitzgerald Inquiry to the CJC. These documents included:

- Transcripts of the Commission's public proceedings;
- Exhibits tendered at the hearings of the Commission (2,304). Included in these exhibits were some exhibits of which not for publication orders were in force; and
- Various other documents created or obtained by the Commission, but which were never directly used in the public hearings. These documents comprised the vast majority of the material – somewhere between 21,000 to 23,000 documents. They included, for example, documents generated by the inquiry such as records of interview with informers, suspects or others and internal memorandums etc. They also included pre-existing original documents obtained by the Commission under summons, including original police files, bank records etc.

2.2 The removal of original Fitzgerald Inquiry documents for CJC files

The evidence suggests that at some time before or early into the existence of the CJC, an unknown number of original Fitzgerald Inquiry documents relevant to continuing investigations were removed from the collection and placed on new files for the proposed CJC.⁸ Evidence to the Committee

⁴ Orders in Council, as amended by Orders in Council of 24 June 1987, 25 August 1988 and 29 June 1989; The Fitzgerald Report, at page (i).

⁵ Report of a Commission of Inquiry Pursuant to Orders in Council, 1987-1989, page 4.

⁶ Report of a Commission of Inquiry Pursuant to Orders in Council, 1987-1989, Appendix 12, pages A49-A173.

⁷ *Criminal Justice Act No. 111 of 1989*, section 2.48.

⁸ See, for example: PCMC, *Record of Proceedings*, 14 March 2013, page 19; PCMC, *Record of Proceedings*, 6 March 2013, page 3.

suggests that around 4,000 documents were removed from the holdings and transferred to CJC files.⁹ It is these documents which were later destroyed in 2007 by the CMC.

From 1994 to 1997, the CJC was in discussion with the QSA about the destruction of CJC intelligence files which contained 'copies of Fitzgerald Inquiry records'.¹⁰ A letter from the QSA to the CJC dated 5 October 1994 notes that the CJC Intelligence Division request regarding the destruction of materials including: Fitzgerald Inquiry transcripts described as duplicate material; and 19 folders containing Fitzgerald Inquiry material '*original is held on file in CJC central registry from which selected information was copied*'.¹¹

From 2003 the CMC began to develop various records management policies, including a retention and disposal schedule outlining what documents could be retained or destroyed and when.

2.3 The transfer of Fitzgerald Inquiry documents from the CMC to the QSA

In 2006 a project commenced to transfer Fitzgerald Inquiry and CJC files from the CMC to QSA. A primary motivator for this movement of material relates to the CMC moving to new premises.¹²

In October 2006 the CMC's retention and disposal schedule was approved.¹³ On 19 June 2007, the then CMC Chair (Mr Robert Needham) nominated and delegated the then Director, Information Management (Mr Greg Rigby) with access authorisation approval for the CMC's holdings at QSA.¹⁴ This access authorisation enables the setting of Restriction Access Periods (RAPs), which effectively directs the QSA as to when documents can be made available to the public.

From July 2007 to March 2009 the physical transfer of the bulk of the Fitzgerald Inquiry holdings to the QSA occurred. A total of 17 Series (i.e. categories) of Fitzgerald Inquiry items were transferred in four large tranches (TR5422).¹⁵ The first transfer (August 2007) from the CMC to the QSA included: Statements (20 boxes); Transcripts (920 boxes); and Records of Interviews (27 boxes). On 2 December 2007 a second transfer occurred which included: Exhibits (51 boxes); and Correspondence (21 boxes). On 3 March 2008 a third transfer of Fitzgerald Inquiry Files from the CMC to the QSA occurred which included: Documentation (135 boxes) and 1 large chart. On 12 March 2009 the final transfer from the CMC to the QSA occurred: "politicians and police officers correspondence and various."

2.4 The classification of the Fitzgerald Inquiry documents at the QSA – setting the RAP

On 3 September 2010 Ms Janet Legg, CMC Records Manager, advised the QSA that a 65 year Restricted Access Period (RAP) applied to all Series, except specific items in Series 18561 which are to have a 100 year RAP applied.¹⁶

At about this time, the CMC also sent to the QSA an electronic index to the various documents now held at the QSA. This electronic description of the files, which has come to be described as 'metadata' in the Committee's inquiry was, in the main, sourced from the original descriptors of the

⁹ See, for example: PCMC, *Record of Proceedings*, 6 March 2013, page 3.

¹⁰ PCMC Exhibit TD_106.

¹¹ PCMC Exhibit TD_106.

¹² PCMC, *Record of Proceedings*, 21 March 2013, page 41 (Ms Legg).

¹³ PCMC Exhibit TD_106.

¹⁴ PCMC Exhibit TD_106.

¹⁵ PCMC Exhibit TD_106.

¹⁶ PCMC Exhibit TD_106. (On 3 September 2010 a Letter from Ms Legg (CMC) to Ms Prowse (QSA) is sent re: Restricted Access Notice for TR 5422 Series 18651 (annotated correction on covering letter refers to series 18586 replacing 18651).

material compiled by the Fitzgerald Inquiry from its TCR computer system.¹⁷ It appears that unbeknown to the CMC, the QSA placed this metadata on its publically available searchable database, even though the files themselves were subject to a 65-100 year RAP.¹⁸

An issue which arose early in the Committee's inquiry is that the metadata used to describe the Fitzgerald Inquiry documents is very informative as to its content. That is, the file descriptor given to the documents can itself disclose sensitive information. This may not merely be an issue relevant to the CMC specifically, but rather may be relevant to public recordkeeping across the public sector. This will be addressed as a new issue arising from the Committee's inquiry (see section 5.7).

From late 2009 and into 2012, a number of journalists and other persons were seeking access to the Fitzgerald Inquiry holdings for research into books or other academic work they were compiling. The evidence to the Committee revealed that no process or system was developed by the CMC to deal with these requests and that considerable time often elapsed between the original request and outcome.¹⁹ The evidence suggests that these requests, a lack of a process within the CMC to deal with these requests, confusion over roles and responsibilities in respect of these requests and a fundamental misunderstanding of the content of the Fitzgerald Inquiry material by key office holders within the CMC, all combined to lead to the RAP on the majority of the holdings being changed from 65 years to 20 years.²⁰ This enabled full public access to material that clearly should never have been made public, either via its metadata or the files themselves.

On 2 February 2012 Mr Peter Duell, Director of Information Management at the CMC, emailed Ms Elizabeth Hawkins, Manager Archival Collections, QSA, and attached a copy of the RAP change request form and advised a hard copy was to follow.²¹ The change of RAP was to make publically available all 17 Series of Fitzgerald Inquiry material after 20 years, effectively making all Series available to the public immediately with the exception of those items previously classified as having a 100 year RAP applied (exhibits tendered at the Fitzgerald Inquiry by subject to a not for publication order).

Critically, on 15 February 2012, Ms Morales, Senior Archivist (QSA), emailed Mr Duell (CMC) the electronic transfer report for Transfer 5422, further to an email he received from Ms Hawkins (QSA) at 9.23am that morning.²² This transfer report contains hundreds of pages of metadata showing the entire holdings of QSA of Fitzgerald Inquiry material and the classification applying to each item – effectively 20 years for all except those covered by the non-publication order.²³

Mr Duell admitted to never looking at this material.²⁴ A number of witnesses before the hearings of the Committee, when confronted by the metadata in the exhibit²⁵ were visibly shocked by the content of the metadata and agreed that the material on its face should never have been made

¹⁷ PCMC, *Record of Proceedings*, 14 March 2013, page 23; PCMC, *Record of Proceedings*, 15 March 2013, page 55; PCMC, *Record of Proceedings*, 18 March 2013, pages 5, 13 and 31; PCMC, *Record of Proceedings*, 21 March 2013, page 42.

¹⁸ See: PCMC Exhibit TD_45.

¹⁹ See, for example: PCMC Exhibit TD_19; PCMC Exhibit TD_21; PCMC, *Record of Proceedings*, 18 March 2013, pages 54-55.

²⁰ See, for example: PCMC Exhibit TD_07; PCMC, *Record of Proceedings*, 14 March 2013, pages, 6-11, 13-15, 32-34 and 38; PCMC, *Record of Proceedings*, 20 March 2013, page 74; PCMC, *Record of Proceedings*, 22 March 2013, pages 48-49.

²¹ PCMC Exhibit TD_06; PCMC Exhibit TD_22 to TD_25.

²² PCMC Exhibit TD_23.

²³ PCMC Exhibit TD_22 to TD_25.

²⁴ PCMC, *Record of Proceedings*, 14 March 2013, page 41; PCMC, *Record of Proceedings*, 22 March 2013, page 44.

²⁵ PCMC Exhibit TD_25.

publically available.²⁶ Through February and March 2012, Mr Duell went about informing various journalists and researchers of the change of RAP.²⁷

There is evidence before the Committee that the amount and range of information released under the changed RAP surprised researchers. On 24 February 2012 the witness Mr Steve Bishop (Researcher), was so surprised by the material released, he asked staff of the QSA to check the RAP relating to certain Fitzgerald Inquiry documents because the extent of the available access was far greater than he expected. Mr Bishop stated that QSA staff advised they checked access with either the CMC/QSA supervisor.²⁸ Mr Krosch also gave evidence indicating his surprise at the material available and noting that he had queried the appropriateness of the release of the information with QSA staff.²⁹

2.5 May 2012

On 5 March 2012, Mr Ross Martin became the Chair of the CMC. By this time, Fitzgerald Inquiry documents had already been destroyed (2007)³⁰ and the RAP changed so the Fitzgerald Inquiry material was publically available at the QSA (February 2012). Mr Martin is, therefore, not responsible for either the destruction or release of the material. However, he is responsible for actions taken by the CMC when his attention was drawn, in May 2012, to the public release of the Fitzgerald Inquiry documents.

On 24 May 2012 Mr Krosch sent an email (at 4:20pm) to Ms Sidonie Wood, the CMC Official Solicitor, acknowledging receipt of an earlier letter by Ms Wood regarding his information requests. Mr Krosch also stated in the email:

*I do a lot of work through archives around Australia and I was surprised to see all the Fitzgerald Inquiry Surveillance Reports are accessible now. I am sure it was a 60 year access originally?*³¹

Ms Wood forwarded the email from Mr Krosch to Mr Russell Kenzler (CMC RTI Coordinator). Mr Kenzler responded (4:36pm) to Ms Wood acknowledging that he (Mr Kenzler) thought the Fitzgerald Inquiry material available was confined to exhibits tendered at the public hearing.³²

Around this time the Chairperson, Mr Martin, was made aware of the revelations in Mr Krosch's email. Mr Martin recalls speaking with both Ms Wood and Mr Duell about the matter, probably around 26 May 2012 – although there is no record of the meeting or conversation. (For reasons detailed later in this report, the Committee suspects that Mr Martin, in fact, became aware on 29 May 2012.) After becoming aware of the issue, Mr Martin asked Mr Duell to explain what had happened and Mr Duell indicated that there was a mistake in the numbering of files, or 'something like that'.³³ Mr Martin gave evidence that he was under the impression that the cause was a 'modest

²⁶ PCMC, *Record of Proceedings*, 19 March 2013, page 37 (Ms Wood); PCMC, *Record of Proceedings*, 20 March 2013, page 85 (Mr Hutchings); PCMC, *Record of Proceedings*, 21 March, page 56 (Ms Legg); PCMC, *Record of Proceedings*, 14 March 2013, page 42 (Mr Duell); PCMC, *Record of Proceedings* 15 March 2013, page 23 (Mr Martin).

²⁷ PCMC Exhibit TD_28; PCMC Exhibit TD_29.

²⁸ PCMC Exhibit TD_65; PCMC, *Record of Proceedings*, 18 March 2013, pages 51 and 57.

²⁹ PCMC, *Record of Proceedings*, 13 March 2013, pages 3-4.

³⁰ PCMC, *Record of Proceedings*, 6 March 2013, page 3; PCMC, *Record of Proceedings*, 14 March 2013, pages 18-19.

³¹ PCMC Exhibit TD_83.

³² PCMC Exhibit TD_83. Mr Kenzler was the Clerk to the Fitzgerald Inquiry and would be expected to have had considerable knowledge of the CMC's Fitzgerald Inquiry holdings.

³³ PCMC, *Record of Proceedings*, 15 March 2013, pages 22-23.

clerical issue that affected a relatively small number of documents'.³⁴ According to Mr Martin he asked Mr Duell to "fix" the error and then later, after Mr Duell had left, asked Ms Wood to look into the matter to ensure that appropriate access was in place.³⁵

On 29 May 2012 Mr Duell signed a Restricted Access Notice (RAP) – Change Request form to the QSA requesting that a 65 year RAP be applied to 15 of the 17 Series of Fitzgerald Inquiry material.³⁶ A covering letter to Ms Hawkins dated 29 May 2012 stated that the RAP applied to all Fitzgerald Inquiry holdings, with the exception of series 18501, 18586, and 18651 which relate to the transcripts, PCMC Exhibits and inquiry documentation. The exceptions to Series 18651 continued to apply for items previously listed in the RAP Notice of 3 February 2012 for a RAP of 100 years. The effect of this change was to leave a very large bundle of "documents" in Series 18651 publically available. Many of these documents are very sensitive investigative files, including material provided by the Australian Federal Police and the National Crime Authority to the Fitzgerald Inquiry marked ***CONFIDENTIAL***.

Also around 29 May 2012, the CMC General Counsel Mr Robert Hutchings was made aware of Mr Krosch's concerns and there are a number of email communications between Mr Hutchings, Ms Wood and Ms Zora Valeska suggesting investigations by the Legal Service Unit into the change of RAP and the physical holdings at the QSA which are available to the public.³⁷ However, for reasons that the Committee has been unable to definitely determine, the investigations scoped in these emails do not take place. Curiously, at 3.30pm on 29 May 2012 an incomplete draft email by Mr Hutchings to Mr Martin is composed, but never sent, which reads:

Below is DUELL's response to the issue of State Archives having Fitzgerald Inquiry covert material available for inspection.

I'm not sure the issue is resolved simply by reverting to a 65 year access period. I would have thought that reports of surveillance undertaking by the Commission (and not tendered in evidence) aren't feel there's more that needs to be do.³⁸

No satisfactory explanation was provided to the Committee as to why this email was never completed or sent, or why Ms Valeska was not directed to proceed with an investigation as previously defined.³⁹ The Legal Service's Unit appears to do nothing more until July 2012.

A considerable part of the Committee's inquiry focussed on the events in May 2012. The Committee's focus was on: the apparent inertia in the Legal Service's Unit in investigating what had happened and what holdings remained publically available; the absence of any report by the Chairperson to the PCMC of the matters reported by Mr Krosch or the errors in the RAPs allowing public access to confidential material which had been uncovered; and the absence of any satisfactory follow-up to the issues uncovered by Mr Krosch.

Two documents provided to the Committee indicate that on 13 July 2012 there was a meeting between the Official Solicitor (Ms Wood) and the CMC Chairperson (Mr Martin) regarding the earlier issue arising in May.⁴⁰ No satisfactory explanation was received by the Committee about the content

³⁴ PCMC, *Record of Proceedings*, 15 March 2013, pages 22-23.

³⁵ PCMC, *Record of Proceedings*, 15 March 2013, pages 11-13, 15 and 22; PCMC Exhibit TD_31; PCMC Exhibit TD_33.

³⁶ PCMC Exhibit TD_86.

³⁷ PCMC Exhibit TD_99; PCMC Exhibit TD_31; PCMC Exhibit TD_32.

³⁸ PCMC Exhibit TD_35.

³⁹ PCMC, *Record of Proceedings*, 22 March 2013, pages 65-69; PCMC, *Record of Proceedings*, 18 March 2013, pages 40 and 42; PCMC Exhibit TD_59; PCMC Exhibit TD_61; PCMC Exhibit TD_62; PCMC Exhibit TD_32.

⁴⁰ PCMC Exhibit TD_44; PCMC Exhibit TD_79.

or purpose of that meeting, but it is clear that the Chairperson was requiring some sort of report on the outcome of investigations into the May incident.⁴¹ Unfortunately, evidence to the Committee revealed that the Official Solicitor, Ms Wood destroyed her original notes of this meeting, after an internal inquiry to the matter had commenced, leaving the Committee with an alleged reproduction of a very short note of the meeting, which only suggests that Ms Wood was tasked with checking the holdings at QSA available via metadata.⁴²

A joint PCMC/CMC meeting also occurred on 13 July 2012, but no mention was made of the matters arising in May at that joint meeting. The coincidence of the meeting between Ms Wood and Mr Martin regarding this matter on the same day as the joint PCMC/CMC meeting also became a focus of the Committee during its inquiry.⁴³

On 26 July 2012 a meeting occurred between Mr Duell and Ms Wood – where Mr Duell apparently explained how the material was transferred to the QSA and how RAPs were applied - this meeting appears to conclude any further investigation by Ms Wood.⁴⁴ No further report to Mr Martin is recalled or noted by any witness.⁴⁵

Unfortunately, the inadequate investigation of this matter in May 2012 meant that a great deal of very sensitive material was to remain in the public domain.

2.6 September 2012

On 19 September 2012 a person attempted to access two documents at the QSA that are part of Series 18651 but are marked '***CONFIDENTIAL***'. This caused QSA staff to telephone Mr Peter Duell about the request which clearly enough related to apparently sensitive Fitzgerald Inquiry documents from Series 18651.⁴⁶

Mr Duell directed the QSA to not release the documentation until further advice was provided. Mr Duell then changed the RAP of specified items (those marked "confidential") in Series 18651 to 100 years. QSA immediately implemented the change.⁴⁷

An email thread between Mr Duell (CMC) and Ms Hawkins (QSA) on this date states:

*This is to confirm that all items in Transfer ID: 5422, Series ID 18651 with a description commencing 'CONFIDENTIAL' or '***CONFIDENTIAL***' are to be considered exceptions for the Series RAP. Consistent with the previously advised exceptions to Series 18651, these items will have a RAP of 100 years applied. These items should also not be web-enabled for online searches.*⁴⁸

Mr Duell in evidence stated that he would have told his immediate superior, Ms Edith Mendelle, CMC Executive General Manager, of the September incident at his next fortnightly meeting with her.⁴⁹ Ms Mendelle in her evidence refuted this and has produced her detailed notes of meetings as evidence of the absence of such a report.⁵⁰ Mr Duell later admitted to not telling any other superiors,

⁴¹ PCMC, *Record of Proceedings*, 15 March 2013, pages 33-34; PCMC, *Record of Proceedings* 19 March 2013, pages 13-15.

⁴² PCMC, *Record of Proceedings*, 19 March 2013, pages 5-6 and 13-15.

⁴³ PCMC, *Record of Proceedings*, 15 March 2013, page 37.

⁴⁴ PCMC, *Record of Proceedings*, 20 March 2013, page 17.

⁴⁵ PCMC Exhibit TD_80; PCMC Exhibit TD_82.

⁴⁶ PCMC Exhibit TD_06; PCMC, *Record of Proceedings*, 22 March 2013, page 37 (Ms Hawkins); PCMC, *Record of Proceedings*, 22 March 2013, page 78 (Mr Duell).

⁴⁷ PCMC Exhibit TD_38; PCMC, *Record of Proceedings*, 22 March 2013, page 37 (Ms Hawkins).

⁴⁸ PCMC Exhibit TD_38.

⁴⁹ PCMC, *Record of Proceedings*, 14 March 2013, page 46 (Mr Duell).

⁵⁰ PCMC, *Record of Proceedings*, 21 March 2013, pages 6-7 (Ms Mendelle).

such as the CMC Chairperson, or the Legal Service Unit of the September issue and the further change of RAP.⁵¹

2.7 The revelations of February and March 2013

On 26 February 2013, a journalist, Mr Hedley Thomas, whilst at the QSA requested access to a document forming part of Series 18651. That document was missing, with only a note in the folder in which it should have been. The QSA contacted Mr Duell about the missing document.⁵²

On 28 February 2013 the QSA Collections Manager contacted Mr Duell advising that a sheet of paper in the file where the document should have been included the annotation 'see 104/4/4/5'. Mr Duell recognised this as an old CJC file numbering sequence.⁵³

On 1 March 2013 Mr Duell met with the Acting Chairperson of the CMC, Warren Strange about the missing document and raised the issue of a possible misconduct investigation.⁵⁴ Later that day Mr Duell discovered that the missing file, as identified on 28 February 2013, had been destroyed in 2007, in accordance with the CMC's approved Retention and Disposal Schedule.⁵⁵

Further investigation revealed that the file held a number of documents which appeared to have been original Fitzgerald Inquiry documents and that the file had been created in June 1989, prior to the close of the Fitzgerald Inquiry, with intelligence-type documents apparently removed from the Fitzgerald Inquiry file and attached to CJC files.⁵⁶

The QSA advised Mr Duell of other cases of missing documents from the Fitzgerald Inquiry holdings, which also included handwritten notes referring to file numbers in place of missing documents.⁵⁷ Mr Duell advised the QSA that he would investigate 'to get an understanding of the size of the problem'.⁵⁸

On 4 March 2013 Mr Duell was informed by the QSA that Mr Hedley Thomas was requesting a large number of apparently highly sensitive documents from the QSA online catalogue. The QSA informed Mr Duell of the content of Mr Thomas's requests. Mr Duell resolved to reclassify Series 18561 to a 65 year RAP and undertook to provide the RAP change form the following day.⁵⁹

Also on this day Mr Duell identified multiple Fitzgerald Inquiry documents that had been destroyed. Initial estimates indicated that possibly more than 4,000 documents may have been destroyed in 2007.⁶⁰

Late in the afternoon of 5 March 2013, the PCMC first became aware that the CMC had, in error, released confidential material through holdings in the QSA.⁶¹

On the morning of 6 March 2013 Mr Hedley Thomas and Ms Emma Hart published an article titled 'CMC blunder exposes dossiers', in *The Australian*.

⁵¹ PCMC, *Record of Proceedings*, 22 March 2013, page 55 (Mr Duell).

⁵² PCMC Exhibit TD_106; PCMC, *Record of Proceedings* 7 March 2013, page 5 (Ms Prowse); PCMC, *Record of Proceedings*, 14 March 2013, page 18 (Mr Duell).

⁵³ PCMC Exhibit TD_106; PCMC, *Record of Proceedings* 14 March 2013, page 18 (Mr Duell).

⁵⁴ PCMC Exhibit TD_106.

⁵⁵ PCMC, *Record of Proceedings*, 14 March 2013, page 19 (Mr Duell); PCMC Exhibit TD_06.

⁵⁶ See, for example: PCMC, *Record of Proceedings*, 14 March 2013, page 19; PCMC, *Record of Proceedings*, 6 March 2013, page 3.

⁵⁷ PCMC Exhibit TD_106.

⁵⁸ PCMC Exhibit TD_06, page 3.

⁵⁹ PCMC Exhibit TD_106; PCMC Exhibit TD_06.

⁶⁰ PCMC Exhibit TD_26.

⁶¹ PCMC, *Record of Proceedings*, 21 March 2013, page 35 (Mr Strange).

The article alleged that a CMC error led to the reclassification of files that were mistakenly reopened. The files contained Fitzgerald Inquiry operational documents. The CMC immediately instituted a 65-year restriction on all documents, and determined to review the issue of access to all Fitzgerald Inquiry records (which number in excess of over 19,000 items) and ascertain how the administrative error occurred. The CMC stated that its review would also seek to determine whether any inappropriate access has occurred.⁶²

It is also on this day that the Committee commenced its investigation (see Parts 1 and 2).

⁶² *Crime and Misconduct Commission statement – 06.03.2013*. See: www.cmc.qld.gov.au/news-and-media/media-releases/cmc-statement-2013-06.03.2013

3. The Parliamentary Crime and Misconduct Committee's Inquiry

As outlined in Part 1, the Committee began its inquiry on 6 March 2013 and took substantial evidence *in camera* on 6 and 7 March 2013 and gathered documentary evidence from the QSA pursuant to a summons issued on 6 March 2013 returned on 7 March 2013.

Following the resolution of the Legislative Assembly on 8 March 2013, the Committee recommended the appointment of Mr Peter Davis SC as Acting Parliamentary Crime and Misconduct Commissioner and Dr Kerri Mellifont SC as Counsel assisting the Commissioner, such appointments being approved by Madam Speaker on 11 March 2013. The appointment of Mr Davis SC as Acting Commissioner was necessary because of the unavailability of Mr Paul Favell, the permanent Parliamentary Commissioner.

The Committee also approved the Clerk of the Parliament issuing summons to witnesses to attend and produce evidence to the Committee.

In total, the Committee heard evidence in 14 hearings over twelve (12) days: two (2) days of evidence preceded the Legislative Assembly's resolution; and eight (8) days following the resolution.

During the 14 hearings, approximately 42 hours of evidence was taken from 31 witnesses who gave their evidence to the Committee under Oath or Affirmation. Two (2) witnesses gave evidence via Video Conference from the United Kingdom and Regional Queensland (Kingaroy).

Approximately 10 linear metres of documentary evidence was gathered by the Committee pursuant to summonses issued by the Committee or provided by undertakings to the Committee, in addition to a large amount of evidence provided by way of electronic information on DVD disc (such as emails from key witnesses).

A total of 124 exhibits were tendered at the hearings; with 140 documents tabled during the inquiry.

3.1 Was an external inquiry warranted?

On the last day of hearing, 28 March 2012, Mrs Judith Bell, a part-time Commissioner of the CMC gave evidence. During the course of her evidence, in answer to questions posed by the Committee, Mrs Bell opined that the matter should have been dealt with by way of an internal investigation and that the Committee's inquiry had been unduly harsh on CMC staff.⁶³

The Committee is of the view that the CMC did have an opportunity to conduct an internal investigation into the issue. That opportunity was in May 2012, when Mr Krosch's email alerted the CMC to the Fitzgerald Inquiry documents being publically available. All the evidence before the Committee clearly demonstrates that the CMC 'dropped the ball' in May 2012 and failed to institute a proper internal inquiry. A proper internal inquiry in May 2012 would have prevented the damage that was ultimately caused to the CMC's reputation.

In relation to the Committee undertaking the inquiry, pursuant to the motion of the Legislative Assembly, with the assistance of the Acting Parliamentary Commissioner, it must be appreciated that at the time the inquiry was established the CMC was unable to inform the Committee as to the extent of information publically available,⁶⁴ how many people were at risk, how many people's reputations were at risk or what operations, if any, had been compromised. The evidence of

⁶³ PCMC, *Record of Proceedings*, 28 March 2013, pages 2, 5 and 6 (Mrs Bell).

⁶⁴ For instance, evidence received from the CMC suggests that as at March 2013, 741 documents were publicly accessible (PCMC Exhibit TD_26). Evidence from the QSA suggests that the number of publicly accessible documents as at 4 March 2013 was 7341 (PCMC Exhibit TD_106. EX QSA50); PCMC, *Record of Proceedings*, 6 March 2013.

Ms Florian, detailed later in this report, establishes that at least 13 people were later found to be at some risk.

3.2 Summonses

Pursuant to section 25 of the *Parliament of Queensland Act 2001* 'An authorised committee may order a person, other than a member, to attend before the committee and also to produce to the committee any document or other thing in the person's possession.'

Section 26 of the *Parliament of Queensland Act 2001* requires that a person who is ordered to attend must be given a summons issued by - if ordered to attend by an authorised committee – the Clerk of Parliament on notification by the committee's chairperson. The summons must state a reasonable time and place for the attendance and, if a document or other thing is ordered to be produced, reasonable particulars of the document or other thing.

At 5.55pm on 12 March 2013, prior to the commencement of the Committee's public hearings pursuant to the resolution of the House, the Committee served a summons issued by the Clerk of Parliament on Ms Sidonie Wood, CMC Official Solicitor, as the responsible officer, requiring her attendance at the hearing and the production of the following material:

- *a copy of all documents (including documents and data held in electronic form, such as emails and attachments), held by the CMC:*
 - a) *created in the period 1 January 2007 to 10 March 2013; and*
 - b) *relating to the transfer and retention of and access to (including anything relating to Records Access Periods (RAPs)) documents the Fitzgerald Inquiry, which were transferred from the CMC to QSA between 2007 and 2010.*
- *a copy of all documents (including documents and data held in electronic form, such as emails and attachments), held by the CMC:*
 - a) *created in the periods 1 January 2006 to 31 December 2007 and 1 January 2013 to 10 March 2013; and*
 - b) *relating to the process of or approvals for the destruction of documents in the possession of the CMC; but*
 - c) *excluding the content or description of operational files of the CMC.*
- *a copy of all records of communications (including documents and data held in electronic form, such as emails and attachments), between officers of the CMC and QSA between 1 January 2006 and 10 March 2013 held by the Crime and Misconduct Commission or in her personal possession.*
- *a copy of all documents (including documents and data held in electronic form, such as emails and attachments), held by the CMC that relate Messrs Tony Reeves, Stephen Bishop and Barry Krosch and their access to documents of the Fitzgerald Inquiry, which were transferred from the CMC to QSA between 2007 and 2010:*
- *extracts from the minutes of meetings of the Crime and Misconduct Commission in the period 1 January 2006 to 10 March 2013 and all documents relevant to such proceedings of the Crime and Misconduct Commission such as submissions, briefings or reports that relate to the transfer and retention of and access to any documents the Fitzgerald Inquiry or the records of the CMC.⁶⁵*

⁶⁵ PCMC Exhibit TD_1.

The Committee provided a draft of the summons to the CMC on 10 March 2013 in advance of the formal summons in order to provide the CMC further time within which to locate and provide the requested material in compliance with its terms.

Ms Wood attended the Committee's hearing at 10.00am on 13 March 2013 and provided much, but not all, of the material required by the summons. The documents not provided at that stage were relevant extracts from the minutes of the CMC from 2009 (part of item 6), the 2006, 2007 and 2013 emails relating to item 4 and a number of documents with respect to Mr Krosch and the CMC's communications with him (part of item 5).

Ms Wood noted that the CMC had not had an opportunity to undertake a forensic examination to identify any other potential gaps in the information, and conceded that there may be some potential series missing. She hoped to be able to ascertain whether this was the case in the next few days. Ms Wood stated that since receiving the draft summons the CMC had done its best to identify and produce all the relevant material.⁶⁶

Ms Wood gave an undertaking for further compliance with the summons and the production of documents to the Committee as and when they became available.⁶⁷

The Committee had previously resolved to have the Clerk issue a summons to the State Archivist to appear before the Committee and produce material in *in camera* proceedings on 7 March 2013. The Committee reasonably expected that all the material provided by the QSA⁶⁸ (except internal QSA documents) would be amongst the material provided by the CMC. However, close inspection of the CMC's material revealed that a number of documents provided by the QSA were not amongst the material provided by the CMC on 13 March 2013.

On the morning of 14 March 2013 Mr Mark Pollock, a CMC solicitor, produced to the Committee a total of five further volumes of material in response to the summons on Ms Wood of 12 March 2013 and in response to a verbal request for information made by the Committee Chair that morning. This material and that produced on 13 March 2013 became tabled document 4.

Mr Pollock was not able to answer whether there had then been compliance with the summons served on Ms Wood on 12 March 2013. He advised that there were perhaps other documents that were the subject of the undertaking given by Ms Wood.

Late on the afternoon of 14 March 2013 Ms Wood attended the Committee's hearing and produced a folder of further documents pursuant to the summons of 12 March 2013. This further folder of material also became part of tabled document No. 4. A covering letter to the further folder stated that the CMC could not locate any further information in relation to Mr Krosch and the search seemed to have expired. Ms Wood stated that "*We don't seem to be able to follow it through with anything else.*" Ms Wood was stood down on her undertaking to return when required and to provide such further documentation as became apparent to her as falling within the summons, should that occur.⁶⁹

On 18 March 2013 the Committee authorised the issue of a further summons to Ms Wood as the responsible officer at the CMC requiring the production of all documents from the CMC's computer servers recording Mr Duell's "in", "out" and "draft" email folders for the period 1 February 2011 to 18 March 2013.⁷⁰

⁶⁶ PCMC, *Record of Proceedings*, 13 March 2013, page 4.

⁶⁷ PCMC, *Record of Proceedings*, 13 March 2013, page 4..

⁶⁸ PCMC Exhibit TD_106.

⁶⁹ PCMC, *Record of Proceedings*, 13 March 2013, page 4.

⁷⁰ PCMC Exhibit TD_71.

On the afternoon of 19 March 2013 Mr Clifford Horwood, the CMC's Manager, Information Technology attended before the Committee in response to that summons. He advised that, the documents he was producing at that stage represented only a partial response to the summons. He produced copies of only the "external" emails from Mr Duell's computer on text searchable DVDs with printed indices and stated that there were still a further 114 external emails and all of Mr Duell's "internal" emails to be produced. The material provided was tabled as document 70. Mr Horwood stated that the 114 remaining external emails would be provided to the Committee that afternoon.⁷¹

Mr Horwood also provided another series of further emails in response to the summons on Ms Wood of 12 March 2013. These became tabled document 72. Mr Horwood was unable to say whether there remained any further material outstanding pursuant to the 12 March 2013 summons.⁷²

On 19 March 2013 the Committee was provided with a copy of file notes made by Ms Wood on 26 July 2012 concerning a discussion she had with Mr Duell about ensuring the RAPs on the Fitzgerald Inquiry documents at QSA had been restored to 65 years.⁷³ The file notes were located in an original CMC file which fell within the description of items 2 and 5 of the summons on Ms Wood of 12 March 2013, but had not previously been supplied.

On 20 March 2013 the Chair observed in respect of these file notes:

*We authorised the summons on 13th March. It said—sorry, the date of service is 13th March. Relating to the transfer, we wanted all of the documentation including documents, data held in electronic form such as emails and attachments. We got this email, this file note, from you yesterday. That's all. I am a bit frustrated, and I can only speak for myself, that we are being drip fed this information from the CMC.*⁷⁴

Ms Wood explained that the notes had been placed on the top of a records file which had been provided by Mr Duell. In March 2013 another CMC officer had taken the file and Ms Wood's notes. Ms Wood stated that it was only the previous day that this was brought to her attention. She conceded that the file notes fell within the summons, and therefore "when they extracted parts or all of that file for the summons, someone should have seen my file note and given it to me or included it in the—or just scanned it. They scanned everything else."⁷⁵

Later on 20 March 2013 Mr Hutchings provided a statement to the Committee annexing emails⁷⁶ that he had located "that might have been incorporated in the original tranche of documents that was provided pursuant to the summons that the CMC responded to last Wednesday."⁷⁷ Mr Hutchings had CMC IT staff interrogate his email records including deleted files and produced the emails "to cover off any possibility that they are not there... This would have been provided earlier but for some issues with actually getting backup tapes from archives due to the deletion of some of my emails for the period August 2011 to March 2012."⁷⁸

Late in the evening of 20 March 2013 Mr Pollock produced the remaining 114 external emails from Mr Duell's email folders pursuant to the summons on Ms Wood of 18 March 2013. This material was tabled as document 102.

⁷¹ PCMC, Record of Proceedings, 19 March 2013, page 2.

⁷² PCMC, Record of Proceedings, 19 March 2013, page 2.

⁷³ PCMC Exhibit TD_87.

⁷⁴ PCMC, Record of Proceedings, 20 March 2013, page 35.

⁷⁵ PCMC, Record of Proceedings, 20 March 2013, page 35.

⁷⁶ PCMC Exhibit TD_92.

⁷⁷ PCMC, Record of Proceedings, 20 March 2013, page 43.

⁷⁸ PCMC, Record of Proceedings, 20 March 2013, page 43.

Tabled documents 35 and 112 included a draft email prepared by Mr Hutchings to Mr Martin. On 21 March 2013 the Committee authorised the issue of a summons in relation to material related to the draft email in an endeavour to establish when it was composed.⁷⁹

On the morning of 22 March 2013 Mr Pollock attended before the Committee and provided a large volume of documentation aimed at identifying the time and date the draft email was composed. This material became tabled document 109.

Despite the summons requiring the CMC to produce information which provided details as to the time and date the draft email was prepared, the large volume of material produced did not assist the Committee in establishing this information. Mr Pollock indicated that there were further searches to be undertaken in respect of this issue. He was unable to provide an estimate as to when the required searches would be completed.

Mr Pollock also provided some further material in response to the summons issued 18 March 2013 in relation to the emails of Mr Duell. This material was tabled as document 110.

The Committee was not satisfied that it had been provided with all documents falling within the description of item 2 of the summons to Ms Wood of 12 March 2012. Therefore, on 21 March 2013 it authorised another summons to the CMC Manager Information Technology, Mr Horwood, requiring the production from the CMC's computer servers of all documents in the "in", "out" and "draft" email folders of Mr Hutchings, Ms Wood and Ms Valeska at the CMC email addresses created in the period 1 May 2012 to 18 March 2013.⁸⁰

Mr Horwood appeared before the Committee on the morning of 22 March 2013. In relation to the draft email prepared by Mr Hutchings, the best evidence he could provide at that stage was that it was prepared sometime between 9.45am on 30 May 2012 and 12.21pm on 23 June 2012.

The Committee was frustrated that more definitive evidence could not be provided. Dr Mellifont SC suggested that Mr Horwood make immediate representations to the CMC Chairperson to ensure that whatever resources are required in order for there to be a complete and fulsome response to the summons—including authorisation, including engagement of the forensic IT expertise of the CMC—be engaged as an absolute matter of priority so that the Committee could have a full and comprehensive response to that summons today.

After the CMC Information Technology section spent a considerable amount of time and produced large volumes of unhelpful material, the issue was resolved when Mr Pollock returned before the Committee later on 22 March 2013 and produced a screen shot of Mr Hutchings' current Outlook account which clearly showed that the draft email was prepared at 3.30pm on 30 May 2012.⁸¹

Mr Horwood appeared before the Committee again on the evening of 22 March 2013 to provide an update of progress with respect to the summons dated 18 March 2013 in relation to Mr Duell's emails. He estimated that his staff still had another 16 hours of work to do to generate the internal emails into text searchable format on DVD, plus time to then print them all out.

After some consideration the Committee resolved to reduce the volume of material required under the summons of 21 March 2013 relating to the emails of Mr Hutchings, Ms Wood and Ms Valeska. The Committee sought emails only for the period 20 May to 31 July 2012 and advised that it would accept the copies of those emails electronically. These emails and the internal emails of Mr Duell were required by close of business Monday 25 March 2013.

⁷⁹ PCMC Exhibit TD_113.

⁸⁰ PCMC Exhibit TD_111.

⁸¹ PCMC Exhibit TD_118.

Mr Horwood provided the outstanding material after lunch on 25 March 2013 as required. The Committee staff and Parliamentary Commissioner's staff then set about inspecting the emails.⁸² The Committee was concerned to note that within the material provided on 25 March 2013, a number of emails were located which fell within the description of items 2 and 5 of the summons to Ms Wood provided in draft form on 10 March 2013 and formally on 12 March 2013.⁸³ These emails enabled the Committee to (somewhat belatedly) gain a fuller understanding of the CMC's inadequate attempts in May and July to deal with the public access to Fitzgerald Inquiry documents at the QSA. However as time constraints meant the main part of the public hearings had concluded, there was no opportunity for the Acting Parliamentary Commissioner to examine CMC officers about the emails.

Committee Finding 1

The Committee appreciates that the formal summonses to the CMC authorised by the Committee and issued by the Clerk of Parliament required a considerable amount of material to be identified and compiled by the CMC in a relatively short period of time.

Overall, whilst CMC officers cooperated with the Committee in terms of arrangements for their appearances before the Committee, the Committee considers the CMC's provision of documents and other materials pursuant to summonses to have been less than satisfactory.

Emails initially provided under summons were apparently only sourced from the existing "in", "out", "draft", and "archive" boxes of individuals.

This meant that emails which had been deleted were not initially provided.

Later, the Committee summonsed emails from 'server data' whereby emails that had been received, sent or drafted were recovered.

This resulted in further emails not provided under the original summons being discovered by the Committee.

3.3 Further investigations

The nature of a parliamentary inquiry

It is important to emphasise that the Committee's inquiry on its own motion and pursuant to the resolution of the Legislative Assembly is a manifestation of the Legislative Assembly's powers of a grand inquest of the State. The Committee has effectively been delegated the task of acting on the Assembly's behalf as a grand inquest. The Acting Parliamentary Commissioner and Counsel Assisting the Commissioner were in turn assisting the Committee in its inquest.

A parliamentary inquiry has the power of summons pursuant to section 25 of the *Parliament of Queensland Act 2001*, a power which has been utilised by the Committee in this inquiry. In addition, a parliamentary inquiry cannot be impeached or questioned by another authority outside of Parliament (such as a court or a disciplinary tribunal). Sections 8 and 9 of the *Parliament of Queensland Act 2001* provide:

⁸² Given the potentially sensitive information (operational material) which could be contained within the emails of the legal officers of the CMC the subject of the summons, staff of the Office of the Parliamentary Commissioner undertook the inspection of the emails of Mr Hutchings, Ms Wood and Ms Valeska.

⁸³ PCMC Exhibit TD_127; PCMC Exhibit TD_128.

8. Assembly proceedings can not be impeached or questioned

(1) The freedom of speech and debates or proceedings in the Assembly can not be impeached or questioned in any court or place out of the Assembly.

(2) To remove doubt, it is declared that subsection (1) is intended to have the same effect as article 9 of the Bill of Rights (1688) had in relation to the Assembly immediately before the commencement of the subsection.

9. Meaning of proceedings in the Assembly

(1) Proceedings in the Assembly include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee.

(2) Without limiting subsection (1), proceedings in the Assembly include—

- a) giving evidence before the Assembly, a committee or an inquiry; and*
- b) evidence given before the Assembly, a committee or an inquiry; and*
- c) presenting or submitting a document to the Assembly, a committee or an inquiry; and*
- d) a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry; and*
- e) preparing a document for the purposes of, or incidental to, transacting business mentioned in paragraph (a) or (c); and*
- f) preparing, making or publishing a document (including a report) under the authority of the Assembly or a committee; and*
- g) a document (including a report) prepared, made or published under the authority of the Assembly or a committee.*

(3) Despite subsection (2)(d), section 8 does not apply to a document mentioned in subsection (2)(d)—

- a) in relation to a purpose for which it was brought into existence other than for the purpose of being tabled in, or presented or submitted to, the Assembly or a committee or an inquiry; and*
- b) if the document has been authorised by the Assembly or the committee to be published.*

Example—

A document evidencing fraud in a department tabled at a portfolio committee inquiry can be used in a criminal prosecution for the fraud if the document was not created for the committee's inquiry and the committee has authorised the document to be published.

(4) If the way in which a document is dealt with has the effect that—

- a) under an Act; or*
- b) under the rules, orders, directions or practices of the Assembly; the document is treated, or accepted, as having been tabled in the Assembly for any purpose, then, for the purposes of this Act, the document is taken to be tabled in the Assembly.*

(5) For this section, it does not matter what the nature of the business transacted by a committee is or whether the business is transacted under this Act or otherwise.

What this effectively means is that witnesses who have attended before the Committee have been compelled to give evidence under oath or affirmation and sometimes have given evidence against their interest. The evidence provided by those witnesses (and the evidence of other witnesses) cannot be used in any proceedings, such as criminal prosecutions or disciplinary proceedings. However, it does not mean that appropriate investigations by appropriate authorities cannot be commenced *ab initio* (from the beginning).

In terms of documentary evidence gathered by the Committee, the vast majority has been copies of material, which can be reproduced for another appropriate authority. There have been two original files produced to the Committee. The originals were required for forensic purposes. The Committee has subsequently copied these files for its records and ordered the return of the originals to the CMC. The Committee has also authorised the publication of the original files pursuant to section 9(3) for use by the CMC. The operation of section 9(3) means that these documents can now be used in any other proceedings.

The Committee has attempted at all times to conduct its inquiry with procedural fairness to witnesses and in accordance with the rules of the House contained in Schedule 3 (Instructions to Committees regarding witnesses). The strict timeline imposed by the Legislative Assembly and the overwhelming public interest in arriving at the truth of the matters within the timeline has necessarily impacted upon the Committee's absolute adherence to rules of procedural fairness.

In this respect, the Committee notes that it uncovered documentary evidence, such as emails, well after some witnesses relevant to those documents had given evidence. Where such evidence was uncovered by the Committee, the Committee has either avoided use of those emails or avoided any adverse commentary and noted clearly that the document had not been provided to the witness.

As the inquiry progressed, the Committee also began to reveal the implications of the matters uncovered against corporate frameworks, charters and policies and in many cases was provided some of the relevant documentation after witnesses had given evidence. However, the Committee has taken the view that senior officers of the Commission should have been aware and should have complied with obligations imposed upon them by corporate frameworks, charters and policies.

Recommendation 1

The Committee recommends that an appropriate, independent investigation of issues relating to the dissemination and destruction of the Fitzgerald Inquiry material be established with a view to identifying possible disciplinary action or breaches of the *Crime and Misconduct Act 2001*.

In accordance with normal protocols, the CMC and the Committee will liaise about the most appropriate mechanism for the investigation.

It is important that any inquiry be commenced *ab initio* (from the beginning) and that evidence gathered by the Committee not be used in such inquiry, in contravention of sections 8 and 9 of the *Parliament of Queensland Act 2001*.

Without limiting the inquiry, the inquiry should consider the following matters:

- Whether any breaches of section 62 of the *Crime and Misconduct Act 2001* has occurred (unlawful dissemination of material), by whom and if any defences exist for those breaches
- Whether any breaches of the *Public Records Act 2002* has occurred (such as destruction of permanent records) , by whom and if any defences exist for those breaches
- Whether any other breaches of the *Crime and Misconduct Act 2001* has occurred, including specific consideration of section 210 (fabrication of record, destruction or alteration of record with the intent to obstruct or delay a Commission function) or section 218 (providing a false or misleading document to the Commission);
- Whether any CMC officer has committed official misconduct or another disciplinary breach by:
 - Failing to follow a lawful directive;
 - Maladministration;
 - Negligently or deliberately failing to report matters in accordance with approved frameworks, charters or policies or in accordance with the general provisions of the Code of Conduct.

3.4 The Legal Service Unit

The role of the Legal Services Unit is to provide legal advice to (1) The Commission (2) The Chairperson and (3) Officers of the CMC.

The Committee considers the LSU to have an extremely important role within the CMC. The LSU, in particular by providing the Commission and the Chairperson with legal advice independent of other operational units (such as Crime and Misconduct), provides an important element in the overall internal Corporate Governance of the CMC. However, evidence before this Committee revealed a unit in which its two most senior officers were both very narrowly task orientated and “reactive”.

As stated elsewhere in this report, the Official Solicitor, Ms Wood, asserted a narrow perception of what Mr Martin tasked her to do, which she relied upon repeatedly. When it was put to her that she failed to make enquiries or take steps to ensure the problem was fixed, she said that “*My understanding of my task was to ensure it was fixed. Insofar as that I looked at the notice letter⁸⁴ and assured myself that that information had been actually performed on that day.*”⁸⁵ Even if she genuinely believed that she had complied with what she was told to do, her process of reasoning in coming to that belief was illogical.

⁸⁴ PCMC Exhibit TD_86.

⁸⁵ PCMC, *Record of Proceedings*, 20 March 2013, page 3.

Ms Wood was not prepared to accept that not checking what documents fell within series 18651 was a grave error of judgment. Her answer to this proposition was, once again, narrowness of the task assigned to her by Mr Martin:

I wasn't tasked to physically audit or check what was in the files. My task was to ensure the RAP had gone back to 65 years. Those physical audits I assumed had been done previously and they knew what was in each of the series. I made an inquiry about the nature of those documents to check that it was public and I got that confirmation or assurance from Mr Duell.⁸⁶

General Counsel, Mr Hutchings described his perception of his role as General Counsel to be reactive.⁸⁷ As is detailed elsewhere in this report, his emails on 29 and 30 May 2012 reveal that he realised that there was a problem, and he also clearly thought that there was a need to check the veracity of what Mr Duell told him about the problem being fixed. The draft email of 30 May 2012 reveals that he was unconvinced that the problem had been solved and more needed to be done.⁸⁸ However, he did nothing and told the Committee that this was because Mr Duell is a senior officer and he took him at face value.⁸⁹ That is contradicted by the draft email of 30 May.⁹⁰

Mr Hutchings appeared to try to convey the impression to the Committee that everyone within the LSU worked autonomously and not within any sort of formal reporting structure. If Mr Hutchings were to be believed, then he rarely interacted with Ms Wood beyond signing timesheets and leave applications and his position description as a supervisor did not appear to go beyond this.⁹¹ This is simply incorrect and the email evidence viewed by the Committee does not support the impression he sought to convey. There was considerable email traffic between Mr Hutchings and Ms Wood on 29 and 30 May 2012 about the matter which clearly demonstrated Mr Hutchings supervisory capacity.

The Committee is deeply concerned about the operation and culture within the LSU. In fairness, it may well be that resourcing of the LSU is a factor in its operations, which may have led to the long delays in advice experienced by Mr Duell. If this is the case, then the Commission needs to address the issue. However, the culture on display to the Committee during its hearings cannot be linked to resourcing.

The LSU effectively let the Chairperson down in respect of this matter.

Committee Finding 2

The Committee considers the LSU to have an extremely important role within the CMC. The LSU, in particular by providing the Commission and the Chairperson with legal advice independent of other operational units (such as Crime and Misconduct), provides an important element in the overall internal Corporate Governance of the CMC. However, evidence before this Committee revealed a unit in which its two most senior officers were both very narrowly task orientated and "reactive".

Recommendation 2

As a matter of urgency the Commission needs to review the operations of and address the culture within the Legal Services Unit and report back to the Committee.

⁸⁶ PCMC, *Record of Proceedings*, 20 March 2013, page 19.

⁸⁷ PCMC, *Record of Proceedings*, 20 March 2013, page 83.

⁸⁸ PCMC Exhibit TD_35.

⁸⁹ PCMC, *Record of Proceedings*, 20 March 2013, page 82.

⁹⁰ PCMC Exhibit TD_35.

⁹¹ PCMC, *Record of Proceedings*, 20 March 2013, page 39.

4. Matters of Law and Policy

4.1 Unlawful dissemination

The *Criminal Justice Act 1989* (CJA) established the Criminal Justice Commission (CJC).⁹² That Act also provided for the CJC to have a number of divisions, including an Intelligence Division.⁹³ The functions of the Intelligence Division included:

- (b) to assume possession and control of all data and records of the Commission of Inquiry continued in being by the Commission of Inquiry Continuation Act 1989*
- (c) to secure such data base and records in its possession and control so that only persons who satisfy the Director of the Intelligence Division or the Chairman that they have a legitimate need of access to the same are able to have access thereto.*

The CJA was repealed by the *Crime and Misconduct Act 2001* (CM Act), which created the Crime and Misconduct Commission (CMC), in essence as the successor to the CJC (and the former Queensland Crime Commission).

Section 375 of the CM Act provides for the Fitzgerald Inquiry documents to continue in the possession and control of the CMC:

- (1) This section applies to the commission of inquiry data and records of which the director of the intelligence division under the repealed Criminal Justice Act 1989 assumed possession and control under that repealed Act.*
- (2) The commission must continue possession and control of the data and records and the provisions of the repealed Special Prosecutor Act 1988, sections 20 and 21 apply, with necessary changes, as if—*
 - a) the commission of inquiry referred to in that Act were the commission; and*
 - b) the chairperson referred to in that Act were the chairperson under this Act.*
- (3) In this section—*

commission of inquiry data and records means the commission of inquiry data and records mentioned in the repealed Criminal Justice Act 1989, section 59.

In relation to the dissemination of material from the CMC, section 62 of the CM Act provides:

62. Restriction on access

- (1) Any information, document or thing in the commission's possession may be used and dealt with in performing the commission's functions, but otherwise must not be given to or made available for inspection by any person without the commission's express written authorisation.*
- (2) Subsection (1) is subject to sections 293 and 317.*

Sections 293 and 317 relate to information provided to the Parliamentary Committee or the Parliamentary Commissioner.

This dictionary in Schedule 2 defines "Commission" as the Crime and Misconduct Commission and the "Crime and Misconduct Commission means the Crime and Misconduct Commission established under section 220."

⁹² *Criminal Justice Act 1989*, para. 2.1.

⁹³ *Criminal Justice Act 1989*, para. 2.12; *Criminal Justice Act 1989*, para. 2.47, subsequently renumbered as section 59.

The term "Commission" in the CM Act means the Commission as constituted by the Chairperson and the five part-time Commissioners. Sections 220, 223 and 251 state:

220. Establishment

The bodies corporate known as the Criminal Justice Commission (established under the repealed Criminal Justice Act 1989) and the Queensland Crime Commission (established under the repealed Crime Commission Act 1997) are merged into a single body corporate and continued in existence under this Act under the name 'Crime and Misconduct Commission'.

223. Membership of the commission

The commission is to consist of the following 5 commissioners—

- a) a full-time commissioner who is the chairperson;*
- b) 4 part-time commissioners who are community representatives.*

The role of the Chairperson is outlined in section 251 of the CM Act, and provides that the chairperson is the chief executive officer of the commission and responsible for the administration of the commission and the proper performance of the commission's functions.

A policy for the *Dissemination of Intelligence Information, Information and Evidence* has been approved by the Commission. The policy clearly states that:

.... CMC officers who seek to disseminate information, evidence or intelligence information are aware of the circumstance in which such material can and should be disseminated and the statutory and procedural requirements that govern disseminations.

Later it states:

The Commission has formally delegated authority to approve disseminations under these sections to appropriate officers.

And later still:

All disseminations will be authorised by an officer to whom the appropriate authority has been formally delegated.

...

All stages of the dissemination process, including the filing and recording of disseminations will be consistent across the CMC. All disseminations will be documented and centrally recorded and filed in a manner that permits prompt and ready retrieval.

The CMC provided a list of delegations, including its delegations under section 62. That delegation is to the Chairperson, the Assistant Commissioner, Crime and the Assistant Commissioner, Misconduct. There is no power in these delegations to further delegate this power.

Section 16 of the *Public Records Act 2002* requires a public authority that transfers public records to the Queensland State Archives to classify its records according to the content and give a written notice to the State Archivist about the restricted access period (RAP) of the records. A RAP is the period of time during which a person may not obtain access to a public record in the custody of the QSA except by application under the *Right to Information Act 2009* (RTI Act) or with the agency authorisation. A RAP starts on the day the record is made and ends on the day stated in a written notice given by the responsible public authority to the State Archivist.

The authority to set the RAPs was given to Mr Duell by a document signed by the Chairperson. There is no resolution of the Commission giving the authority to Mr Duell.

There is no conflict between the administrative process in the *Public Records Act 2002* (PRA) and section 62 of the *Crime and Misconduct Act 2001* (CM Act). Section 18 of the PRA provides that the responsible public authority may give the archivist notice, effectively releasing the documents. However, the responsible public authority is clearly the Crime and Misconduct Commission.

Section 62 of the CM Act preserves confidentiality of the Commission's information and documents, allowing dissemination under the Commission's express written authorisation.

It seems that, whilst the Commission delegated its power to disseminate CMC information under section 62 to the Chairperson, the authorisation under section 18 of the PRA cannot be given by the Chairperson. Any delegation then of these powers to Mr Duell would not be a delegation of the Chairperson's power, but should be a delegation by the Commission of Commission powers. There is no evidence of the Commission granting a delegation to Mr Duell.

Therefore, it appears that there was no proper authority vested in Mr Duell to reclassify the documents. This is because there was no delegation by the Commission of a power which vested in it. The Chairperson did not hold the power and therefore could not delegate it to Mr Duell.

Committee Finding 3

Whilst the Commission delegated its power to disseminate CMC information under section 62 of the *Crime and Misconduct Act 2001* to the Chairperson, the authorisation by the Chairperson under section 18 of the *Public Records Act 2002* does not override the Commission's authority under section 62 of the *Crime and Misconduct Act 2001*.

The Committee found that former CMC Chairpersons had signed Authorisation Access forms. Mr Martin was not called upon to consider an authorisation, as the authorisation signed by the previous Chairperson was, on its face, still in place.

Any delegation then of these powers to Mr Duell was not a delegation of the Chairperson's power, but should have been a delegation by the Commission of Commission power to disseminate. There is no evidence of the Commission granting a delegation under section 62 to Mr Duell.

Therefore, it appears that there was no proper authority vested in Mr Duell to reclassify the documents. This is because there was no delegation by the Commission of a power which vested in it. The Chairperson did not hold the power, except as delegate and therefore could not delegate it to Mr Duell.

The Fitzgerald Inquiry material was, therefore, unlawfully disseminated. Of course, persons acting pursuant to the purported authority may have been acting on an honest, but mistaken belief that it was correct.

4.2 The absence of Risk Management

Section 61 of the *Financial Accountability Act 2009* requires all accountable officers and statutory bodies to establish and maintain systems of internal control and risk.

The CMC pursuant to this requirement has established an Enterprise Risk Management Framework (22 June 2012).⁹⁴ That Framework requires all staff to report 'risk incidents' to their manager

⁹⁴ PCMC Exhibit TD_132.

See also: Crime and Misconduct Commission, *Risk Management Policy*, April 2009 available at: <http://www.cmc.qld.gov.au/about-us/right-to-information/about-us/our-policies-1/corporate-governance/risk-management-policy.pdf/download>.

immediately, who must decide whether to escalate the matter to executive management. The framework requires a report to be forwarded to the Corporate Governance area within 48 hours and the matter must be placed on the risk incident register.⁹⁵

The purpose of the Framework is to identify risks, analyse risks, evaluate risk and treat the risk (pages 5-6 of the Framework).

There is a Risk Management Committee that forms part of Corporate Governance are which, according to a Charter,⁹⁶ assists the Commission in its responsibilities as regards section 61 of the *Financial Accountability Act 2009*.

Ms Mendelle produced to the Committee a folder of documents which included a document titled *Strategic Risk Register 2012-13* last updated on 18 February 2013.⁹⁷ That document tries to outline many of the risks faced by the CMC, whether or not the risk is likely, and likely consequences, controls etc.

It is of interest to the Committee that this document, in its first risk description cites 'Loss of Community Confidence', with a likelihood of 'Likely', a consequence of 'Major', inherent risk of 'Very High', key controls as including 'Information security and management protocols disseminated to staff to avoid unauthorised/inappropriate release of information', responsibility as 'Commission' and risk actions as 'Risk rating is acceptable subject to maintenance of existing controls (Limitations due to external influence)'.

Ms Mendelle also produced a document titled *2011-12 Risk Incident Register*.⁹⁸

It outlines the date the risk occurred/reported, the description of the risk, the area, the action taken, further action required, who is managing the risk, the date referred or closed and follow up action required, and when finalised.

The matters reported in the timeframe range from a staff member cutting their thumb with a kitchen knife in the staff tea room to various trips and falls on the premises to the loss of a security token providing remote access to the CMC.

Both Ms Mendelle and Mr Strange acknowledged in evidence that the incidents in May 2012, September 2012 or March 2013 involving the public release of CMC Fitzgerald Inquiry information from the QSA that was inappropriate to be released were not in fact reported under the risk management framework. Each matter should have clearly been reported under the Framework, regardless of the exact knowledge of the extent of the dissemination. Each officer aware of each release had an obligation under the policy to ensure it was reported under the framework, but failed to do so.

Reporting under the framework should have led to further action being undertaken to ensure the risk was minimised or arrested.

Indeed, Ms Mendelle who is the Chair of the Risk Management Committee and who is Mr Duell's line manager gave evidence that she was completely unaware of the incidents in May 2012 and September 2012, until March 2013.⁹⁹ However, even though the March 2013 incident was well known in the Commission since at least 5 March 2013, at the time of giving her evidence on 21 March 2013, no incident had been recorded on the register relating to these matters.¹⁰⁰

⁹⁵ Enterprise Risk Management Framework, pages 6 and 7.

⁹⁶ PCMC Exhibit TD_134.

⁹⁷ PCMC Exhibit TD_104.

⁹⁸ PCMC Exhibit TD_104.

⁹⁹ PCMC, *Record of Proceedings*, 21 March 2012, pages 2-3.

¹⁰⁰ PCMC Exhibit TD_104.

It is abundantly clear that the dissemination of the Fitzgerald Inquiry material carried a significant risk to the CMC and each and every person named in the documents. The evidence of Ms Kathleen Florian, Director of Intelligence, and her report¹⁰¹ on the risk analysis of the public access to the document, makes it clear that there was not only reputational risk, but actual risk of harm to at least 13 persons.¹⁰²

Committee Finding 4

Mr Duell, Ms Wood, Mr Hutchings and Mr Martin, all very senior officers, failed in May 2012 to adhere to CMC internal corporate policies and procedures by not forwarding to the Corporate Governance area within 48 hours the fact that Fitzgerald Inquiry material had been inappropriately publically disseminated via the QSA.

This meant that the matter was not placed on the CMC's risk incident register along with details of how the risk arose, the description of the risk, the action taken to address the risk, the further action required, and who was managing the risk, and follow up action required were not also actively identified.

This was a very serious failing in corporate governance. If proper procedures had been followed, it is likely that the matter would have been properly resolved in May 2012 and risk minimised.

Committee Finding 5

Mr Duell, a senior officer, failed in September 2012 to adhere to CMC internal corporate policies and procedures by not forwarding to the Corporate Governance area within 48 hours the fact that Fitzgerald Inquiry material had been inappropriately publically disseminated via the QSA.

This meant that the matter was not placed on the CMC's risk incident register along with details of how the risk arose, the description of the risk, the action taken to address the risk, the further action required, and who was managing the risk, and follow up action required were not also actively identified.

This was a very serious failing in corporate governance. If proper procedures had been followed, it is likely that the matter would have been properly resolved in September 2012 and risk minimised.

The Committee believes that Mr Duell failed to report the matter in accordance with policy. An internal investigation of the matter may have exposed not only his original error in February 2012, but his failure to fix the matter in May 2012.

¹⁰¹ PCMC Exhibit TD_121.

¹⁰² PCMC, *Record of Proceedings*, 22 March 2013, pages 62-63.

5. Addressing the Terms of Reference

5.1 Incorrect classification of documents transferred from CMC between 2007 and 2009

CMC responsibility for the Fitzgerald Inquiry records

The CJA established the Criminal Justice Commission (CJC)¹⁰³ The CJA also provided for the CJC to have a number of divisions, including an Intelligence Division which, in addition to its operational functions, was:

- a) *to assume possession and control of all data and records of the Commission of Inquiry continued in being by the Commission of Inquiry Continuation Act 1989*
- b) *to secure such data base and records in its possession and control so that only persons who satisfy the Director of the Intelligence Division or the Chairman that they have a legitimate need of access to the same are able to have access thereto.*¹⁰⁴

The enactment of the CM Act in 2001 established the CMC and removed the requirement for the Fitzgerald Inquiry material to be in the control and possession of the CMC Intelligence Division. Section 375 of the CM Act provides for the Fitzgerald Inquiry documents to continue in the possession and control of the CMC:

This section applies to the commission of inquiry data and records of which the director of the intelligence division under the repealed Criminal Justice Act 1989 assumed possession and control under that repealed Act.

The commission must continue possession and control of the data and records and the provisions of the repealed Special Prosecutor Act 1988, sections 20 and 21 apply, with necessary changes, as if—

- a) *the commission of inquiry referred to in that Act were the commission; and*
- b) *the chairperson referred to in that Act were the chairperson under this Act.*

In this section—

commission of inquiry data and records means the commission of inquiry data and records mentioned in the repealed Criminal Justice Act 1989, section 59.

The management of this material was eventually transferred to the Director, Information Management; however, the Committee was not provided with information on why this decision was made.

The Committee heard from the former CMC Director of Information Management, Mr Rigby, that, aside from tracking down some exhibits, he undertook no audit of the material when he assumed responsibility for the material.¹⁰⁵ Similarly, Mr Duell thought it too onerous to undertake an audit of the material he assumed responsibility for when he was appointed as Director, Information Management. In this regard, Mr George Fox, CMC part-time Commissioner said:

I have concerns around things like was it fair for Mr Duell, whose background is in IT, to be given responsibility for something that is a matter of archiving or librarian work. I have concerns with to what extent he could rely on subordinates who may be more skilled in that area. I have concerns about why there does not appear to have been any formal handover when he took that role. One gathers from the testimony—and I have not heard it all but I

¹⁰³ *Criminal Justice Act 1989*, para. 2.1.

¹⁰⁴ *Criminal Justice Act 1989*, section 59.

¹⁰⁵ PCMC, *Record of Proceedings* 18 March 2013 (Mr Rigby), page 4.

*have heard a fair bit of it—that there was no written briefing from anyone on what this material contained. So those things concern me.*¹⁰⁶

Transfer of Fitzgerald Inquiry holdings to the Queensland State Archives

Public sector agencies may transfer public records to the QSA. The State Archivist will only receive records the QSA deem to be permanent. The public authority remains the owner of the record, and the QSA becomes the custodian of the document.¹⁰⁷

The agency, in this case the CMC, as the owner of the records:

- can access its own records;
- sets, can change, and monitors the retention access periods for the records (RAPs) [Section 19(2) *Public Records Act 2002*]. Thus, the agency determines which of its records can or cannot be released, and when; and
- describes each record – this description is accepted by the QSA, and is the basis for the metadata description assigned to a record.

The Committee understands that it is the intention of the State Archivist, pursuant to the PRA, that records transferred to the QSA will eventually become publicly accessible.¹⁰⁸

As noted above, the CMC, by virtue of the CJA and, later the CM Act, is the owner of the Fitzgerald Inquiry records. 'Possession and control' rests with the CMC by virtue of section 375 of the CM Act. Whilst the QSA has physical possession of the Fitzgerald Inquiry records that have been transferred, the CMC has legal possession.

Section 62(1) of the CM Act states:

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

The Committee received no evidence of a written commission authorisation to disseminate the material to the QSA in accordance with section 62 of the CM Act. Since 2002, the Commission has issued an unlimited delegation to the Chairperson to authorise dissemination of CMC information under section 62 of the CM Act.¹⁰⁹ There is no evidence presented to the Committee to show any decision making process or an understanding on the part of the CMC that, by transferring the records to the QSA, those records would eventually become publicly accessible.

In 2006 the then CMC Record's Manager, Ms Janet Legg (then Janet Walker), commenced a project to transfer the CMC's Fitzgerald Inquiry holdings to the QSA.¹¹⁰ The motivation for the CMC to relocate this material appears to be two-fold; firstly, the material generated by the Fitzgerald Inquiry was taking up considerable storage space at the CMC and, secondly, the CMC was moving premises

¹⁰⁶ PCMC, *Record of Proceedings*, 28 March 2013 (Mr Fox), page 7;

¹⁰⁷ PCMC, *Record of Proceedings*, 7 March 2013, pages 1-2 (Ms Prowse).

¹⁰⁸ See: PCMC Exhibit TD_106.

¹⁰⁹ The Commission also issued a delegation to the Assistant Commissioner, Crime and the Assistant Commissioner, Misconduct of the Commission's authority to authorise, in writing, dissemination of Commission information under sections 60(1) and (2).

¹¹⁰ PCMC, *Record of Proceedings*, 21 March 2013, pages 48-49 (Ms Legg). This one page document is the extent of the documented evidence received by the Committee which relates to the transfer of the Fitzgerald Inquiry records to the QSA.

to Green Square.¹¹¹ Negotiations commenced between the State Archivist and the CMC, and on 26 February 2006 the State Archivist and a QSA staffer visited the CMC to inspect the Fitzgerald Inquiry holdings to understand the size of the collection and the types of records it contained.¹¹²

Ms Prowse advised the Committee that it is her practice, as State Archivist, to meet with a CEO, or a Commissioner of a commission of inquiry to advise of their record keeping responsibilities at the commencement of commission of inquiry.¹¹³

In order for the CMC to transfer the Fitzgerald Inquiry holdings to the QSA, a Retention and Disposal Schedule (R&D Schedule) was prepared by the QSA which detailed which classes of records were permanent and which were temporary. Under that R&D Schedule, the CMC was to retain the temporary records for the period specified in the schedule, and permanent records could be transferred to the QSA.¹¹⁴

Ms Legg's team audited the Fitzgerald Inquiry holdings, as part of the transfer project. This audit consisted of transferring the information from the TCR database used by the Fitzgerald Inquiry into an acceptable format for the QSA. The team viewed each document to check it against the TCR information, then gave it a number and recorded the box it was placed in. Ms Legg and her team did not consider the sensitivity of the documents, or the appropriateness of public release of the information.¹¹⁵

As noted above, the transfer of the material was completed in four stages. The process set out above occurred in relation to the first three transfers which occurred on 1 August 2007, 2 December 2007 and 3 March 2008.¹¹⁶

The final transfer required a different approach. There appears to have been no adequate TCR record of the contents to the final 315 boxes of Fitzgerald Inquiry material. A project plan was developed in 2008 to transfer the final 315 boxes of Fitzgerald Inquiry records which lists Ms Wendy-Lea Klynsmith as the project supervisor.¹¹⁷

Ms Klynsmith told the Committee that the substantive roles of the officers who undertook this task were property officers.¹¹⁸ The process in relation to the cataloguing of the final 315 boxes involved reviewing the contents of each box and entering the details of each item into the database to be provided to the QSA.¹¹⁹

... we were told there was no clear record of what was contained in these boxes, so what we had to do was—they were in a box, in an envelope—we would pull them out—in a clear plastic pocket—and we would identify whether it was a police statement, or whatever it was, and we had also a set coding of, you know, if it was a police statement, it would be that, the person's name, and whatever, and that would be slipped back into the box.¹²⁰

¹¹¹ PCMC, *Record of Proceedings*, 21 March 2013, page 46 (Ms Legg); PCMC Exhibit TD_33 (email attachment titled 'Fitzgerald Holding Project'). The State Archivist advised the Committee that she had given consideration to the Fitzgerald Inquiry material being stored in commercial storage but did not think it acceptable for this material to be stored in that way. See: PCMC, *Record of Proceedings*, 22 March 2013, page 34 (Ms Prowse).

¹¹² PCMC, *Record of Proceedings*, 22 March 2013, page 34 (Ms Prowse); See PCMC Exhibit TD_106.

¹¹³ PCMC, *Record of Proceedings*, 22 March 2013, page 34-35 (Ms Prowse).

¹¹⁴ PCMC Exhibit TD_106.

¹¹⁵ PCMC, *Record of Proceedings*, 22 March 2013, page 42 (Ms Prowse).

¹¹⁶ PCMC Exhibit TD_106.

¹¹⁷ PCMC Exhibit TD_33.

¹¹⁸ PCMC, *Record of Proceedings*, 21 March 2013, page 62 (Ms Klynsmith).

¹¹⁹ PCMC Exhibit TD_108, page 1.

¹²⁰ PCMC, *Record of Proceedings*, 21 March 2013, page 59 (Ms Klynsmith).

The final transfer of the Fitzgerald Inquiry documents to the QSA was on 12 March 2009.¹²¹ In March 2013, the State Archivist advised that the QSA held 19,329 items within the Fitzgerald Inquiry collection; however, it should be noted that this is not 19,329 'documents' as one 'item' may include many documents.¹²² Additionally, subsequent to the hearing, Ms Prowse advised the Committee that it is common practice to provide a box of items to a researcher who requests an item from that box.¹²³

Committee Finding 6

Testimony to the Committee suggested that a motivation for transferring the Fitzgerald Inquiry material (approximately 250-300 linear metres) to the QSA was because of the imminent relocation of the CMC to new premises.

The lack of documentation available to the Committee means that the circumstances are unclear around when and why the decision was made for the Fitzgerald Inquiry material held at the CMC to become the responsibility of the Director of Information Management rather than the responsibility of an officer who would better understand the nature and sensitivity of the information. There was no written evidence provided to the Committee to explain the decision making process around this important decision of the CMC.

This mistake was compounded by the failure on the part of the successive Directors of Information Management to sufficiently acquaint themselves with the information, a task they needed to undertake to effectively deal with the Fitzgerald Inquiry material for which they were responsible. Mr Rigby and Mr Duell both advised the Committee that at no point did they undertake a comprehensive, or even a cursory audit of the Fitzgerald Inquiry material they were charged with.

Recommendation 3

That the CMC review and report to the Committee on proposed changes to how it handles sensitive historical information, including the Fitzgerald Inquiry records and records of both the CJC and CMC. The CMC's report to the Committee should include proposed procedures to determine the appropriate CMC officers to have responsibility for the information, training for those officers around their responsibilities in relation to the information, and appropriate accountability mechanisms for decisions and actions by the responsible CMC officers regarding dealings with that information.

¹²¹ PCMC Exhibit TD_106.

¹²² PCMC, *Record of Proceedings*, 13 March 2013, page 5 (Mr Krosch); PCMC Exhibit TD_3, page 6. Mr Krosch advised the Committee that a request by him to examine one Fitzgerald Inquiry item resulted in hundreds of pages being provided. See also: PCMC, *Record of Proceedings*, 28 March 2013, page 25.

¹²³ Letter to the Committee from Ms Prowse dated 28 March 2013.

Committee Finding 7

The project to transfer the Fitzgerald Inquiry documents to the QSA was fundamentally flawed. There was no real appreciation by any of the, relatively junior, CMC officers directly involved in the transfer of the Fitzgerald Inquiry records to the QSA of the sensitive nature of the material they were cataloguing. Whilst the Records Manager, Ms Legg, understood that the information in the catalogue required by the QSA would be uploaded into the QSA search engines, there was no evidence of any understanding by those officers, or their superior officers, that the data they were inputting into the spread-sheets would become publicly searchable through the QSA catalogue.¹²⁴ Had there been any appreciation of this, more care would likely have been taken to assess the sensitivity of the material, or the issue would have been progressed to the higher management to deal with appropriately.

The Committee was unable to determine why the assessment and transfer of the Fitzgerald Inquiry holdings was allocated to the Records Management team, without input from other CMC divisions such as the Intelligence Division. The Committee considers it was inappropriate for relatively junior records/property management staff to manage and undertake the task of cataloguing the Fitzgerald Inquiry records held by the CMC. Rather, CMC officers with experience of dealing with, and disposing of, confidential surveillance and other investigative material should have been involved in the project. The Committee expects the CMC to address how it will handle sensitive historical information in future.

Recommendation 4

That the CMC review its policies and procedures in relation to large scale projects, to ensure that:

- a) appropriate senior officers are appointed to lead important or significant projects;
- b) appropriate procedures to document and record decisions and actions are in place and adhered to; and
- c) appropriate mechanisms to report to management in relation to those projects are in place and adhered to.

The Restricted Access Period - delegations under the PRA

Section 16 of the PRA requires a public authority which has transferred public records to the QSA to classify its records, according to the content of the record, and to give written notice to the QSA to set restricted access periods for the records of not more than 30, 65 or 100 years for different classes of documents.¹²⁵

It is usual practice for public authorities to provide the transfer document and set the RAP at the time of the transfer of the records to the QSA. This data was provided by the CMC firstly converting the information entered into the TCR during the Fitzgerald Inquiry, then manually in relation to the items within the final 315 boxes. It appears that the CMC did not consider the appropriateness of inputting that detailed, sensitive information into the QSA database.

¹²⁴ PCMC. *Record of Proceedings*, 21 March 2013, pages 49 and 55. (Ms Legg).

¹²⁵ Section 16(4)(a) Not more than 100 years for a record containing information about the personal affairs of an individual, whether living or dead; (b) not more than 65 years for a record containing information that potentially is exempt information under the *Right to Information Act 2009*, schedule 3, section 7, 8, 9 or 10; and (c) not more than 30 years for another public record.

The Committee received evidence of negotiations between the CMC and QSA in relation to the appropriate RAP to be applied to the Fitzgerald Inquiry records, but the CMC did not provide this information to the QSA immediately.¹²⁶

The Fitzgerald Inquiry documents, whilst in the physical custody of the QSA, remained in the legal custody of the CMC under section 375 of the CM Act. As information, documents and things in the possession of the CMC, dissemination of this information can only occur under section 62 of the CM Act. That requires express written authorisation from the Commission. The Committee has received no evidence to support an authorisation from the Commission in this regard. Indeed, one current part-time Commissioner advised the Committee that he was unaware of the transfer of the Fitzgerald Inquiry holdings to the QSA.¹²⁷

It is the intention of the QSA that records which are transferred into its custody will eventually become public.¹²⁸ The Restricted Access Period is the time for which the public record will remain closed to public access.

In essence, the purported delegation under the QSA Access Authorisation form and pursuant to section 18 of the PRA, allows an 'authorised officer' to set and change the RAP, and authorise individuals to access the information held by the QSA. This effectively means that the authorised person can disseminate information in the legal possession of the CMC contrary to section 62 of the CM Act.

In 2007, the then Chairperson signed a delegated authority form from the QSA to authorise Mr Rigby to act on behalf of the CMC in relation to the Fitzgerald Inquiry records held at the QSA.¹²⁹ In April 2011 the former Chairperson signed a further Access authorisation form from the QSA to authorise Mr Duell and again in October 2011 for Mr Duell and Ms Sweeper. The Committee understands that the same Access authorisation form was signed by successive Chairperson's for Ms Legg. The Committee notes that the current access authorisations under section 18 of the PRA, in relation to the Fitzgerald material, is due to expire in June 2013. Mr Ross Martin did not sign an Access Authorisation form, to delegate the authority to Mr Duell or Ms Sweeper.

The Commission's delegation of that power to the Chairperson, discussed above, would allow the Chairperson to disseminate the information, but does not extend to a power on his part to authorise another officer to disseminate Commission information. It appears that the release of CMC information by Mr Duell was not in accordance with section 62 of the CM Act or the Commission's delegation to the Chairperson to authorise dissemination of CMC information under section 62, as there was no written authorisation by the Chairperson or the Commission.

Committee Finding 8

The Committee finds that the successive delegations under section 19 of the *Public Records Act 2002* were to officers who may not have had sufficient appreciation of the sensitivity of the information contained in the Fitzgerald Inquiry material. Again, there is no documentation to show the decision-making processes to determine the appropriate officers to hold the purported authorisations under section 19 of the *Public Records Act 2002*. There is also no apparent appreciation that section 19 of the *Public Records Act 2002* does not vitiate the requirements of section 62 of the *Crime and Misconduct Act 2001*.

¹²⁶ See: PCMC, *Record of Proceedings*, 18 March 2013, , page 6 (Mr Rigby); PCMC Exhibit TD_106; PCMC, *Record of Proceedings*, 21 March 2013, page 43 (Ms Legg).

¹²⁷ See: PCMC, *Record of Proceedings*, 28 March 2013, page 19 (Mr Nase).

¹²⁸ PCMC Exhibit TD_106; page 12.

¹²⁹ PCMC Exhibit TD_52.

Recommendation 5

That the CMC audit, review and report to the Committee on the appropriateness, and validity, of all delegations.

Setting the RAP

Ms Legg set the RAP for the Fitzgerald Inquiry Series held at the QSA on 3 September 2010, over three years after the initial transfer.¹³⁰ Until this time, there was no public access to the Fitzgerald Inquiry documents held by the QSA or to the metadata.¹³¹

Prior to imposing this RAP, Ms Legg sought legal advice from the CMC's then General Counsel Ms Jan Speirs in relation to the future status of the non-disclosure periods – i.e. whether those items would remain closed or could they become public at some point.¹³² Ms Speirs did not provide any legal advice in this regard and Ms Legg imposed a 100 year RAP on those records which were subject to a non-disclosure order and a 65 year RAP on those records which were not subject to a non-disclosure order.¹³³ Again, this action was undertaken without any real audit or appreciation of the content of the records. However, the Committee appreciates that Ms Legg's response in this instance was prudent as Ms Legg essentially set a RAP which would retain the closed status of the Fitzgerald Inquiry documents until after 2050.

Between the commencement of the transfer of the records and the setting of the RAP, the CMC categorised the documents into Series. Each Series was named and a QSA Series number was allocated. Importantly, the Documentation Series was allocated 18651, and the Exhibits Series was allocated 18586.¹³⁴

Ms Legg's covering letter to the QSA, which attached the *Restricted Access Notice – for Series* form contained an error. She applied a 100 year RAP on certain items within Series 18651 which she referred to as 'Exhibits'. Series 18651 is actually the Fitzgerald Inquiry 'Documentation' Series ID, the 'Exhibits' Series ID is 18586. There was discussion between the QSA and Ms Legg and an amendment was made to the covering letter to amend 18651 to 18586. No such amendment was made to the CMC copy of the letter, nor has the Committee received any evidence of a file note or other such attempt to correct the CMC's record in this regard.¹³⁵ It appears that this misstated Series ID number, which remained uncorrected, perpetuated a later belief that Series 18651 contained exhibits tendered and made public, during the Fitzgerald Inquiry.¹³⁶

The publicly searchable metadata

It was after the RAP was applied on 3 September 2010, that the metadata provided to the QSA in the transfer document became publicly searchable on the QSA website. The metadata is the data which identified the records, which Ms Legg, Ms Klynsmith and their teams converted into the QSA acceptable format from the TCR, and also manually input into the QSA spread-sheets for the last 315 boxes of material, discussed above.

The Committee has received copies of the metadata for the Fitzgerald Inquiry records held at QSA and was shocked that either the CMC or QSA thought it appropriate for this material to be available

¹³⁰ PCMC, *Record of Proceedings*, 7 March 2013, page 6 (Ms Prowse); PCMC Exhibit TD_09.

¹³¹ PCMC, *Record of Proceedings*, 7 March 2013, page 6 (Ms Prowse).

¹³² See: PCMC Exhibit TD_33, email from Ms Legg to Ms Speirs dated 16 April 2010.

¹³³ PCMC Exhibit TD_09.

¹³⁴ PCMC Exhibit TD_09.

¹³⁵ See for example: PCMC, *Record of Proceedings*, 21 March 2013, page 54 (Ms Prowse).

¹³⁶ PCMC, *Record of Proceedings*, 14 March 2013, pages 17 and 22 (Mr Duell).

publicly. Even a cursory glance at the information which can be gleaned from this descriptive data provides enough detail about the sensitive content of some documents to raise a reasonable suspicion that a mistake has been made. Whilst some of the documents and the metadata will be innocuous, some include detailed information on informants, and untested and scandalous allegations about individuals, including some high profile Queenslanders, which could just from their description damage the reputations of these people.¹³⁷

Each witness who was afforded an opportunity to view the metadata during the Committee's inquiry expressed shock or dismay that that material was publicly available. Each CMC witness, including Mr Duell, who viewed the metadata stated they did not know that the information was publicly available on the QSA website.¹³⁸

It appears that even after this matter was raised in the media and the Chairperson of the CMC had acted to close the public access to the Fitzgerald Inquiry records, the CMC still did not appreciate that the metadata was in the public domain from the start of the initial RAP. In his email to the CMC Chairperson and Mr Strange, Mr Hutchings states:

*From February 2012, when the RAP was altered from 65 to 20 years, all 19,000 documents were searchable (subject to a few hundred exceptions, including exhibits marked "not for publication" and others which had been labelled "confidential") in the abstract.*¹³⁹

Mr Hutchings' understanding is incorrect. The metadata for the Fitzgerald Inquiry records at the QSA was publicly accessible from around September 2010 when Ms Legg set the initial RAP. Additionally, , the metadata was publicly searchable for the documents subject to a further 65 year RAP set by Mr Duell in May and September 2012 except for those '***Confidential***' items that he requested not be web-enabled for public searches.

The Committee heard that the release of the metadata at the point of setting the RAP is standard QSA practice, unless the responsible public authority specifically requests that QSA mask the metadata; this issue is discussed at section 5 of this report. The Committee has not received any evidence on how this information is presented by the QSA to agencies.

The State Archivist told the Committee that she has no statutory obligation to assess the suitability of the metadata for public access. Despite the lack of a statutory obligation or requirement in this regard, the Committee considers this was yet another missed opportunity to prevent the public release of such sensitive information.

¹³⁷ PCMC Exhibit TD_25; PCMC Exhibit TD_106.

¹³⁸ PCMC, *Record of Proceedings*, 19 March 2013, page 37 (Ms Wood); PCMC, *Record of Proceedings*, 20 March 2013, page 85 (Mr Hutchings); PCMC, *Record of Proceedings*, 14 March 2013, page 42 (Mr Duell); PCMC, *Record of Proceedings*, 15 March 2013, page 23 (Mr Martin).

¹³⁹ PCMC Exhibit TD_45.

Committee Finding 9

Metadata serves to summarise the content of documents. In this instance, the metadata included detailed information on informants, and untested and scandalous allegations about individuals, including some high profile Queenslanders, which could just from their description damage the reputations of these people.

The State Archivist advised the Committee that the QSA advises agencies that the metadata will become publicly available upon the application of a RAP to the records held by the QSA. This important information was clearly unappreciated by the CMC staff, or not properly communicated by the QSA, during the transfer of the CMC's Fitzgerald Inquiry records to the QSA.

As soon as Mr Martin became aware in March 2013 that the metadata was publicly available, despite the RAP, he acted swiftly to close it.

The Committee notes the advice from the State Archivist that she is contacting agencies who have closed records and open metadata to bring the open metadata to their attention. The Committee considers that the State Archivist needs to review the advice from the QSA to agencies to ensure it appropriately advises them that the metadata will be publicly available despite the RAP applied to those records, unless the agency requests the metadata also be closed.

Recommendation 6

That the CMC review its records held by the QSA and the status of the metadata in relation to those records.

Recommendation 7

That the State Archivist review QSA policies, procedures and information provided to agencies in relation to transfer of an agencies records to the QSA, to ensure agencies are clearly informed of QSA procedures in relation to the metadata.

Public access to the documents

Public access to the Fitzgerald Inquiry records was afforded in two ways, firstly an individual, Mr Tony Reeves, was granted access to specified items in October 2010 and, secondly, Mr Duell changed the RAP on the whole Series of Fitzgerald Inquiry records in February 2012.

Mr Duell told the Committee that he and the Records Manager had to deal with numerous requests for access to the Fitzgerald Inquiry material in the custody of the QSA. The Committee received no evidence of regular, sustained requests for access to the documents; rather a few long-standing requests from journalists.¹⁴⁰ The Committee heard no evidence that the CMC implemented an adequate process to deal with the access requests and often a long period would lapse between the initial request and the CMC decision.¹⁴¹ Mr Duell agreed that the requests were a 'bureaucratic headache' to him and he was keen to get rid of them.¹⁴²

¹⁴⁰ PCMC Exhibit TD_93. The Committee received evidence of requests from: Mr Krosch (TD_03, TD_10, TD_58); Mr Bishop (TD_20, TD_21, TD_28, TD_65, TD_67, TD_68); Mr Reeves (TD_15, TD_29); and Mr Condon (TD_13, TD_18).

¹⁴¹ As an example: PCMC Exhibit TD_21.

¹⁴² PCMC, *Record of Proceedings*, 14 March 2013, page 38 (Mr Duell).

Mr Duell told the Committee that up to and including February 2012, he understood that the Fitzgerald Inquiry material held at the QSA contained two classes of documents – public exhibits tendered during the Fitzgerald Inquiry and closed exhibits which were tendered but subject to a non-disclosure period issued by Commissioner Fitzgerald.¹⁴³ Mr Duell understood that, in the absence of legal advice from the CMC General Counsel, Ms Legg applied the highest RAP possible on that class of documents, at 65 years.¹⁴⁴ Ms Legg told the Committee that, whilst the lack of legal advice may have played a part in setting the maximum 65 year RAP, she applied this RAP as it was sensitive information:

*Well, that probably played a part in it but also we tended to look at a generation—so keep sensitive information unavailable for like 65 years or so.*¹⁴⁵

Having never undertaken an audit of the Fitzgerald Inquiry records at the QSA, Mr Duell's evidence to the Committee is that he continued to assume, until March 2013, that there were only two classes of documents - public documents subject to the 65 year RAP and sensitive documents subject to the 100 year RAP.¹⁴⁶

Individual access

On 12 September 2011, Mr Duell signed an Access Authorisation form to allow Mr Reeves, an author, to access and copy certain documents he had requested access to.¹⁴⁷ This is problematic for a number of reasons: firstly, the dissemination of CMC material, as discussed above, requires written Commission, or Chairperson, authorisation so any authorisation by Mr Duell under section 19 of the PRA is likely to be invalid; secondly, Mr Duell's purported authorisation expired on 30 June 2011 and was not renewed until October 2011,¹⁴⁸ and thirdly, Mr Duell did not review the requested material to assess its suitability to be released to, and copied by, Mr Reeves.

A further issue arises in that QSA allowed Mr Reeves to access the specified documents on 4 October 2011. This is despite email correspondence between Mr Duell and Ms Hawkins (QSA) in relation to Mr Duell's expired access authorisation.¹⁴⁹ Hon Moynihan AO QC signed a further Access Authorisation form for Mr Duell on 10 October 2011, six days after Mr Reeves accessed the information.¹⁵⁰

The evidence suggests that QSA allowed Mr Reeves to access the CMC's Fitzgerald Inquiry records held at the QSA despite the expiration of Mr Duell's authorisation. The State Archivist wrote to the former Chairperson of the CMC in June 2011 to advise of the expiration of authorisations; that letter contained a handwritten notation that it had been referred to Mr Duell on 9 June 2011.¹⁵¹ This evidence suggests that Mr Duell was made aware of his expired authorisation.

Mr Reeves' access to the Fitzgerald Inquiry records at the QSA occurred without any written authorisation from the Commission or the Chairperson of the CMC.

¹⁴³ PCMC, *Record of Proceedings*, 14 March 2013, page 6 (Mr Duell).

¹⁴⁴ PCMC, *Record of Proceedings*, 14 March 2013, page 6 (Mr Duell).

¹⁴⁵ PCMC, *Record of Proceedings*, 21 March 2013, page 44 (Ms Legg).

¹⁴⁶ PCMC, *Record of Proceedings*, 14 March 2013, page 13 (Mr Duell).

¹⁴⁷ PCMC, *Record of Proceedings*, 14 March 2013, page 34 (Mr Duell); PCMC Exhibit TD_15; TD_106.

¹⁴⁸ PCMC Exhibit TD_12.

¹⁴⁹ PCMC, *Record of Proceedings*, 14 March 2013, page 34 (Mr Duell); PCMC Exhibit TD_16; PCMC Exhibit TD_106.

¹⁵⁰ PCMC, *Record of Proceedings*, 14 March 2013, page 34 (Mr Duell); PCMC Exhibit TD_17.

¹⁵¹ PCMC Exhibit TD_12.

Change to the RAP

In late August 2011 Mr Duell asked the Acting Records Manager, Ms Suzanne Sweeper, to draft a memorandum to General Counsel which was to discuss the RAP, and the appropriate authorised officers, under section 19 of the PRA, to set the RAP and determine access to the Fitzgerald Inquiry records at the QSA. There is no written record of Mr Duell's direction, or instructions, to Ms Sweeper to undertake this task.¹⁵²

Ms Sweeper's memorandum proceeds on the same mistaken assumption that the majority of the Fitzgerald Inquiry records held at QSA were tendered during the Fitzgerald Inquiry and made public at that time.¹⁵³ In this memorandum, which was amended by Mr Duell before it progressed to General Counsel, Ms Sweeper recommended consideration of a reduction in the RAP from 65 years to 20 years and for General Counsel to be the authorised officers under section 19 of the PRA.¹⁵⁴

Advice from the General Counsel was provided to Mr Duell, by email, over three months later on 23 December 2011.¹⁵⁵ In his advice, Mr Hutchings limits his advice to two categories of documents, those made public during the Fitzgerald Inquiry, and those subject to non-publication orders. In relation to allowing public access to the second category, Mr Hutchings states:

- *The high probability that the exhibits (such as Briffman transcripts) had little probative value as they would likely be pure hearsay. Such a likelihood was recognised by Commissioner Fitzgerald at p.10 of his report;*
- *Despite being tendered as exhibits in the Inquiry, there had apparently been no opportunity for those before the inquiry to test the evidence contained in those exhibits;*
- *The likelihood that public interest immunity considerations will arise, as a number of the documents would reveal or be likely to reveal the Identity of police informants; and*
- *The potential for significant embarrassment to Individuals, whether they are the named persons if still alive, or their families, affected by the contents of exhibits which might be highly defamatory.*

There is no reference in Mr Hutchings' email to documents not tendered at the public hearings, and not subject to a non-publication order. Mr Hutchings advises Mr Duell that he will provide further advice in the new year. The Committee has not received evidence that that follow-up advice was provided.

There is no reference in Mr Hutchings' email advice to documents generated by the Fitzgerald Inquiry but not tendered at the hearings which could contain sensitive information. Mr Hutchings advises that he will follow up with further advice in the new year. This later advice did not eventuate.

Mr Duell used the advice in this email, along with the memorandum drafted by Ms Sweeper, to speak with Mr Strange, then Acting Chairperson of the CMC, in January 2012. The Committee heard a conversation took place in the doorway of Mr Strange's office where Mr Duell proposed to Mr Strange the release of Fitzgerald Inquiry material which was previously in the public domain, and

¹⁵² PCMC, *Record of Proceedings*, 14 March 2013, page 12 (Mr Duell).

¹⁵³ PCMC Exhibit TD_07; PCMC Exhibit TD_7A; PCMC Exhibit TD_33; PCMC Exhibit TD_95; PCMC Exhibit TD_96.

¹⁵⁴ PCMC Exhibit, TD_114, page 3.

¹⁵⁵ PCMC Exhibit TD_18.

the retention of a 100 year RAP on the holdings subject to a non-publication order.¹⁵⁶ This would be in accordance with Mr Hutchings advice of 23 December 2012.

All parties appeared oblivious to the fact of the third, and highly sensitive class of information being released; Mr Duell did not appreciate that that class of Fitzgerald Inquiry records existed, and Mr Hutchings and Mr Strange contemplated that Mr Duell was not proposing to release any documents other than those publicly tendered during the Inquiry.

The informal nature of the General Counsel's reply to Ms Sweeper's memorandum, and the discussion between Mr Duell and the Acting Chairperson in the office doorway suggests a lax attitude was taken by all. The Committee considers that had a more formal meeting taken place, Mr Duell's incorrect assumptions as to the content of the Fitzgerald Inquiry records may have become evident and release of the information may have been prevented.

On 2 February 2012, Mr Duell completed a Restricted Access Change Request form and submitted it to the QSA.¹⁵⁷ The effect of this change in the RAP was to allow public access to the vast majority of over 19,000 Fitzgerald Inquiry items held at the QSA. Again, no audit was undertaken by the CMC in relation to the Fitzgerald Inquiry holdings.

Following the change to the RAP, the QSA provided Mr Duell with a transfer report. The Committee has received a copy of this transfer report which contains the metadata for each item.¹⁵⁸ Even a cursory glance at the information contained in that metadata report would cause any reasonable person to consider the appropriateness of release of such information. Mr Duell told the Committee that he did not view the document; he simply filed it in an electronic file.¹⁵⁹

The sensitivity of the information Mr Duell had allowed to be released by the QSA was brought to the attention of the CMC in May 2012, discussed in section 5.2 below.

Committee Finding 10

Informal nature of decision-making

The Committee finds that the informal nature of the decision making and consultation processes utilised by CMC officers in this matter allowed the incorrect assumptions and knowledge gaps to prevail. There were no formal meetings; there was no formal documentation, such as a detailed submission to identify the information to be released and seeking authority from the requisite authority; and there was no substantive, formal legal advice to clearly spell out the issues. The brief memorandum drafted by Ms Sweeper, and significantly altered by Mr Duell, was insufficient for this purpose.

The CMC Code of Conduct states that advice should be in writing wherever possible, and where the advice is not in writing, officers should keep well documented notes about the advice provided. The Committee considers this informal approach to the decision making in this matter is contrary to the Code of Conduct and wholly inappropriate and a failing on the part of the CMC and its senior officers.

Mr Duell

Mr Duell's primary motivator was to provide access to the Fitzgerald Inquiry records held by the QSA to relieve him of what he considered to be a bureaucratic headache of requests from journalists and researchers for access to the documents. The Committee did not receive evidence to suggest an unreasonable amount of requests for access to the Fitzgerald Inquiry material to support this motive.

¹⁵⁶ PCMC, Record of Proceedings, 14 March 2013, page 37 (Mr Duell); PCMC, Record of Proceedings, 21 March 2013, page 27.

¹⁵⁷ PCMC Exhibit TD_06, page 2; PCMC Exhibit TD_106.

¹⁵⁸ PCMC Exhibit TD_22; PCMC Exhibit TD_23.

¹⁵⁹ PCMC, Record of Proceedings, 14 March 2013, page 41 (Mr Duell).

The Committee is concerned that Mr Duell's and Ms Legg's requests for legal advice from General Counsel went unanswered, or were not answered in a timely manner.¹⁶⁰ The failure on the part of the CMC General Counsel and Legal Services Unit was yet another missed opportunity to prevent the release of this information.

Mr Duell's change to the RAP in February 2012 allowed the public release of the full Series of Fitzgerald Inquiry records held by the QSA, except those items subject to a 100 year RAP. Mr Duell made the change to the RAP, knowing it would result in public access to the documents without satisfying himself as to the content of the information he was to release, nor the appropriateness of public access to that information.

Mr Duell, in his position of responsibility and seniority within the CMC, should have taken steps to satisfy himself that the material he was authorising for release by changing the RAP was suitable for public dissemination. He did not do so and instead relied on a memorandum drafted by his subordinate, at his direction and later amended by him; an email from General Counsel who promises further, detailed advice that was never provided; and a brief, informal 'doorway' chat with the Acting Chairperson as the basis for his, largely undocumented, decision to release, under a blanket RAP change, the Fitzgerald Inquiry records.

Access to Mr Reeves in October 2011

The Committee finds that Mr Duell signed an authorisation access form to enable Mr Reeves to access material when his authorisation under the *Public Records Act 2002* had expired. Further, the QSA allowed Mr Reeves to access the Fitzgerald Inquiry records held at the QSA without proper authorisation from the CMC, or from Mr Duell, as his authorisation had expired.

No evidence was provided to the Committee to suggest there was an authorisation in this regard provided by the Commission or the Chairperson of the CMC.

The QSA did not provide information on why this access was allowed by the QSA when Mr Duell's authorisation had expired.

The Committee considers that the State Archivist should review QSA processes and procedures in relation to ensuring individual access authorisations are valid prior to providing access.

CMC corporate responsibility

The release of the CMC Fitzgerald Inquiry documents in February 2012 was a result of a culmination of events and failings on the part of the CMC on numerous occasions and over a number of years including:

- the passage of time since the Fitzgerald Inquiry and, consequentially, the de-sensitisation of CMC officers to the gravity of the Fitzgerald Inquiry and its material;
- the removal of the material from the responsibility of the Intelligence Division;
- responsibility for the material transferring to the Director, Information Management without any apparent consideration of the knowledge required to properly deal with the material, and no steps taken by the CMC to ensure the required knowledge was gained by those officers now responsible for the material;
- a continuing reduction in corporate knowledge of the contents of the material;
- no effective policies or procedures to ensure that the material was dealt with appropriately;
- a lack of audit, by appropriate officers, of the material or of the metadata, prior to public release; and

¹⁶⁰ PCMC Exhibit TD_18, PCMC Exhibit TD_7; PCMC Exhibit TD_7A; PCMC Exhibit TD_33.

- a total lack of informed decision-making around the release of the material.

Recommendation 8

That the QSA review its processes and advice provided to agencies in relation to individual access authorisations to ensure authorisations are valid prior to providing individual access to an agencies closed records.

Recommendation 9

That the QSA advise relevant Chief Executive Officers of the extent of the authorisations under the Authorised Access forms will allow their delegates to set and change RAPs and provide access to closed documents upon application by researchers. This advice should include a recommendation that the agency has appropriate and effective internal controls in place to mitigate the risk of inappropriate disclosure.

5.2 The failure to correct the incorrect classification in May 2012

On 24 May 2012 an email was sent from Mr Krosch (Researcher) (4:20pm) to Ms Wood, the CMC's Official Solicitor, acknowledging receipt of an earlier letter by Ms Wood regarding his information requests. Mr Krosch also provided in the email: *"I do a lot of work through archives around Australia and I was surprised to see all the Fitzgerald Inquiry Surveillance Reports are accessible now. I am sure it was a 60 year access originally?"*

It is to the credit of Ms Wood that she identified a serious problem being raised by Mr Krosch - the dissemination of information that should not be disseminated - and that she initially took action in respect of the matter by taking the matter up with more senior officers and, apparently, formulating a plan of action to ensure the matter was properly investigated and "fixed". However, the plan of action was never followed through to completion.

This email from Mr Krosch was, in addition to Ms Wood's, eventually seen or discussed by at least five other CMC officers:

- Mr Barry Kenzler, the CMC's Right to Information Officer
- Ms Zora Valeska, Acting Senior Lawyer, Compliance
- Mr Peter Duell, CMC Director of Information
- Mr Robert Hutchings, CMC General Counsel
- Mr Ross Martin SC, CMC Chairman.

Unfortunately, most of these officers were unable to assist the Committee with an understanding of what exactly occurred in late May 2012 which lead the CMC to fail, as a corporate entity, to remedy the incorrect classification of the Fitzgerald Inquiry holdings at the QSA.

The lack of recall of the senior CMC officers involved in responding to matters raised in Mr Krosch's email led the Chair of the Committee, in the hearings,¹⁶¹ to despair that the CMC appeared to have a *'case of corporate amnesia'*. The Chair echoed a frustration held by the entire Committee. Indeed, the Committee has been forced to piece together a largely incomplete picture of events, mainly through the assistance of documentary evidence received under summons – particularly email

¹⁶¹ PCMC, Record of Proceedings, 21 March 2013, page 31.

strings between key CMC officers. The chronology contained in the table below is based solely on various email records which the Committee has been able to obtain.

Date	Time	From	To	CC	Re (and summary of content)
24/5/2012	4:20pm	KROSCH	WOOD		ATTENTION SIDONIE WOOD - I was surprised to see all the Fitzgerald Inquiry Surveillance Report are accessible. I am sure it was a 60 year access originally?
24/5/2012	4:29pm	WOOD	KENZLER		ATTENTION SIDONIE WOOD - FYI
24/5/2012	4:36pm	KENZLER	WOOD		ATTENTION SIDONIE WOOD - Thanks Sidonie. I was not aware of the extent of access to Fitz material. I thought it was confined to exhibits tendered at the public hearing. I wonder if this was intended? I am pleased Mr Krosch acknowledged your efforts!
29/5/2012	8:52am	VALESKA	HUTCHINGS	WOOD	Fitzgerald instructions – ‘As I was leaving last night Sidonie indicated that you would both like me to follow up on the mystery of what records/documents the State Archives has with regard to the Fitzgerald Inquiry (including covert documents) and who might have released them. Sidonie advised that you requested I: (i) call property; (ii) call the Director, Information Management to see whether they know who released all documents; and (iii) go to QSA to inspect the holdings. Before I start, can you confirm that I have understood the above? Note – I am interrogating TRIM before I do either, to see if the mystery lies in a memo or note to file that we already have.’
29/5/2012	8:53am	HUTCHINGS	VALESKA	WOOD	Fitzgerald instructions – that’s it Zora, thanks
29/5/2012	8:54am	WOOD	HUTCHINGS	VALESKA	Fitzgerald instructions – Zora, Rob or I will call Peter Duell first to see what he had disseminated
29/5/2012	8:54am	HUTCHINGS	WOOD	VALESKA	Fitzgerald instructions – Great. I can speak to him if you’d prefer
29/5/2012	8:58am	VALESKA	WOOD HUTCHINGS		Fitzgerald instructions – Thank you both – would someone be able to let me know outcome when done?
29/5/2012	9:00am	WOOD	HUTCHINGS	VALESKA	Fitzgerald instructions – Rob, good idea. I will also send you the person’s email that states that covert material is released by QSA. If it was released by the CMC, I guess our starting point is whether the release of Fitzgerald covert material is a breach of s.213. Of course, if Warren authorised the dissemination (he has the delegation) under a section 60 or 62, then it’s fine (I would find it ‘strange’ if he did). I cannot recall from your advice to PD whether you would have included ‘all material’ to be disseminated. Zora can you check please.
29/5/2012	9:48am	VALESKA	WOOD HUTCHINGS		Fitzgerald instructions – Rob’s email advice to Duell is attached - ... two broad categories ... I also found an email that confirms: (1) The RAP for the bulk of the Fitz holdings have been changed from 65 to 20 years (2) Records subject to ‘not for publication or inspection’ orders are currently restricted for 100 years
29/5/2012	10:05am	WOOD	VALESKA		Fitzgerald instructions – Zora, it appears that covert investigative material has been considered as category 1 and was disseminated. Is that your take on it?
29/5/2012	10:07am	VALESKA	WOOD		Fitzgerald instructions – My take would be that if it wasn’t listed as not for publication or inspection, it was assigned the 20 year restricted access period and is now available.
29/5/2012	10:09am	WOOD	VALESKA		Fitzgerald instructions – I agree. So it was probably an oversight by registry – i.e. if it wasn’t subject to a NPO they disseminated it to Archives.
29/5/2012	10:13am	VALESKA	WOOD		Fitzgerald instructions – I guess so. There is an index of Fitzgerald exhibit that clearly lists restrictions on the documents – I would have hoped that Registry would have looked at this first.

Date	Time	From	To	CC	Re (and summary of content)
29/5/2012	10:13am	WOOD	HUTCHINGS		ATTENTION SIDONIE WOOD - FYI – see below 'I was surprised to see all the Fitzgerald Inquiry Surveillance Reports are accessible now. I am sure it was a 60 year access originally?' (so am I) I think what has happened is that anything that was not subject to a NPO was disseminated to Archives including all the covert investigative material. I am unsure whether that material should be available to public.
29/5/2012	10:31am	HUTCHINGS	MARTIN		ATTENTION SIDONIE WOOD Ross Over the last 24 hours an issue has emerged about the availability of covert material relating to the Fitzgerald Inquiry at State Archives. The attached email is of some concern – it suggests surveillance report have been made available by the CMC to State Archives, and now those documents are being accessed by members of the public – one of whom is a former Police Officer and he has located documents he produced himself covertly. I'm trying to get to the bottom of the matter with Peter DUELL to find out what and why these documents are now available.
29/5/2012	10:40am	HUTCHINGS	DUELL		ATTENTION SIDONIE WOOD - As we discussed, the attached email suggests that covert material is available publicly. Can we get to the bottom of whether this is correct?
29/5/2012	11:12am	WOOD	VALESKA	HUTCHINGS	RELEASE OF INFO - Z subject to Rob's instructions, can you please contact Registry to find out what Fitz Inquiry was released (obtain a list of docs) to Archives and when. ... Rob may wish to ask Peter first whether we disseminated the covert material with the public inquiry material.
29/5/2012	11:13am	VALESKA	WOOD	HUTCHINGS	RELEASE OF INFO - ... Thanks just confirming latest instructions: (1) contact Registry to see when Fitz stuff actually disseminated (2) contact QSA, identify myself as CMC officer and request information on how the stuff came to be there and what kind of holdings we are looking at (3) anything else?
29/5/2012	11:18am	WOOD	VALESKA		ATTENTION SIDONIE WOOD - Zora, await Rob's instructions – Peter Duell's email is peculiar – releasing 'the bulk' of the Fitz material without an authorisation seems ... odd The change of years from 60 to 25 – where did he get those instructions from? Wouldn't one need a dissemination authority for that?
29/5/2012	11:19am	VALESKA	WOOD		ATTENTION SIDONIE WOOD - Yes, I should think that one would need a dissemination. I saw your last email re subject to Rob's instructions, so I've held off doing anything until further notice.
29/5/2012	11:39am	HUTCHINGS	WOOD VALESKA		RELEASE OF INFO – I have spoken with Peter. I have forwarded the email to him and have asked him to investigate whether Mr Krosch's email accurately reflects what is available at State Archives. I will let you know what he report to me. In the meantime Zora it may avoid wasted effort if we see what Peter has to say. I wouldn't do much yet. Have let the Chairperson know we are looking into the issue.
29/5/2012	11:40am	VALESKA	HUTCHINGS WOOD		RELEASE OF INFO – All good. I will await instructions with bated breath
29/5/2012	11:41am	WOOD	HUTCHINGS		ATTENTION SIDONIE WOOD - Hyperlink to dissemination process You will see that a ss 55, 60 or 62 should have been completed for the dissemination in any event. It may have been however according to Peter's email there was no authority needed (even State Archives thought that was needed). It is strange that the covert and public inquiry information was disseminated without an Authority/Form per our policies.

Date	Time	From	To	CC	Re (and summary of content)
29/5/2012	12:16pm	WOOD	VALESKA		NO SUBJECT – Can you check whether we ever responded to Suzanne Sweeper’s email request.
29/5/2012	12:16pm	WOOD	DEVIA		D, In 2010 records (Suzanne Sweeper) and Peter Duell asked LSU/GC for advice is requested on (inter alia) whether: (1) A 65year restricted access period for the Fitzgerald Inquiry material was appropriate; and (2) Non-publication orders relating to Fitzgerald Inquiry records stood indefinitely, thus effectively meaning those exhibits will never be publicly accessible. I have been unable to find a response from the Office of General Counsel/LSU to the memo above. I cannot find any response from Jan or Dom – can you do a search to see if we responded by email or gave an advice. S.
29/5/2012	12:30pm	VALESKA	WOOD HUTCHINGS		Fitzgerald instructions – + attachments I stand corrected with regard to my verbal assertion earlier (in Sidonie’s office) re Reeves.
29/5/2012	1:12pm	VALESKA	WOOD	HUTCHINGS	SS REQUEST FOR ADVICE – in response to your query below and our subsequent phone conversation ... I have gone through TRIM to find the following on RM’s requests for advice on Fitzgerald Inquiry records generally: (a) Email request from Janet Legg (Acting Records Manager) 16 April 2010 – requesting advice on lifting restrictions on records subject to non-publication orders. The email refers to an index of exhibits (attached). Janet sent a subsequent request to Jan [Speirs] in September 2010, which I have not included, as it restates the request. (b) A memo created by Lisa Brereton 19 November 2010 and 9I believe) in response to above request for research on this matter. The memo provides ... (c) A memo to General Counsel from Suzanne Sweeper 9Acting Records Manager) (through Peter Duell) 7 September. This memo explains that advice was previously sought for the Office of General Counsel on two occasions in April and May 2010 ... - and that same is outstanding. Advice is requested on whether: (1) A 65 year restricted access period was appropriate; and (2) Non-publication orders relating to Fitzgerald inquiry records stood indefinitely, thus effectively meaning those exhibits will never be publicly accessible. I have been unable to find a response from the Office of General Counsel/LSU to the memo above. (D) a document entitled ‘Fitzgerald Holdings Project’ – it is undated and unsigned, but refers to Wendy Klynsmith as Project Supervisor, described the project as one to move Fitz holding to QSA and lists phases of the project as occurring between November 2008 – March 2009. Note – there are also: • Advice requests to various units within the CMC (including us), letters, etc relating to requests by journalists, crime writers, etc for specific Fitzgerald Inquiry records. • Correspondence between RM, QSA etc on imposition/lifting of restricted access periods. I have not included these ...
29/5/2012	5:03pm	VALESKA	HUTCHINGS		Subject: Do you need me to do anything else re the Fitz stuff tonight? EOM
29/5/2012	5:03pm	HUTCHINGS	VALESKA		Subject: Do you need me to do anything else re the Fitz

Date	Time	From	To	CC	Re (and summary of content)
					stuff tonight? EOM Go home
30/5/2012	9:45am	DUELL	HUTCHINGS	WOOD	ATTENTION SIDONIE WOOD - Good morning Rob. As briefly discussed with Sidonie yesterday, the issue identified by KROSCH arose from a misunderstanding at our end and was discussed yesterday with QSA. QSA have rectified this immediately and the COI surveillance reports have been returned to their 65 year restricted access period. In the scheme of things it was fortunate that Barry raised this with Sidonie.
29/5/2012	3:22pm	HUTCHINGS	GRAHAM		Subject: Declined: Weekly meeting with General Counsel Viki – would you be good enough to remove this from Ross' calendar? I don't have any items to trouble him with tomorrow.
29/5/2012	3:22pm	GRAHAM	HUTCHINGS		RE: Weekly meeting with General Counsel Shall do
30/5/2012	3:30pm Saved not sent	HUTCHINGS	MARTIN		Email draft - Not sent 'Below is DUELL's response to the issue of State Archives having Fitzgerald Inquiry covert material available for inspection. I'm not sure the issue is resolved simply by reverting to a 65 year access period. I would have thought that reports of surveillance undertaking by the Commission (and not tendered in evidence) aren't felt there's more that needs to be do'
30/5/2012	5:29pm	HUTCHINGS	VALESKA	WOOD	ATTENTION SIDONIE WOOD - Zora – see attached reply from Peter. Not sure it this addresses the concern we had. In any event, we can discuss tomorrow.
30/5/2012	5:31pm	VALESKA	HUTCHINGS	WOOD	ATTENTION SIDONIE WOOD - Based on the very brief conversation today, I think Sidonie still had a few questions about how the stuff may have initially been released to QSA in the first place minus a section 62 authority; I thought maybe as part of the Fitzgerald Holdings project... (per one of the numerous attachments sent to you both yesterday)? If in doubt, and subject to your instructions, I could always chat with Wendy Klynsmith about it.
30/5/2012	5:32pm	HUTCHINGS	VALESKA	WOOD	ATTENTION SIDONIE WOOD - Yes that's a separate issue

The above chronology reveals a number of very important matters:

- Firstly, Ms Wood, Mr Kenzler, Ms Valeska and Mr Hutchings all clearly understand that an error has been made.
- Secondly, Ms Wood and Mr Hutchings correctly recognised at a very early time the significance and risk posed by the matters revealed in Mr Krosch's email. Indeed, the matter is elevated to the Chairperson, Mr Martin by Mr Hutchings.
- Thirdly, Ms Valeska identifies the what has in fact happened very early on 29 May, where at 10.07 am she states:

My take would be that if it wasn't listed as not for publication or inspection, it was assigned the 20 year restricted access period and is now available.

Ms Wood takes this up when at 10.09am when she responds:

I agree. So it was probably an oversight by registry – i.e. if it wasn't subject to a NPO they disseminated it to Archives.

Furthermore, at 10.13 am, Ms Wood emails Mr Hutchings stating:

I think what has happened is that anything that was not subject to a NPO was disseminated to Archives including all the covert investigative material. I am unsure whether that material should be available to public.

It is significant that Ms Wood clearly articulates the thought that “all the covert investigative material” had been disseminated. However, Mr Hutchings in both his email to Mr Martin at 10.31 am and Mr Duell at 10.40am only refers to “surveillance reports” and “covert material” and does not pass on to Mr Martin the correctly formulated views of Ms Valeska and Ms Wood that the problem was more significant.

- Fourthly, as early as 8.52am on 29 May 2012, Ms Wood has given precise instructions to Ms Valeska, which if followed would have uncovered the true extent of the problem, namely:
 - (i) call property; (ii) call the Director, Information Management to see whether they know who released all documents; and (iii) go to QSA to inspect the holdings.*
- Fifthly, at least in the mind of Ms Wood, the lack of authority to disseminate information and the potential breach of section 62 is an issue. This issue is also taken up by Ms Valeska and raised with Mr Hutchings. Mr Hutchings sees it as a “separate issue” in his last email communication. Nonetheless, Mr Hutchings also clearly sees it as a live issue. However, there is no evidence that this “separate” issue was ever followed up.
- Lastly, on both 29 and 30 May 2012, there is a sense of urgency emanating from the emails within the Legal Services Unit. Mr Hutchings, Ms Wood and Ms Valeska all appear to understand the issue and the need to quickly identify and solve what has happened.

What is not clear from the chronology, and what is very puzzling to the Committee, is why the issue which devoted so much energy and discussion on 29 and 30 May 2012, disappears from further documentary evidence. The last email communication on this issue is Mr Hutchings’ email at 5.52pm on 30 May 2012. The next piece of documentary evidence indicating any activity in respect of this matter is a file note (reproduced by Ms Wood from original notes) recording a meeting between Ms Wood and Mr Martin on 13 July 2012 – 6 weeks later.

Despite any apparent activity after 30 May 2012, there is clear evidence that on that day neither Mr Hutchings nor Ms Wood were satisfied by the explanations provided by Mr Duell.

At 3.30pm, Mr Hutchings had drafted an email to Mr Martin (never sent) that clearly outlined his thoughts at that time that further action was required:

Below is DUELL’s response to the issue of State Archives having Fitzgerald Inquiry covert material available for inspection.

I’m not sure the issue is resolved simply by reverting to a 65 year access period. I would have thought that reports of surveillance undertaken by the Commission (and not tendered in evidence) aren’t felt there’s more that needs to be do

Ms Wood was clearly also not satisfied at 5.59pm on 30 May 2012 when she wrote:

Zora – see attached reply from Peter. Not sure it this addresses the concern we had. In any event, we can discuss tomorrow.

Outside of the documentary evidence, the best reconstruction from the recollections of the witnesses is that, probably on 30 or 31 May 2012, Mr Martin spoke to Mr Duell about the matter who downplayed the issue and assured it would be rectified and later Mr Martin tasked Ms Wood’s to investigate and ensure the matter was fixed.

Mr Martin's recollection is that he became aware of the issue probably around 26 May 2012, but by 29 May, he had received the email from Mr Hutchings, which included the email from Ms Wood and the email from Mr Krosch of 24 May.¹⁶² The Committee is dubious of Mr Martin's knowledge of this matter until Mr Hutchings' email of 29 May, because the email is drafted in such a way to suggest the raising of a new matter not the continuation of a prior conversation:¹⁶³

¹⁶² PCMC, *Record of Proceedings*, 15 March 2013, page 13; PCMC Exhibit TD_31.

¹⁶³ This email was uncovered by the Committee under summons from emails from Mr Hutchings email box on the CMC's server, it was not in the original material provided by the CMC prior to the hearings.

Ross

Over the last 24 hours an issue has emerged about the availability of covert material relating to the Fitzgerald Inquiry at State Archives.

The attached email is of some concern – it suggests surveillance report have been made available by the CMC to State Archives, and now those documents are being accessed by members of the public – one of whom is a former Police Officer and he has located documents he produced himself covertly.

I'm trying to get to the bottom of the matter with Peter DUELL to find out what and why these documents are now available.

Mr Martin's evidence was that in a meeting with Mr Duell in May, Mr Duell explained that there was a mistake in the numbering of files. Mr Martin gave evidence that he was left with the impression that it was a modest clerical issue involving a small number of documents.¹⁶⁴ However, this view by Mr Martin does not match other evidence, especially his subsequent meetings with Ms Wood's in both May and July 2012.

According to the evidence provided by Ms Wood, Mr Martin came into her office to make sure or check that the 20 year RAP had been removed and replaced with 65 years¹⁶⁵ and said "Let's fix – make sure it's fixed."¹⁶⁶ This conversation must have taken place shortly after 30 May 2012, but there is no record of the meeting.

Ms Wood subsequently spoke to Mr Duell, and looked at a letter of 29 May 2012 which he had sent to the QSA which he purported rectified the problem.¹⁶⁷ Ms Wood admitted that she never independently checked that the numbers set out in that request for change in fact covered off all the surveillance documentation. Mr Duell also showed her documents on a spread-sheet, but it did not reveal the Series number and did not assist her in correlating that referred to in the letter and the surveillance records.¹⁶⁸ Ms Wood admitted that she never conducted any audit of looking at the change of access documentation which reduced the RAP to 20 years to cross-check it with the series numbers in the change of request form as she did not see this as her task.¹⁶⁹

Ms Wood said that "My understanding of my task was to ensure it was fixed. Insofar as that I looked at the notice letter¹⁷⁰ and assured myself that that information had been actually performed on that day."¹⁷¹ The Committee queries how Ms Wood could have believed she complied with Chairpersons direction to 'ensure it was fixed' by simply viewing a letter/form, which she did not understand. Ms Wood clearly simply relied on what she was told by Mr Duell and performed no independent 'due diligence'.

¹⁶⁴ PCMC, *Record of Proceedings*, 15 March 2013, pages 11-13; PCMC, *Record of Proceedings*, 15 March 2013, pages 22-23.

¹⁶⁵ PCMC, *Record of Proceedings*, 20 March 2013, page 1.

¹⁶⁶ PCMC, *Record of Proceedings*, 20 March 2013, page 5.

¹⁶⁷ PCMC, *Record of Proceedings*, 20 March 2013, page 1; PCMC Exhibit TD_86.

¹⁶⁸ PCMC, *Record of Proceedings*, 20 March 2013, page 2.

¹⁶⁹ PCMC, *Record of Proceedings*, 20 March 2013, page 2.

¹⁷⁰ PCMC Exhibit TD_86.

¹⁷¹ PCMC, *Record of Proceedings*, 20 March 2013, page 3.

Committee Finding 11

There was an ineffective response within the CMC following the realisation that material from the Fitzgerald Inquiry at the QSA that should not be disseminated was in fact being disseminated.

There was no proper investigation in May 2012 to:

- Determine exactly what material from the Fitzgerald Inquiry at the QSA was available for public dissemination;
- How the dissemination came about (who was responsible);
- Whether the dissemination was lawful; and
- Whether the issue had been properly resolved.

Unfortunately, the description by Mr Duell of the error as being “administrative” or a “misunderstanding” may have coloured the responses of Ms Wood, Mr Martin and Mr Hutchings.

However, Mr Duell's trivialising of the issue should not mitigate their lack of effective response: collectively, the lack of recognition by Mr Duell, Ms Wood, Mr Hutchings and Mr Martin, all very senior officers, of the importance of sensitive Fitzgerald Inquiry material being in the public domain and their collective failure to properly investigate the issue is totally unacceptable. It would have only taken one of them to take the issue seriously and to react with some level of industry, such as validating Mr Duell's assertions, for the problem to have been properly identified and solved in May 2012. They are all collectively responsible for the failure to properly investigate and solve the matter.

Mr Duell's assumption that his actions taken in May 2012 to rectify the “misunderstanding” solved the problem was simply a continuation of his ineptitude. Once again, Mr Duell did nothing to ensure that all series which could have contained sensitive information were returned to the 65 year RAP. Instead, he made exceptions to the reversal, such exceptions not being based on any knowledgeable basis whatever. Once again, he did not engage with the relevant considerations to reduce the RAP. That series 18651 could remain unchanged, when it was described merely as “documentation”, and when there was no effort to ascertain content, was a critical omission.

The Committee was unable to determine, from any CMC witness during this inquiry, why the documentary evidence stopped, seemingly along with any proposed actions to investigate this matter further, on 30 May 2012.

5.3 The failure of any real follow-up action – July 2012

The next item of documentary evidence produced to the Committee under summons, was a handwritten file note by Ms Wood's dated 13 July 2012.¹⁷² This file note evidences a conversation which occurred on the same day as a joint meeting between Mr Martin and the Committee.¹⁷³ Mr Martin did not recall the meeting, until presented with the file note.¹⁷⁴

The Committee received evidence that Mr Martin met with Ms Wood on 13 July 2012. This meeting occurred on the same day as the first CMC joint meeting with the Committee of the 54th Parliament. There was no report to the Committee pursuant to section 329 of the CMA or in any other way. It is therefore concerning that the original notes of Ms Wood were destroyed by her when she rewrote the note on or around 6 March 2013.

Following her meeting with Mr Martin, Ms Wood met with Mr Duell on 26 July 2012, during which she sought written evidence showing that the documents had returned to 65 years, what she

¹⁷² PCMC, *Record of Proceedings*, 15 March 2013, page 33; PCMC Exhibit TD_44.

¹⁷³ PCMC, *Record of Proceedings*, 15 March 2013, page 37.

¹⁷⁴ PCMC, *Record of Proceedings*, 15 March 2013, page 33.

received were four large spread-sheets which caused her frustration and confusion.¹⁷⁵ They did not provide an answer, yet nothing further was done by Ms Wood to get the clarity she needed in order to have carried out the task of ensuring that the RAP issue was fixed.

What Ms Wood sought by way of clarification was unduly restrictive given the task she had been given. All that she sought by way of clarification was that which showed that the 65 years was documented on the CMC files so that there wasn't any confusion on the occasional request from journalists for information, rather than any further proof that all that had to be changed externally (that is, through QSA) had done. In terms of the internal clarification she sought, she was looking for '65' next to the document to signify that the document was subject to a 65 year RAP and was currently closed. But again, she never received this in a meaningful sense.¹⁷⁶

Her assertion that she was prepared to accept the word of Mr Duell, does not sit at all with her views expressed in her emails on 29 and 30 May 2012 that it was also obvious to her that at some stage this may be a section 62 issue. Somewhat striking is her assumption that Mr Martin and Mr Hutchings would have turned their mind to it, even though she never raised it with either of them or vice versa. To her, it seemed obvious that they would have turned their mind to it. She said that the change to a 20 year RAP seemed like a "*gross mistake*".¹⁷⁷ When queried as to why she was still prepared to accept Mr Duell's assurances of rectification in May 2012, she answered "*I accepted his assurances and relied on his expertise*" and he explained that he didn't get it wrong: his people in a team "*that were tasked with writing on a form those series numbers and they got that connection incorrect, which was those series numbers should not have been put on that form.*"¹⁷⁸

Yet Ms Wood knew that Mr Duell had signed off on the form and ultimate responsibility lay with him.¹⁷⁹ When queried why, "where it was obvious to you that a breach of the Act was triggered by a senior officer within the CMC, why was it that you were prepared to accept his assurances when you had been told by Mr Martin, the Chairperson, to make sure it went back to 20 years." Again, her answer was that he told her it had been fixed and he appeared to have a very competent knowledge of the area.¹⁸⁰

Ms Wood accepted there was nothing which prevented her from taking other steps.¹⁸¹ Yet she took none. And, nothing at all happened in the two months between the end of May and the end of July 2012. Then, when Ms Wood and Mr Duell did meet on 26 July 2012, the reality is that she did nothing meaningful to satisfy herself that the problem was rectified. In respect of this meeting, Ms Wood said "*I'd been assured on 29 May the RAP had changed, the dissemination was lawful and I was satisfied 99 per cent then. My role here was to ensure, from reading my notes, that the dissemination early 2007 - ie the project - was lawful and I was going to get that list of documents. I thought, I think, that was the whole purpose of the meeting.*"¹⁸² In regard to the dissemination issue, Ms Wood wanted to see delegation or the authority in the first place. She says that she saw a memorandum to that effect,¹⁸³ thus inferring that she was satisfied that viewing the memorandum was sufficient for that purpose.

¹⁷⁵ PCMC, *Record of Proceedings*, 20 March 2013, page 17.

¹⁷⁶ PCMC, *Record of Proceedings*, 20 March 2013, page 4.

¹⁷⁷ PCMC, *Record of Proceedings*, 20 March 2013, page 6.

¹⁷⁸ PCMC, *Record of Proceedings*, 20 March 2013, page 6.

¹⁷⁹ PCMC, *Record of Proceedings*, 20 March 2013, page 7.

¹⁸⁰ PCMC, *Record of Proceedings*, 20 March 2013, page 7.

¹⁸¹ PCMC, *Record of Proceedings*, 20 March 2013, page 8.

¹⁸² PCMC, *Record of Proceedings*, 20 March 2013, page 5.

¹⁸³ PCMC, *Record of Proceedings*, 20 March 2013, page 12.

At that meeting, Mr Duell told her "series" was different categories of exhibits.¹⁸⁴ She asked him how he knew that the Mr Krosch surveillance material was definitely not in archives. He said that "*You pop on the website*". That day, Mr Duell sent her the link to the website. He also sent her four large spreadsheets. Ms Wood's said that she perused them, but was unable to give evidence as to how that perusal could have satisfied herself that the problem had been fixed. Rather, Ms Wood's says that stated that she saw the number 65 appearing in a column repetitively and assumed that what that meant was that the CMC records were reflecting that. That is the extent of the cross-check she took.¹⁸⁵ She accepts that it would have been impossible from her perusal to satisfy herself that everything disseminated was up to 65 years and that she again relied upon the word of the individual who had made the mistake in the first place.¹⁸⁶

Ms Wood said she did go onto the website link, but cannot remember whether she did nor not.¹⁸⁷ Ms Wood's perusal must have been entirely cursory, for we know from the evidence of Ms Prowse, that just a few clicks would have taken her to the item by item metadata which would have shown her precisely the sensitive nature of what was publicly available. As the CMC's Official Solicitor, Ms Wood's lack of industry in this respect is disappointing in the extreme.

Ms Wood also said that she made no enquiry of Mr Krosch as to what was publically available, but accepts that in retrospect that would have been a good idea. Certainly he was regarded by her as reputable.¹⁸⁸

Ms Wood acted throughout on the assumption that sensitive documents would not have been disseminated or in the public domain in any way. That assumption was made because Mr Duell "*didn't tell me they were. He would know.*"¹⁸⁹

Ms Wood was not prepared to accept that not checking what documents fell within series 18651 was a very grave error of judgment. Ms Wood's answer to this proposition, was, once again, narrowness of the task assigned to her by Mr Martin. She said "*I wasn't tasked to physically audit or check what was in the files. My task was to ensure the RAP had gone back to 65 years. Those physical audits I assumed had been done previously and they knew what was in each of the series. I made an inquiry about the nature of those documents to check that it was public and I got that confirmation or assurance from Mr Duell.*"¹⁹⁰

Ms Wood did not accept that her perception of the narrowness of her brief from Mr Martin led to any of the problems.¹⁹¹ She gleaned from Mr Martin he wanted the problem sorted and she accepted that in retrospect it was not. She accepted that in retrospect that perhaps there could have been things she may have been able to do but "*I cannot think of them I possibly could have popped in that series number, for example, looked at – checked what he was giving permission for I guess, yes.*"¹⁹² That, however, seems to be the extent of reflection Ms Wood has given to what lead to the problem and what she could have done better.

¹⁸⁴ PCMC, *Record of Proceedings*, 20 March 2013, page 8.

¹⁸⁵ PCMC, *Record of Proceedings*, 20 March 2013, page 13.

¹⁸⁶ PCMC, *Record of Proceedings*, 20 March 2013, page 18.

¹⁸⁷ PCMC, *Record of Proceedings*, 20 March 2013, pages 19-20.

¹⁸⁸ PCMC, *Record of Proceedings*, 20 March 2013, page 15.

¹⁸⁹ PCMC, *Record of Proceedings*, 20 March 2013, page 16.

¹⁹⁰ PCMC, *Record of Proceedings*, 20 March 2013, page 19.

¹⁹¹ PCMC, *Record of Proceedings*, 20 March 2013, page 19.

¹⁹² PCMC, *Record of Proceedings*, 20 March 2013, page 19.

Committee Finding 12

The follow up to the revelations in May 2012 by Mr Martin and Ms Wood in July 2012 was totally inadequate.

There was no proper investigation as to what material from the Fitzgerald Inquiry at the QSA remained available in the public domain and there was no requirement for a written report of investigations.

Ms Wood did not undertake the task set for her by Mr Martin to ensure the matter had "been fixed" with the required level of due diligence. As detailed in section 3.4, the Legal Services Unit let the Chairperson down by not diligently ensuring the matter had been fixed.

On the evidence available, it also appears that Mr Martin also failed to follow up on the matter by requiring any written report.

On 19 September 2012 a person attempted to access two documents at the QSA that are part of Series 18651 but are marked '***CONFIDENTIAL***'. This caused QSA staff to telephone Mr Duell about the request which clearly enough related to apparently sensitive Fitzgerald Inquiry documents from Series 18651.¹⁹³

Mr Duell directed the QSA to not release the documentation until further advice was provided. Mr Duell then changed the RAP of specified items (those marked "confidential") in Series 18651 to 100 years. QSA immediately implemented the change.¹⁹⁴

An email thread between Mr Duell (CMC) and Ms Hawkins (QSA) on this date states: 'This is to confirm that all items in Transfer ID: 5422, Series ID 18651 with a description commencing 'CONFIDENTIAL' or '***CONFIDENTIAL***' are to be considered exceptions for the Series RAP. Consistent with the previously advised exceptions to Series 18651, these items will have a RAP of 100 years applied. These items should also not be web-enabled for online searches.'¹⁹⁵

Mr Duell in evidence initially stated that he would have told his immediate superior, Ms Mendelle, CMC Executive General Manager, of the September incident at his next fortnightly meeting with her.¹⁹⁶ Ms Mendelle in her evidence refuted this and has produced her detailed notes of meetings as evidence of the absence of such a report.¹⁹⁷ Mr Duell later admitted to not telling any other superiors, such as the CMC Chairperson, or the Legal Service Unit of the September issue and the further change of RAP.¹⁹⁸

Not only was this, yet again, a lost opportunity to rectify the inappropriate dissemination of the Fitzgerald Inquiry material, but it was a totally ineffective response by Mr Duell who failed, yet again, to do any due diligence on the actual material before changing the RAP.

Committee Finding 13

The Committee finds that, at best, Mr Duell failed to inform his superiors of this incident in September 2012 pursuant to established CMC policies.

¹⁹³ PCMC Exhibit TD_06; PCMC, *Record of Proceedings*, 22 March 2013, page 37 (Ms Hawkins); PCMC, *Record of Proceedings*, 22 March 2013, page 78 (Mr Duell).

¹⁹⁴ PCMC Exhibit TD_38; PCMC, *Record of Proceedings*, 22 March 2013, page 37 (Ms Hawkins).

¹⁹⁵ PCMC Exhibit TD_38.

¹⁹⁶ PCMC, *Record of Proceedings*, 14 March 2013, page 46 (Mr Duell).

¹⁹⁷ PCMC, *Record of Proceedings*, 21 March 2013, pages 6-7 (Ms Mendelle).

¹⁹⁸ PCMC, *Record of Proceedings*, 22 March 2013, page 55 (Mr Duell).

5.4 Destruction of Records

Transfer of Fitzgerald Inquiry documents to CJC Intelligence files

As noted earlier, original Fitzgerald Inquiry documents, relevant to continuing investigations were removed from Fitzgerald Inquiry files and placed on new files for the proposed CJC in 1989. It is clear that the actions taken by unknown officers in creating those files would not be considered best practice now,¹⁹⁹ and was probably a questionable records management practice at the time.²⁰⁰

This meant that documents later destroyed by the CMC in 2007 were original documents from the Fitzgerald Inquiry files. At the hearing of the Committee on 6 March 2013, the Chairperson of the CMC advised that as many as 4,000 Fitzgerald Inquiry documents may have been destroyed.²⁰¹

Missing documents

Evidence before the Committee is that the destruction of these Fitzgerald Inquiry documents was discovered on 26 February 2013 following a search request by a journalist to inspect Fitzgerald Inquiry records at the QSA.²⁰² The QSA, upon retrieving the requested item, instead found a sheet of paper with notation to 'see file' followed by a CJC file reference.²⁰³ The QSA notified the CMC the same day.²⁰⁴ Further inquiries were then undertaken by the CMC to understand how those documents came to be 'missing' resulting in the discovery that they had been inadvertently destroyed in 2007²⁰⁵ with over 'tens of thousands of actual files containing multiple documents', and that the destruction occurred 'over a lengthy period.'²⁰⁶

The State Archivist stated that whilst the CMC had conceded that it never transferred the missing documents to QSA,²⁰⁷ the QSA probably should have picked up that some of the files were empty as part of its process.²⁰⁸

It is noted, however, that one of the documents provided by the QSA indicates that in September 2010, the QSA had not received some documents which were included in a list of exhibits for which a restricted access period (RAP) would apply.²⁰⁹ It is not clear whether this is related to the 'missing documents' identified in February 2013, and/or whether this issue could have been identified sooner (although this would not have impacted on the destruction of documents as destruction is reported to have occurred prior to this).

The Committee has not determined what steps, other than Mr Rigby needing to locate some exhibits, were taken at that time by the CMC to remedy this issue and whether this highlighted any systemic or process failures regarding the transfer of documents to the QSA.²¹⁰

¹⁹⁹ PCMC, *Record of Proceedings*, 7 March 2013 (Ms Prowse), page 16.

²⁰⁰ PCMC, *Record of Proceedings*, 18 March 2013 (Mr Rigby), pages 3, 20 and 24.

²⁰¹ PCMC, *Record of Proceedings*, 6 March 2013, page 4.

²⁰² PCMC, *Record of Proceedings*, 6 March 2013 (Mr Martin), page 4; PCMC, *Record of Proceedings*, 14 March 2013 (Mr Duell), page 18.

²⁰³ PCMC Exhibit TD_53; PCMC, *Record of Proceedings*, 14 March 2013 (Mr Duell), page 18.

²⁰⁴ PCMC, *Record of Proceedings*, 7 March 2013 (Ms Prowse), page 5. See also: PCMC Exhibit TD_106.

²⁰⁵ PCMC, *Record of Proceedings*, 14 March 2013 (Mr Duell), pages 18-19.

²⁰⁶ PCMC, *Record of Proceedings*, 14 March 2013 (Mr Duell), page 21.

²⁰⁷ PCMC, *Record of Proceedings*, 7 March 2013, page 3.

²⁰⁸ PCMC, *Record of Proceedings*, 7 March, page 3; PCMC Exhibit TD_14.

²⁰⁹ Email and file notes, PCMC Exhibit TD_3.

²¹⁰ PCMC, *Record of Proceedings*, 18 March 2013, page 4.

Retention and disposal schedules

At the hearing on 7 March 2013, the State Archivist tabled the authorised retention and disposal schedules. There are five; the first three applied to the CJC and the remaining two applied to the CMC.

A summary of these schedules and authorisations are replicated below:

Reference No.	Date of approval	Issued to	Disposal coverage	Comments
F118/6	5 October 1994	CJC	Intelligence Division records	Includes approval to destroy duplicate copies of Fitzgerald Inquiry transcripts of hearing
F118/49	4 January 1996	CJC	Intelligence Division records	Intelligence records retained for 5 years. Information transferred to CID database which is backed up and retained permanently
F118/78	2 May 1997	CJC	Intelligence Division records in Recfind	Confirmation of approval to destroy Intelligence Division records in Recfind
QDAN 606 version 1	16 October 2006	CMC	Core business records of CMC	Excludes Fitzgerald Inquiry records
QDAN 630 version 1	31 August 2007	CMC	Records of Fitzgerald Inquiry	

The Committee has not received any evidence to suggest that the documents destroyed by the CMC in 2007 were duplicates of the original Fitzgerald Inquiry documents. The Committee has therefore assumed that the Fitzgerald Inquiry records destroyed in 2007 were original Fitzgerald Inquiry documents, and were therefore required to be retained permanently. While the Committee has not been apprised of the exact number, evidence suggests that over 4,000 original Fitzgerald Inquiry documents have been destroyed.²¹¹

Authority to dispose of Fitzgerald Inquiry records has existed since 5 October 1994 when the first retention and disposal schedule was authorised by the former State Archivist. Since then, another four schedules have been approved. The last two schedules were approved by the current State Archivist under the PRA²¹² and were issued to the CMC.²¹³ These schedules provide for the lawful destruction of specified public records.

Records provided to the Committee by the QSA evidence that in 1994, 1996 and 1997, the then CJC had approval to destroy duplicate Fitzgerald Inquiry records and intelligence records.²¹⁴ Assuming

²¹¹ PCMC, *Record of Proceedings*, 6 March 2013 (Mr Martin), page 3.

²¹² *Public Records Act 2002*, section 13.

²¹³ PCMC, *Record of Proceedings*, 7 March 2013 (Ms Prowse), page 18.

²¹⁴ Disposal Authority F118/6; Disposal Authority F118/49; Disposal Authority F118/78 all issued to the CJC; See PCMC Exhibit TD_106.

those duplicate Fitzgerald Inquiry records were correctly destroyed in accordance with an approved retention and disposal schedule, the Committee is not concerned with their destruction.

The Committee understands from the evidence that the CJC files housing the Fitzgerald Inquiry records were destroyed, largely in accordance with the relevant disposal and retention schedules. Mr Duell told the Committee that those original Fitzgerald Inquiry documents that were removed from the Fitzgerald Inquiry documents prior to the establishment of the CJC were placed on files such as 'misconduct intelligence reports' and 'intelligence reports'. Those files were used and other files and documents added to them over the years until around 1995.²¹⁵ Once the files were no longer of operational value they were sentenced for destruction under the retention and disposal schedules.

The actual category of file 'intelligence reports' received by the CJC had a destruction date of five years after last act of document and—

...

That was the retention and disposal schedule approved by the Queensland State Archivist and that approval only came through in 2006 and after that period of time, at 2006, there was basically 17 years of files created by the CJC which—none of which had been disposed of and they were sentenced at that point in time based on the approved retention and disposal schedule from State Archives.²¹⁶

The Committee received a copy of the relevant retention and disposal schedule approved by the QSA on 16 October 2006²¹⁷ which provides for the destruction of records in accordance with Mr Duell's advice above. The Committee notes that this retention and disposal schedule does not make specific reference to the Fitzgerald Inquiry records. In August 2007, around the time of the first transfer of records, the QSA approved a separate schedule which specifically covered Fitzgerald Inquiry records.²¹⁸ That retention and disposal schedule requires most categories of documents relating to the Fitzgerald Inquiry to be retained permanently.²¹⁹

The Committee understands from the evidence that the CJC files housing the Fitzgerald Inquiry records were destroyed, largely in accordance with the relevant disposal and retention schedules. Mr Duell told the Committee that those original Fitzgerald Inquiry documents that were removed from the Fitzgerald Inquiry documents prior to the establishment of the CJC were placed on files such as 'misconduct intelligence reports' and 'intelligence reports'. Those files were used and other files and documents added to them over the years until around 1995.²²⁰ Once the files were no longer of operational value they were sentenced for destruction under the retention and disposal schedules.

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²¹⁵ PCMC, *Record of Proceedings*, 14 March 2013 (Mr Duell), page 19.

²¹⁶ PCMC, *Record of Proceedings*, 14 March 2013 (Mr Duell), page 19.

²¹⁷ Retention and Disposal Schedule 2006, 606, version 1; PCMC Exhibit TD_106.

²¹⁸ PCMC, *Record of Proceedings*, 7 March 2013 (Ms Prowse), page 18.

²¹⁹ Retention and Disposal Schedule 2007, 630, version 1, PCMC Exhibit TD_106.

²²⁰ PCMC, *Record of Proceedings*, 14 March 2013, page 19 (Mr Duell).

²²¹ PCMC, *Record of Proceedings*, 14 March 2013, page 19 (Mr Duell).

The Committee received a copy of the relevant retention and disposal schedule approved by the QSA on 16 October 2006²²² which provides for the destruction of records in accordance with Mr Duell's advice above. The Committee notes that this retention and disposal schedule does not make specific reference to the Fitzgerald Inquiry records. In August 2007, around the time of the first transfer of records, the QSA approved a separate schedule which specifically covered Fitzgerald Inquiry records.²²³ That retention and disposal schedule requires most categories of documents relating to the Fitzgerald Inquiry to be retained permanently.²²⁴

Committee Finding 14

Having regard to the dearth of evidence before it, the Committee finds that original Fitzgerald Inquiry records destroyed which were to be retained permanently, were destroyed unlawfully in 2007 in breach of the *Public Records Act 2002*. However, the Committee considers that they were probably destroyed under the honest and mistaken belief that the records sentenced at the time did not contain Fitzgerald Inquiry records which were required to be retained permanently. The Committee also finds that there is nothing to suggest that the protocols for the destruction of documents were inappropriate at the time. It was simply an error to have the original Fitzgerald Inquiry documents on the files which were destroyed and that this was due to the actions of unidentified officers when the files were created sometime in 1989 or 1990.

However, of immediate concern to the Committee is that more original Fitzgerald Inquiry records may still remain on CMC files which, unless identified and removed, are likely to meet the same regrettable fate.²²⁵ Clearly, this is unacceptable.

Evidence suggests that even though the CMC has processes in place to verify that documents ready for destruction can in fact be destroyed, these checks were not sufficient to identify that the files to be destroyed contained original Fitzgerald Inquiry documents.²²⁶ Had the responsible person and Records Management staff been more familiar or aware of Fitzgerald Inquiry records, then it is possible that the loss of these historical documents may have been minimised.

Recommendation 10

The CMC formulate a project plan, and report to the Committee on the costs, resourcing and time required to implement the project, to:

- undertake an audit to identify whether there are any other original Fitzgerald Inquiry documents remaining on CJC/CMC files;
- take remedial steps to replace original records with duplicate records, sourced from electronic or external sources; and
- review its processes for the destruction of documents and provide training to relevant staff to enable them to identify potential Fitzgerald Inquiry records to minimise any future risk of the destruction of Fitzgerald Inquiry records.

²²² Retention and Disposal Schedule 2006, 606, version 1; PCMC Exhibit TD_106.

²²³ PCMC, *Record of Proceedings*, 7 March 2013, page 18 (Ms Prowse).

²²⁴ Retention and Disposal Schedule 2007, 630, version 1, PCMC Exhibit TD_106.

²²⁵ PCMC, *Record of Proceedings*, 18 March 2013, page 29 (Mr Rigby).

²²⁶ PCMC, *Record of Proceedings*, 21 March 2013, pages 54-55 (Ms Legg).

Recommendation 11

The CMC, in consultation with QSA, review its record keeping practices to ensure they are current and provide ongoing training to all staff in respect of their record keeping obligations.

5.5 Failure to Account***Governance/Organisational issues***

The Committee is a standing committee of the Legislative Assembly with particular responsibility for monitoring and reviewing the commission's performance.²²⁷ The Parliamentary Crime and Misconduct Commissioner is an officer of the Parliament who assists the Committee in the performance of its functions.²²⁸ The Committee relies on various statutory and governance mechanisms to fulfil its monitoring and reviewing role. One way in which the Committee undertakes its functions is under section 329 of the CM Act.

Section 329(1) of the CM Act establishes that the chairperson must notify the parliamentary committee, in the way, and within the time, required by the committee, of all conduct of a commission officer that the chairperson suspects involves, or may involve, improper conduct.

In this section *improper conduct*, of a commission officer, means –

- a) *Disgraceful or improper conduct in an official capacity; or*
- b) *Disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission; or*
- c) *Conduct that would, if the officer were an officer in a unit of public administration, be official misconduct.*²²⁹

Official misconduct is conduct that could, if proved, be –

- a) *A criminal offence; or*
- b) *A disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.*²³⁰

The *Protocols governing the investigation of improper conduct complaints against officers of the Crime and Misconduct Commission* outline the steps to be taken upon receipt of a complaint against an officer of the CMC to determine whether it amounts to improper conduct and facilitate its referral to the Committee and the investigation thereof.²³¹ The protocols apply to all Commission officers. Any complaint of improper conduct received by a commission officer must, with limited exceptions, be referred immediately to the Director, Integrity Services who in turn refers the complaint to the Chairperson. The Director, Integrity Services, must accompany their referral with advice regarding whether the complaint is one which may require notification under section 329 of the CM Act. The Chairperson is not bound by the advice of the Director, Integrity Services.²³²

Where the Chairperson holds a suspicion of improper conduct, he must advise the Committee of any investigative steps which have been done, are being or are proposed to be taken, in order to

²²⁷ *Crime and Misconduct Act 2001*, section 9.

²²⁸ *Crime and Misconduct Act 2001*, section 10.

²²⁹ *Crime and Misconduct Act 2001*, section 329(2).

²³⁰ *Crime and Misconduct Act 2001*, section 15.

²³¹ PCMC Exhibit TD_137, page 1.

²³² PCMC Exhibit TD_137, page 2.

preserve evidence or to obtain evidence that would not otherwise be obtainable without immediate action or to preserve the integrity of the Commission's operations. Upon notification to the Committee, no further action shall be taken by the CMC until a response is received from the Committee. Section 295 of the CM Act provides options for the Committee to deal with a concern it holds in relation to the CMC and provides the Committee can:

- *Ask the commission to give a report on the matter to the committee;*
- *Ask the commission to investigate and give a report on the matter to the committee;*
- *Ask the police service or another law enforcement agency to investigate and give a report on the matter to the committee;*
- *Refer the matter to the Director of Public Prosecutions;*
- *Take other action the committee considers appropriate.*²³³

In making a determination under section 6.8 of the protocols, the Committee may consider any submissions by the Chairperson in relation to:

- a) *Whether the Commission needs to take immediate action to secure evidence or to ensure the integrity of its operations;*
- b) *The Commission's proposed course of action in respect of handling the matter;*
- c) *The respective investigative resources and facilities of the investigative agencies;*
- d) *Whether the investigation will require the use of powers and expertise available to one investigative agency and not to others;*
- e) *Whether the nature of the complaint requires the investigation to be carried out independently of the commission; and*
- f) *Any other matters relevant to the particular complaint.*²³⁴

A decision under section 295(2) of the CM Act is effective only if it is made with the bipartisan support of the Committee.²³⁵ The Commission, Police Service, Parliamentary Commissioner or another investigative agency must investigate and report on matters as asked by the Committee.²³⁶

The Commission is to maintain a register of complaints, including referral, investigative and outcome advice.²³⁷ The Committee may, with bipartisan support, direct the Parliamentary Commissioner, pursuant to section 314(2)(a) of the CM Act, to conduct an audit of the register together with the operational files and accompanying material relating to the complaints recorded on the register for the purposes of advising the Committee:

- a) *Whether the Commissioner has exercised power in an appropriate way;*
- b) *Whether the register is up to date and complete and all required documentation is on the file and correctly noted on the register;*
- c) *Whether required authorisations for the exercise of power have been obtained;*
- d) *Whether any policy or procedural guidelines have been strictly complied with.*²³⁸

²³³ *Crime and Misconduct Act 2001*, section 295(2).

²³⁴ PCMC Exhibit TD_137, page 3.

²³⁵ *Crime and Misconduct Act 2001*, section 295(3).

²³⁶ *Crime and Misconduct Act 2001*, section 295(4).

²³⁷ PCMC Exhibit TD_137, page 4.

²³⁸ PCMC Exhibit TD_137, page 5.

In addition to this statutory obligation to notify the Committee, the Commission's Code of Conduct (the Code) is read in conjunction with the CM Act, the *Public Sector Ethics Act 1994*, and the Commission's policies and procedures.²³⁹

In reviewing the protocols the Committee is satisfied that procedural mechanisms are in place to manage risk, but that these mechanisms are without effect if matters are not reported in accordance with the protocols.

Accordingly, the fault lies not in the ratified protocols, but in the culture of the organisation that fails to provide and share information consistent with the goals of the Commission's Code of Conduct, and the *Public Sector Ethics Act 1994*. In turn, the Committee considered the Commission's Code of Conduct, specifically its application to the terms of this Inquiry.

CMC Code of Conduct

The former Chairperson, Mr Martin Moynihan's AO QC message to the CMC, as included in the current Code of Conduct (the Code) provides:

Working at the CMC, we are called upon every day to make decisions. These decisions may vary considerably in complexity and impact, but whatever your work involves we will frequently encounter situations that have an ethical dimension. The purpose of this Code of Conduct is to guide us to help us in dealing with situations.

A code of conduct is particularly important at the CMC given our role in providing advice and direction to the public sector generally on ethical issues. The community expects us to be above reproach and to adhere to high standards of ethical conduct in carrying out our duties in our working relationships and in our private lives.

The Code cannot sensibly provide a comprehensive set of rules that stipulate how we should behave in every conceivable circumstance. Instead, it provides us with a set of guiding standards, principles and values to determine the right or best course of action and puts responsibility on us to use judgement and common sense in resolving ethical issues in the public interest.²⁴⁰

Applying the Code

The CMC has evolved a complex set of policies, guidelines and procedures which govern how we conduct our daily activities. The Code of Conduct does not override policies, but rather seeks to augment them by providing a general summary, coupled with an explanation of the ethical principles underlying them and of the organisational goals and objective to which they contribute.²⁴¹

The CMC policies, guidelines and procedures provide the details of the standards which this Code summarises and any action or conduct which breaches those standards may equally constitute a breach of the Code and result in disciplinary action.

Public Sector Ethics Act 1994

The Code is based upon the *Public Sector Ethics Act 1994*, which sets out four ethics principles that are fundamental to good public administration:

- Integrity and impartiality
- Promoting the public good

²³⁹ PCMC Exhibit TD_137, page 6.

²⁴⁰ Crime and Misconduct Commission Queensland, *Code of Conduct*, October 2011, page 3.

²⁴¹ Crime and Misconduct Commission Queensland, *Code of Conduct*, October 2011, page 5.

- Commitment to the system of government
- Accountability and transparency.

The principles acknowledge the responsibility of all public sector employees to serve the public interest, and the best interests of Queensland. The principles represent an attempt to encapsulate the standards of conduct and obligations expected of the CMC and its officers.

The Code provides that the CMC holds a special position of trust as it is funded through public monies.²⁴² The Code states that any breaches of the Code of Conduct will be examined and determined in accordance with the CMC disciplinary policy and improper conduct must be referred to the Committee. It is clearly stated that vicarious liability may attach to the CMC and to the managers where there is suppression of, or a failure to manage, breaches of the Code.²⁴³

CMC officers have an obligation under the Code to report suspected breaches of the Code.²⁴⁴

The Code of Conduct also provides that employees have an obligation to perform their duties competently, responsibly and with proper diligence, care and attention to all facets of their work. *'We should also aspire to the highest standards of excellence and we must be prepared to take ownership of and responsibility for our actions and decisions'*.²⁴⁵

Disclose wrongdoing

Section 2.4 establishes that CMC officers have an obligation to disclose, among other things, maladministration, or any other breach of law or the Code. Concrete evidence is not required, a suspicion based on reasonable grounds warrants that an officer must make a disclosure to their immediate supervisor, manager or team leader or, if the senior officer appears to be implicated, to another senior manager.²⁴⁶

*Any supervisor or manager who receives a report of suspected wrongdoing is to ensure that it is responded to confidentially, fairly, quickly and in accordance with established procedures and the provisions of the Public Interest Disclosure Act 2010.*²⁴⁷

On 15 March 2013, Mr Martin confirmed that section 2.4 of the Code of Conduct obliges CMC staff to make a disclosure to their relevant manager.²⁴⁸

Confidentiality and information security

The Code acknowledges that CMC staff often deal with highly sensitive information and places an obligation of officers to take particular care not to access, use or release information without an approved official purpose related to the performance of their duties. This includes to:

- *Give close attention to the classification of information as in-confidence, protected or highly protected and rigorously uphold the integrity of those classifications;*
- *Ensure no information can be accessed by unauthorised people;*
- *Any request for information that is not already available publicly should be directed to your manager or supervisor for a decision.*²⁴⁹

²⁴² Crime and Misconduct Commission Queensland, *Code of Conduct*, October 2011, page 5.

²⁴³ Crime and Misconduct Commission Queensland, *Code of Conduct*, October 2011, page 6.

²⁴⁴ Crime and Misconduct Commission Queensland, *Code of Conduct*, October 2011, page 6.

²⁴⁵ Crime and Misconduct Commission Queensland, *Code of Conduct*, October 2011, page 14.

²⁴⁶ Crime and Misconduct Commission Queensland, *Code of Conduct*, October 2011, page 15.

²⁴⁷ Crime and Misconduct Commission Queensland, *Code of Conduct*, October 2011, page 15.

²⁴⁸ PCMC, *Record of Proceedings*, 15 March 2013, page 25.

²⁴⁹ Crime and Misconduct Commission Queensland, *Code of Conduct*, October 2011, page 18.

Record keeping

The Code requires CMC officers to keep full and accurate records of all business transactions and official activities and to ensure that such records are adequately tracked, preserved and made accessible for as long as they are of value.

Importantly, the Code states that advice should be in writing wherever possible, and where the advice is not in writing, officers should keep well documented notes about the advice provided. This does not appear to have been the normal practice in this instance.²⁵⁰

CMC records should be only destroyed when they are of no further value. Destruction is to occur in a secure manner in accordance with Commission procedures and in consultation with the Records Management section.²⁵¹

The Committee also considered the Commission's Policy for the Dissemination of Intelligence Information, Information and Evidence (the Dissemination policy).²⁵² The Purpose of this policy is to ensure that CMC officers who seek to disseminate information, evidence or intelligence information are aware of the circumstances in which such material can and should be disseminated and the statutory and procedural requirements that govern disseminations.²⁵³ The policy states that the Commission has formally delegated authority to approve disseminations to appropriate officers.

The dissemination process is described as:

- All stages of the dissemination process, including the recording and filing of disseminations, will be consistent across the CMC.
- All disseminations will be fully documented and centrally recorded and filed in a manner that permits prompt and ready retrieval.
- An accurate and comprehensive record of disseminations, and copies of the relevant documentation, will be maintained in a central location to facilitate retrieval of statistical data and auditing of the process.

The Committee notes that the Dissemination policy also provides for a 'metadata policy', authorised by the Director, Intelligence.

Committee consideration

The duty of the Chairperson of the CMC to notify the Committee

Mr Duell allowed access to documents without taking any satisfactory steps to ascertain the contents of the documents. Mr Duell's actions came to the attention of the CMC Chairperson in late May 2012, but no report of that event was made to the Committee until March 2013. At no stage was an internal investigation or report made in accordance with the aforementioned governance policies and procedures.

Section 329 does not assume that the Chairperson will make an assessment of the conduct. It is only where that assessment leads to a suspicion of improper conduct that the obligation then arises for the Chairperson to report the matter. The report is required where the Chairperson 'suspects' the conduct of a Commissioner officer 'involves or may involve improper conduct'. The Committee accepts that the definition of improper conduct is not exhaustive, and that ultimately, the question is left to the Chairperson. [Proposed amendments to section 329 are at section 5.9 below.]

²⁵⁰ Crime and Misconduct Commission Queensland, *Code of Conduct*, October 2011, pages 18-19.

²⁵¹ Crime and Misconduct Commission Queensland, *Code of Conduct*, October 2011, pages 18-19.

²⁵² PCMC Exhibit TD_140.

²⁵³ PCMC Exhibit TD_140, page 1.

The CMC Chairperson, in his evidence to the Committee, set out a number of factors for the event in May 2012 failing to 'ping his radar' as requiring disclosure to the Committee, as a matter of judgement and instinct. Those reasons included that it was stale, it didn't appear likely to have had any consequence, it was fixed, and it was a relatively modest mistake.²⁵⁴

On 7 March 2013, Mr Martin provided:

*The second issue is concern about advice from the CMC and our not drawing this to your attention in May 2012, I hope you accept from me that in good faith I have done my best to draw things to your attention when it seemed appropriate to do so, whether or not section 329 strictly applied. But I would invite you to bear in mind that section 329 is the guiding piece of legislation here. As things presented in May 2012, it was not immediately apparent or apparent at all that this is a matter to which section 329 applied. That is something that I would respectfully observe about that representation with respect to concern about our advice.*²⁵⁵

It is difficult to see how some of these factors can be relevant to an assessment of whether there is a suspicion of improper conduct such as to trigger a notification to the Committee. The section contains a clear definition of 'improper conduct'. Factors such as whether a matter is stale, what consequences had resulted, and whether the matter had been remedied might be relevant considerations for the Committee when considering what course of action to take once a notification has been received.²⁵⁶ In this case the Committee was not in any position to make such an assessment, due to the chairperson's failure to notify.

It is certain that had the matter been referred to the Committee when it first arose – and when it first came to the chairperson's notice - back in May 2012, it would not have fallen 'off the radar' as it subsequently did.

The role of CMC officers to report breaches

After consideration of the obligation on all CMC officers under Code of Conduct, the Committee was not satisfied that the requirements of the reporting obligations of CMC staff and the Chairperson were met. In reaching this determination the Committee took evidence from Ms Mendelle, Executive General Manager, who advised that Mr Duell reported directly to the CMC Chairperson in respect of his authority to manage requests and the classifications of the Fitzgerald Inquiry records. The Committee considers that Ms Mendelle should have been informed because of her management role over Mr Duell, and her corporate governance responsibilities, which include risk management.

As discussed at section 4.2 of this report, Ms Mendelle provided that the CMC has a risk incident register which records incidents of risk, of high risk, that need to be attended managed.²⁵⁷

In examining Ms Mendelle's notes, and the risk register, it is evident that no officers identified or reported either the incorrect classification or release of Fitzgerald Inquiry documents at any point in time. The Committee also accepted that, whilst there appeared to be an absence of a formal recognition mechanism missing, it was reasonable to conclude that Mr Duell, Ms Wood and Mr Hutchings were each very well aware of their obligation to report risk and to register that risk on the risk incident report. There is evidence confirming Mr Duell's understanding and use of the risk register and associated protocols regarding ICT infrastructure.²⁵⁸

²⁵⁴ PCMC, *Record of Proceedings*, 15 March 2013, page 29.

²⁵⁵ PCMC, *Record of Proceedings*, 7 March 2013, page 27.

²⁵⁶ See generally *Crime and Misconduct Act 2001*, section 295.

²⁵⁷ PCMC, *Record of Proceedings*, 21 March 2013, page 3.

²⁵⁸ PCMC, *Record of Proceedings*, 21 March 2013, page 4.

Committee Finding 15

The evidence from all part-time Commissioners was that they were unaware of any issues concerning the dissemination or destruction of Fitzgerald Inquiry material until March 2013.

The Chairperson was made aware of the release of the material, by email from Mr Hutchings, General Counsel, at 10:31am on 29 May 2012.²⁵⁹ This advice should have initiated an assessment and a risk report under the Risk Management Framework, and the matter should have been brought to the immediate attention of the Committee.

It is wholly inappropriate that, despite multiple opportunities to do so in writing and in person at various joint meetings, the CMC did not advise the Committee of this matter until March 2013,²⁶⁰ and only after the CMC was made aware that Mr Thomas and Ms Hart were to run an article in *The Australian*.

Adequate governance policies and procedures are in place to satisfy statutory risk management obligations. However, in this instance senior CMC staff, including the Chairperson did not adequately follow these policies and procedures.

The Chairperson of the CMC failed to report this matter to the Committee under either section 329 of the *Crime and Misconduct Act 2001* or under his general reporting obligations to assist the Committee in its oversight of the CMC.

The Chairperson of the CMC and each staff member involved since May 2012 failed to report this matter under the Code of Conduct, risk management framework discussed at section 4.2 and the corporate governance framework and policies discussed at section 5.5.

Recommendation 12

The CMC initiate immediate comprehensive training of all officers, particularly those within the LSU, to ensure the highest levels of compliance with corporate governance obligations under corporate frameworks, charters, policies and the Code of Conduct.

5.6 Long term remedies

Background

The Terms of Reference (e) required the Committee to inquire into and report on:

(e) as to how the issues arising from the incorrect classification of documents can be remedied in the longer term, including whether some or all of those documents have to remain confidential.

Potential implications flowing from the release of documents fall into at least two categories:

- the publication of allegations – unsubstantiated and possibly without merit, with subsequent damage to reputation.
- the possible disclosure of the identity of protected witnesses at the Fitzgerald Inquiry. against individuals, with possible risks to their physical safety.

²⁵⁹ PCMC Exhibit TD_127.

²⁶⁰ PCMC, *Record of Proceedings*, 21 March 2013, page 39.

Immediate measures put in place - Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Act 2013

At a practical level, steps were taken in early March 2013 to close down access to the relevant material, including the metadata.

The Parliament passed on an urgent basis the *Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Act 2013*. That Act amended the CM Act to insert section 346A, which makes it an offence to use of any of the Fitzgerald Inquiry documents (or information) accessed through QSA between 1 February 2012 and 5 March 2013.

The section reads in part:

3. This section applies to a person who, from any source, has gained, gains, or has access to, a disclosed document.
4. The person must not, on or before 8 May 2013 —
 - a. copy the document; or
 - b. use the document for any purpose; or
 - c. disclose the document to anyone; or
 - d. give access to the document to anyone.

The section also provides some limited exceptions, essentially relating to uses for official purposes.²⁶¹

The maximum penalty for any breach is one year imprisonment or 500 penalty units - \$55,000.

The prohibition put in place by the *Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Act 2013* is in place only on a temporary basis, extending only to 8 May 2013.²⁶²

What were the consequences of the access?

The consequences of the incorrect classification of the documents and their subsequent release are largely unknown and will probably remain so. The evidence provided to the Committee discloses initial or primary access by a relatively small number of persons.

However, the Committee assumes some of the people who legitimately accessed the material between February 2012 and March 2013 are likely to have copied the information they accessed. The Committee is unable to determine whether those people copied and disseminated the information they accessed further.

What long-term measures are warranted?

Legislative response

The Committee considers a cautious approach as appropriate, having regard to the sensitivity of the material. Whilst it might be the case, as some have argued, that the risk of any harm is slight, the extent of any harm that might result could potentially be very great.

²⁶¹ Section 346A(2) does not apply if the copying, use, disclosure or giving access is—

- (a) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal.
- (b) as permitted or required by this Act, the *Commissions of Inquiry Act 1950* or the *Parliament of Queensland Act 2001*; or
- (c) to perform official duties under the *Public Records Act 2002*.

²⁶² *Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Act 2013*, section 4(2).

The temporary remedy provided by the amending legislation was both appropriate and necessary.

There is nothing in the material provided to the inquiry to suggest that this legislative remedy should not continue. The mischief to which the Act was directed, the possible unwarranted damage to reputations and the possible disclosure of protected identities, still remains. The Committee heard evidence from Ms Florian, CMC Assistant Commissioner, Crime, that the CMC received feedback that some of the persons the subject of the documents released, have advised the CMC that they request that the protective legislation continue to prevent republication of the material.²⁶³ The Committee recommends the prohibitions imposed by the Act be made permanent.

The need to preserve confidentiality

For similar reasons, the documents ought to remain confidential. There has been some use of the materials already – as is apparent from the publication of the article in *The Australian*, and evidence provided by Mr Krosch and Mr Bishop.²⁶⁴ It is accepted that those persons who accessed the documents did so in good faith. Additionally, a number of people who accessed the documents raised the appropriateness of their public release with the QSA and the CMC.²⁶⁵

However, there is an overriding public interest in ensuring that the confidentiality contemplated by Commissioner Fitzgerald is maintained. He was well placed at the time to make assessments of what material was suitable for release during the Inquiry. The public, and those people referred to in the documents, are entitled to assurances that sensitive documents are kept confidential.

Appropriate access to the Fitzgerald Inquiry documents

It is apparent that the CMC lacks a full understanding of the extent and content of the Fitzgerald Inquiry records that it holds.²⁶⁶ It is critical that the CMC undertake an audit of its holdings of Fitzgerald Inquiry documents.

The Committee understands that a physical audit of the documents would be a huge, time consuming and expensive task and has considered ways in which access to the non-contentious documents could be allowed.

Firstly, the Committee considers that the public interest will also be served by releasing the non-sensitive Fitzgerald Inquiry documents, where it is appropriate to do so. This should commence with the identification and public release of the records that were made public during the Fitzgerald Inquiry.

An ongoing appropriate mechanism for release of other information could be an amendment to the *Right to Information Act 2009* (RTI Act) to allow RTI requests in relation to historical commission of inquiry documents, subject to a range of appropriate exclusions and criteria.

Alternatively, following the development of appropriate dissemination delegations and development of appropriate protocols, the CMC could allow access to the material on a request by request basis, on a discretionary basis under s 18(2)(b) of the PRA to allow access where the provisions of the RTI Act would have resulted in access being given had the documents been subject to that Act.

²⁶³ PCMC, *Record of Proceedings*, 22 March 2013, pages 62-64.

²⁶⁴ PCMC, *Record of Proceedings*, 18 March 2013, page 51 (Mr Bishop advised that he used some of the documents and metadata he accessed in his now published book) and PCMC, *Record of Proceedings*, 13 March 2013, page 3 (Mr Krosch accessed the information during research for his thesis).

²⁶⁵ Mr Bishop raised his concerns with the QSA in February or March 2012, Mr Krosch raised his concern with the CMC in May 2012, and at least one other person, not named during this inquiry, raised concern in September 2012.

²⁶⁶ PCMC, *Record of Proceedings*, 28 March 2013, page 25 (Mr Strange).

The RTI Act does not apply to the documents because the RTI Act does not apply to commissions of inquiry. The documents are exempt, notwithstanding that the CMC, not the now disbanded Fitzgerald Inquiry, presently has control of them.

The RTI Act provides that documents the subject of a request for disclosure should be disclosed unless the document comprises exempt information or its disclosure is contrary to the public interest.

Schedule 3 of the RTI Act contains exemptions. Schedule 4 lists the factors for deciding the public interest. Copies of schedules 3 and 4 of the RTI Act are attached at **Appendix 6**.

Schedule 3 of the RTI Act protects information that is sensitive on the basis of National or State security (probably not relevant to this material given the passage of time), or could prejudice law enforcement or public safety. Some of the information contained within the documents relates to informants and confidential information received by the police during the course of the Fitzgerald Inquiry. The categories of exemptions under the RTI Act might be sufficient to prevent disclosure of these documents.

However, the RTI Act exemptions may not be completely appropriate as some of the information contained in the documents should not be released because it is scandalous. This sort of information would not be "exempt" under schedule 3. The issue would then arise as to whether it is in the public interest to disclose the information and the relevant considerations are contained within schedule 4.

The CMC should develop protocols for the release of the information, under Schedule 4 of the RTI Act i.e. in the public interest. Other categories of Fitzgerald Inquiry documents that should not be released under Schedule 4 of the RTI Act could be developed from the meta data and perhaps a sampling of some of the documents, without the necessity of a full physical audit. Documents which contain untested and unproved allegations impacting upon the character of persons (living or deceased) would be a logical example of a category of document for exemption in this regard, although there would likely be more categories identified.

Committee Finding 16

The public interest lies in firstly protecting those persons who were the subject of the inappropriate release of sensitive Fitzgerald Inquiry documents by the CMC and, in the first instances, the protective provisions inserted into the CMA by the *Crime and Misconduct (Administrative Negligence Rectification) Amendment Act 2013* should be made permanent.

A scheme should be established, in the interim, whereby those persons who have accessed, copied and used the material (a) return the material to the CMC, (b) may make an application for a 'clearance' in respect to that usage, and (c) be entitled to be refunded any expenses paid to QSA to obtain the documents and their reasonable cost of compliance with (a) and (b) above.

The public interest lies secondly in allowing appropriate access to the documents of the Fitzgerald Inquiry. This should commence with the identification and public release of the records that were made public during the Fitzgerald Inquiry.

An appropriate mechanism to allow public access to the Fitzgerald Inquiry material could be through amendment of the RTI Act to allow RTI access to documents of historical commission of inquiry documents, subject to a range of appropriate exclusions and criteria.

Alternatively, the CMC could mirror the mechanisms of the RTI Act to allow access under section 18 of the PRA, with appropriate internal dissemination delegations, and strict protocols around the assessment of the requests for access.

Recommendation 13

The Committee recommends that the provisions in the Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Act 2013 be given permanent effect.

Recommendation 14

The Committee recommends that the Government establish a scheme whereby persons who have accessed, copied and used the released Fitzgerald Inquiry material between 2 February 2012 and 4 March 2013:

- a) return the material to the CMC;
- b) make application for a 'clearance' in respect of any future use of the material; and
- c) be entitled to a refund of expenses paid to QSA to obtain the documents and reasonable costs of compliance with (a) and (b) above.

Recommendation 15

The *Right to Information Act 2009* be amended to allow RTI access to documents of historical commission of inquiry documents, subject to a range of appropriate exclusions and criteria.

Recommendation 16

In the interim, the CMC should ensure there are appropriate internal dissemination delegations, and develop strict protocols around the assessment of the requests for access under section 18 of the *Public Records Act 2002*.

Custody and Care of Commission of Inquiry documents

The Committee considered the long-term custody and care of the documents and records generated by Commissions of Inquiry.

In particular, the Committee considered the sensitive nature of documents generated by commissions of inquiry and the, usually short and finite, timeframe of commissions of inquiry means that either clear direction needs to be provided by the Commissioners during the commission of inquiry as to how the documents are to be held and dealt with, or those decisions must necessarily be made by others at a time following the cessation of the commission of inquiry.

The Committee considers that the QSA could provide the best centralised facility to manage and house commission of inquiry documents in a coordinated and centralised manner. Further consideration, however, is required in relation to any subsequent dealings with documents from ceased commissions of inquiry to prevent inappropriate release as has occurred in this instance.

The Committee has not had time to fully turn its mind to this matter and therefore recommends that the Attorney-General and the Minister for Science, Information Technology, Innovation and the Arts, consider whether a coordinated and centralised method of housing and dealing with commission of inquiry documents is a practical and worthwhile project.

Recommendation 17

The Attorney-General and the Minister for Science, Information Technology, Innovation and the Arts, consider whether a coordinated and centralised method of housing and managing Commission of Inquiry documents is a practical and worthwhile project.

6. Other issues

6.1 Failure to adhere to Governance structure

At least since December 2007, the CMC has communicated a governance framework, which aims to focus the CMC on its statutory responsibilities.²⁶⁷ In the Committee's opinion, that framework is a lucid and worthwhile document which outlines existing statutory obligations and the obligations on all CMC Commissioners and Officers.

The framework notes under the heading "Reporting to the Commission" that:

It is of critical importance that the Commissioners have adequate access to the information they need to perform their role.

The relevant Assistant Commissioner or Director will report to the Commission on issues they consider are, or could be, of strategic importance to the Commission in discharging its legislative responsibilities, both in the present and in the long term.

A strategically significant matter is one that relates to the ability of the Commission to fulfil its mandate, as set out in sections 4, 7 and 56 of the CM Act — namely, 'to combat and reduce the incidence of major crime and continually improve the integrity of and reduce the incidence of misconduct in the public sector' and to perform its witness protection function and its civil confiscation function

The Commission will obtain this information by refining the existing system of reporting. Reporting to the Commission will take two forms:

- *Firstly, there will be a formal system of regular reporting by all business units and committees. The discussion paper, 'Crime and Misconduct Commission's reporting framework and processes', prepared by the Commission's Corporate Governance group and appended to this paper, raises a number of issues for consideration in relation to this first level of reporting.*
- *Secondly, in order to ensure that the Commission is able to effectively oversee the CMC's activities, Assistant Commissioners and Directors are each obliged to report to the Commission on significant matters that are not covered in the reports required by the formal reporting system.*

A "significant matter" is defined as:

(1) any matter so specially contentious that the relevant Assistant Commissioner or Director considers that the Commissioners would be likely to want to consider how it should be dealt with it before it is finalised by staff;

(2) any other matter not requiring decision by the Commission but which the relevant Assistant Commissioner or Director considers is of sufficient sensitivity that the Commissioners either would be likely to want to know about it while it is under consideration by CMC or agency staff (in the case of devolved matters) or would be likely to want to know how the matter has been finalised by staff.

Reporting is a core responsibility of staff: the Commission must rely on effective reporting to be able to discharge its own statutory obligations.

²⁶⁷ Governance and the CMC – Version 10/12/2007

The Commission has an obligation to ensure that formal reporting requirements impose the minimum burden on staff, and will consult with staff as part of the process of reviewing the formal reporting system.

Though it is for the relevant Assistant Commissioner or Director to decide what matters are to be reported to the Commission, all staff have a responsibility to bring any "significant matter" to the attention of their supervisor or manager.

In relation to the role of the Chairperson, the framework discusses at length the dual role of the Chairperson as both chief executive officer (CEO) and member of the Commission (akin to a board) and notes the reserve powers of the Commission *vis a vis* the Chairperson. The framework provides in relation to the duty of the Chairperson to the Commission the framework provides:

It follows that, if the Commission is to effectively exercise this reserve authority in relation to the Chairperson, there must be a reporting system for keeping the Commission informed of the Chairperson's relevant actions.

Such a process already exists on an informal basis. This reporting obligation on the Chairperson can be stated in formal terms as follows:

The Chairperson will inform the Commission of all actions the Chairperson takes that he or she reasonably believes the Commission would want to be told about.

In relation to Directors, such as Mr Duell, the framework provides:

Directors are responsible for the effective operation of their work areas including the achievement of the agreed goals and outcomes and outputs. In addition they have responsibilities for the preparation of reports to the Commission on the operation of their work areas. This includes ensuring that significant matters are reported to the Commission.

In relation to other staff the framework provides:

Staff have a responsibility to keep their supervisor or manager informed in relation to the operation of their area of responsibility. In particular, they have a responsibility to bring any 'significant matter' to the attention of their supervisor or manager.

Despite the above framework, the part-time Commissioners, who gave evidence to the Committee on 28 March 2013 all admitted to not being made aware of the dissemination of Fitzgerald Inquiry material until March 2013.²⁶⁸

²⁶⁸ PCMC, *Record of Proceedings*, 28 March 2013, pages 1, 7, 14 and 20.

Committee Finding 17

The Committee finds that the CMC did have a governance framework in place which was a lucid and worthwhile document that appropriately outlined existing statutory obligations and the obligations on all CMC Commissioners and Officers.

In particular, the Committee finds that there was an obligation on the Chairperson, Directors and other Senior Officers to ensure that the Commission was aware of 'significant matters'. The Committee further finds that alerts that there had been a public dissemination of Fitzgerald Inquiry material in May 2012 and September 2012 were 'significant matters'.

The Committee also finds that the Chairperson (Mr Martin), the Director of Information Services (Mr Duell), General Counsel (Mr Hutchings) and the Official Solicitor (Ms Wood) all failed in their obligations to report under the framework.

The Committee notes that, in this instance, there have been multiple failures by senior officers to comply with the various frameworks and policies of the Commission, the failure in respect of the Governance framework being just one example. The Committee believes that this inquiry has provided a limited opportunity for the Committee to assess CMC governance structures and review the implementation of improvements in 2010 and to make recommendations for the future. The Committee found failures and a poor culture of governance within the Executive Management, the LSU, and Information Management. In particular, the Committee is concerned that the role of Chairperson, given its unique role as both CEO and Chairperson, is considered a proxy for the Commission by CMC staff. That is, CMC staff consider reporting to the Chairperson to be a report to the Commission and the delegation by the Chairperson to be a delegation by the Commission. There is, in the Committee's view, a disconnect between the governance within the CMA, the policies and frameworks approved by the CMC and the actual perceptions, reporting and actions by CMC staff.

The CMC as a Commission, which is constituted by the Chairperson and all four part-time Commissioners fails as an accountability mechanism if the internal culture simply regards the Chairperson as a proxy for the entire Commission.

Recommendation 18

The CMC needs to continually remind all staff of the CMC that the "CMC" is constituted by the Chairperson and all four part-time Commissioners. The internal culture that simply regards the Chairperson as a proxy for the entire Commission must change.

The CMC needs to take a proactive approach to ensuring that breaches of its legislation (especially regarding delegations) and frameworks and policies adopted by the Commission are identified, rectified and offenders are appropriately dealt with in order to enforce the cultural change required.

6.2 Implementation of the Jameson Report

To its credit, the CMC under the Chairpersonship of Mr Martin Moynihan AO QC, in 2010 engaged consultants called Board Matters (Principal Consultant, Elizabeth Jameson assisted by Consultant, Sonya Beyers) to conduct a review of the governance arrangements relating to the CMC. On 12 November 2010, Board Matters delivered a report to CMC on the review (the "Jameson Report").

The Jameson Report found that it was desirable for the CMC to develop a more strategic focus for the Commission itself and less focus on day-to-day operational decisions through explicit delegation of operational decision-making through the office of the Chairperson/CEO. The report also found that it was essential to seek to ensure, as far as possible, that the attributes of candidates

recommended for appointment as part-time Commissioners include experience in the governance of large and complex organisations.

It was recommended by the Jameson Report that the CMC develop and adopt a full Governance Manual including:

- a) *roles and decision-making responsibilities and authorities of the Commission, the Chairperson/CEO, Assistant Commissioners, committees etc within the CMC;*
- b) *an explicit statement of the organisational matters for decision which are reserved to the Commission itself and those matters which are delegated to appropriate officers of the Commission, through the office of the Chairperson/CEO (the Consultant is liaising with relevant officers of the CMC and will provide separately a draft table of contents and Matters Reserved and Delegated); and*
- c) *details of the key skills, experience and attributes required for persons occupying the role of a part-time Commissioners to assist in influencing the making of appropriate and timely decisions in this respect.*

The Jameson Report also found that the blended Chairperson/CEO role under the Act, coupled with the narrow eligibility criteria for the role, generally results in persons occupying this role bringing highly desirable skills, experience, profile and credibility to the role, but lacking critical executive leadership skills and experience within large complex organisations.

The Jameson Report recommended:

- a) *That the role of the Chairperson/CEO, specifically in relation to the responsibility for the "administration of the Commission" (under s.251(2)), be supported by an appropriate delegate, as permitted by s.270 of the Act, in the nature of a "Deputy Chief Executive Officer" being a person with high level experience in executive and strategic leadership, preferably with significant knowledge and/or experience in relation to public sector entities;*
- b) *The role statement for this new "Deputy CEO" role should provide for the role to be accountable (and to report) to the Chairperson/CEO but also to have a high level executive leadership role, somewhat akin in a public sector context to the role of a "Director General" vis-a-vis the relevant Minister, with the person in this role also to attend at part of each Commission meeting and to participate in the newly formed Executive Leadership Group; and*
- c) *that the position of the Executive Director which was in place at the commencement of this review and included some, but not all, of the responsibilities of such a position, be reviewed to determine whether it ought to continue to exist in view of the creation of such a new position.*

This Committee understands that this recommendation was largely implemented prior to the Jameson report being handed down.

The Jameson Report also found that there was confusion about the purpose and functions of many of the internal committees in existence within the CMC and even whether they are formal committees of the Commission or purely management groups originally designed for a purpose which is no longer applicable. The result is that many of the Committees, including the Executive Committee, do not provide any appreciable value to the functions and operation of the CMC and take appreciable valuable personnel time to maintain. They are also contributing to a lack of a sense of personal accountability for decisions within the CMC as it is perceived by many that decisions (and

action) cannot be taken except with the imprimatur of one or more committees that, in reality, have no formal status or function.

The Jameson Report recommended that:

- a) *the Executive Committee (as it was at the commencement of this review) be dissolved;*
- b) *committees which are legislatively required by the Act to exist, namely the Audit Committee and the Crime Reference Committee be maintained;*
- c) *subject to the following paragraphs, all other purely internal CMC committees, (i.e. excluding those legislatively required to exist) be suspended and the desirability of their continued existence reviewed with a view to creating only the internal committees referenced in the following paragraphs;*
- d) *an Executive Leadership Group be created (draft terms of reference for which have been previously provided to the Commission by the Consultant) to meet weekly, comprising only the Chairperson/CEO, the Assistant Commissioners and the Deputy CEO role created pursuant to Recommendation #2(b), acting as an executive committee supporting the Chairperson/CEO by having input to and reviewing substantive decisions to be put to the Commission;*
- e) *a broader management communication forum be convened to be chaired by the Chairperson/CEO (or the Deputy CEO when needed), and scheduled to follow the Executive Leadership Group meetings on a fortnightly basis, inviting to the forum the directors of all other functional areas that were previously part of the Executive Committee, with a view to two-way communication on relevant management issues;*
- f) *a Risk Management Committee be created (this important function was previously the responsibility of the "Executive Committee" but was not being addressed to any real extent) and consideration be given to combining this function with the Audit Committee, but in any case adopt current governance best practice standards of operation, including having an external independent and appropriately skilled chair and to provide reports through the Chairperson/CEO to the Commission;*
- g) *the Finance Committee be maintained in the short term, to assist in the development and ongoing monitoring of annual budgets, but this item should be reviewed by the person appointed to occupy the role of the Deputy CEO role to determine if this is his or her preferred manner to handle this function; and*
- h) *All other "committees" should be regarded purely as operational "committees", or preferably short-term task groups or work groups, created by individual senior managers within or across functional areas, to assist and support those managers in their management roles, but not being regarded as formal committees of the Commission.*

The Committee understands that the Commission adopted the recommendation. But as the Committee noted in section 5.5, in respect of the dissemination of the Fitzgerald Inquiry material and the alerts of May 2012, September 2012 and even February and March 2013 the risk management committee and the risk management framework was ignored by senior officers. In the Committee's view this failure probably reflects an ongoing cultural problem and lack of managerial expertise.

In respect of culture, the Jameson Report also found that:

The fact that the core crime and misconduct functional areas within the CMC enjoy their own distinctive cultures internally ought to be embraced and encouraged. The real cultural issue of concern within the CMC is not the existence of these distinctive cultures but the fact that there is a weak sense of the common goals and interests across the organisation. For instance interviewees often described the culture in terms of one or more of the following:

- a) *the presence of a "silo" mentality, with little interaction or communication between the different parts of the organisation;*
- b) *a sense amongst many of those within functional areas that support and/or supplement the core crime and misconduct functions that they are not a highly valued part of the organisation;*
- c) *a sense amongst many of those within the core crime and misconduct functional areas that they are not strongly supported by those in the supporting and supplementary functional areas; and*
- d) *the need to move closer towards being a "best practice" culture given that many of those interviewed believed that "we do not practice what we preach" as an integrity-focused organisation and also that many personnel avoid personal responsibility for management of organisational and personal performance.*

The Jameson Report recommended that:

The Commission and the Chairperson/CEO, supported by the Executive Leadership Group ... devise, potentially with external specialist assistance, strategies to build, a culture of personal accountability throughout the organisation. By this, we mean a culture wherein:

- a) *all individuals, and teams, within the organisation accept personal responsibility, and importantly accountability to one another, for the achievement of the organisation's goals;*
- b) *at a very personal level, individuals, almost universally throughout the organisation, demonstrate a high level of awareness of the impact that their own performance in their role has on the organisation meeting its significant public accountabilities and responsibilities;*
- c) *individuals at every level of the organisation adhere to organisational policies and procedures with respect to recurring decisions, such as appointments of staff and procurements; and*
- d) *individuals understand how vital it is that they work together cooperatively and with clear and open communication in order to achieve the organisation's goals.*

Communication and consultation are key means by which to build the culture and many of the frameworks outlined in the previous recommendations of this Report. It is essential that the Commission and the executive leadership of the Commission focus on improving the reality and the perceptions of this aspect of the operation of the CMC.

....

Use, as appropriate, the regular Executive Leadership Group meetings and broader management communication forums ... to:

- a) *Discuss and gain an understanding of organisational issues and the impacts of proposed senior management decisions;*

- b) *Encourage senior staff to disseminate important messages across the organisation;*
- c) *Invite genuine consultation on key decisions, but with the clear message that consultation does not alleviate the ultimate responsibility of the decision-maker/s to make a decision, having regard to the opinions of those consulted, but without necessarily acting, or being able to act, in accordance with their respective opinions; and*
- d) *Consider engaging external assistance to conduct regular (e.g. annual) employee "climate surveys" to track progress (or lack thereof) in areas such as this so as to enable the issues to be addressed.*

Undertake a review of the adequacy of CMC information management framework and systems, engaging appropriate external expertise as necessary, including a review of the adequacy of staff training in the use of these systems.

.....

The Commission to track governance effectiveness and improvements on an ongoing basis through:

- a) *Developing and implementing an annual performance review process for the Commission itself;*
- b) *Ensuring that the performance review processes for all senior executives address the extent to which a culture of personal accountability is developed and encouraged;*
- c) *Requiring annual reporting from the Chairperson/CEO (incorporating input from relevant senior management) on the conduct and effectiveness of the performance management processes for personnel throughout the organisation; and*
- d) *Considering the engagement of a regular annual externally-managed employee "climate survey" to gauge the extent to which the Commission's view and that of its employees are aligned on key organisational culture, performance and employee engagement issues.*

At the hearing of the Committee on 28 March 2013, part-time Commissioner Mr George Fox was asked about his views on CMC governance and improvements. The Committee was impressed by Mr Fox's candid and considered remarks:

CHAIR: *Thank you. Do you see in your own mind where improvements could occur in the governance areas?*

Mr Fox: *Again, I suppose my thoughts on that go back to the Jameson report, which identified issues around the structure of the legislative structure. I think part-time commissioners, I am told anecdotally, their role is very much dependant on the views of the chair of the time and sometimes their role has been, I am told, in the past minimal. Sometimes, particularly in recent times, it has operated more on a corporate model. The act, I think interestingly, does not actually say what the role of the part-time commissioners is meant to be, but it's almost by exception that commission authority is required. So I think by default it has been approached from a line of what might be regarded as a corporate model. But the corporate model probably falls down a little bit when—and it's not, I think, probably model corporate governance—you have a chair who is also the CEO who the chair is responsible to supervise and particularly when the CEO has operational requirements as well as being the only person to conduct hearings. Some might think it is a model designed*

by trial lawyers for particular purposes but not by governance experts, and it may be that the organisation has outgrown—what was a corporate model sufficient for some years ago may no longer be, and I think Mr Davis averted to some of that or touched on that in his questioning of who are the managers here. My recollection was there was no easy or apparent answer to that, and I think some of that raises concerns when members asked, 'Who does Mr Duell actually report these to? Is it to the executive director or the lawyers?' and we had to say, 'Which lawyer?'

CHAIR: *Would you like to see the role of the commissioners clarified and entrenched in legislation more clearly?*

Mr Fox: *I would like to see a review of the corporate structure to reflect the needs of a modern, large bureaucratic organisation which has moved beyond—and it is not for me, how can I put it, to say what might have been in the minds of the people when the legislation was originally put in place. But one might think that, as I commented earlier, it does not represent a corporate model that would—if one designed one afresh for an organisation of this size—adequately reflect what is now accepted as corporate needs and responsibilities. As I mentioned earlier, by default we have reached a position of identifying the responsibilities of the part-time commissioners as akin to those of directors of a corporation. But there is no statutory provision for that.*

CHAIR: *Thank you.*²⁶⁹

Part-time Commissioner Mr Philip Nase also commented on the implementation of the Jameson Report which reveals some headway had been made by the CMC in implementing some of its structural recommendations, especially as regards its internal committees:

CHAIR: *Thank you, Mr Nase. Do you have any opening comments?*

Mr Nase: *Yes, I do. I want to make some comments about the general issue of governance of the CMC. During the year 2010, under the guidance of Judge Moynihan, the CMC engaged outside consultants to conduct an exhaustive review of the governance arrangements at the CMC. An interim report was delivered in June of that year and a final report in November of that year. The recommendations and findings of the review resulted in far-reaching changes in the way in which the governance arrangements took place at the CMC. One thing that happened is that the role of executive general manager was created. The role was envisaged as akin to the role of a director-general in the state Public Service. The new position of executive general manager was the result of a recognition that the blended roles of chairperson and CEO, together with the narrow eligibility criteria for appointment, may result in the appointment of chairpersons who lacked experience in corporate management of complex organisations. That finding and recommendation was implemented. It was designed to accommodate as best we could the legislative strictures in the CM Act.*

The review went on to suggest that many of the committees that were then in existence at the CMC did not provide any appreciable value to the functions and operations of the CMC and contributed to what was described as a lack of a sense of personal accountability for decisions within the CMC. Following the report, the commission disbanded many of the existing committees and in their place created or strengthened a number of key governance committees.

So the position of executive general manager was created, and that was intended to fulfil a high function of corporate governance within the CMC. An executive leadership group was

²⁶⁹ PCMC, *Record of Proceedings*, 28 March 2013, pages 8-9.

created that comprised only the chairperson, the two assistant commissioners and the new executive general manager. The group was to meet weekly, and it does. In association with the executive leadership group, a broader management communication forum was brought into existence—it was to be chaired by the chairperson or, in his or her absence, the new executive general manager—to which a larger group of managers within the CMC should attend with a view to two-way communication on relevant management issues. That forum meets regularly.

In addition, a risk management committee was created. The CMC did not have a risk management committee until then. There were functions of risk management that were performed by what was called the executive committee that had a variety of functions, but the recommendation was made that we have specialist risk management committee headed by an external chair with expertise in risk management and we located someone who was very highly qualified, external to the CMC, to chair the risk management committee and it was brought into being. The risk management committee met regularly—I think it was every month at its commencement—and it has engaged with the various functional parts of the CMC with the brief and intention of embedding a sense of risk awareness and appropriate reporting mechanisms throughout the CMC.

The key governance bodies of the CMC, therefore, are the executive leadership group, the risk management committee and the audit committee. The audit committee is required by the CM Act. The audit committee has a number of independent members. The chair of the committee is, oddly enough, a person called Peter Dowling. He is very highly qualified.

CHAIR: *Do you mean Peter Duell?*

Mr Nase: *No, I meant Dowling. His name is Peter Dowling, the same name as the member for Redlands. He is has an AM after his name and has various awards. He is a very well respected external person who guides the audit committee. In addition, there are members from the Queensland Audit Office who attend each audit committee meeting. As a part-time member, I also attend the meetings of the audit committee. Another part-time commissioner attends the meetings of the risk management committee, as does the executive manager, who attends all of the key governance committees.*

The other governance committee is the budget management committee, to which I also belong. All of those committees have proper agendas and they have proper minutes. Indeed, when the commission meets the meetings are not only minuted but also recorded and the minutes are drawn up from the recording. So it is a very formal and thorough business of minuting and recording decisions that are made at the key management committees.

There is one other thing I should say. The commission also strengthened the role of the audit committee by appointing a full-time internal auditor. Until that time there was a part-time internal auditor. A full-time internal auditor was recruited, again with excellent qualifications. He works under the supervision of the audit committee on a full-time basis conducting audits. It is a pity, in a way, that he did not get around with a program of audit committees that was certified and approved by the audit committee. In due time he would have reached the information management part of the CMC.

Without going into any detail, you can see that the management of the CMC is not the invention of some lawyers who sat down. The key governance framework is a framework that was settled on after an exhaustive review of the existing governance arrangements. That is all I wanted to say very briefly about that aspect.²⁷⁰

²⁷⁰ PCMC, *Record of Proceedings*, 28 March 2013, pages 16-17.

Despite the view, held by some and outlined below, that the management of the Fitzgerald Inquiry material was not core business, it is, nonetheless, a statutory obligation and one that requires the co-ordinated efforts of the organisation to administer.

Mr Fox stated:

... and I think a lot of the problem is that this was simply not core business, very few people seemed to know about it. I never knew that the organisation was responsible for historic records that were shifted off site but somehow we retained responsibility for. It almost seems to have been placed in the—how can I put it—a convenient receptacle that was not core operational, and I have already commented on the fairness perhaps of somebody whose skills were not in that area being given responsibility.²⁷¹

And later stated:

For me a concern in this very unhappy exercise is that, in my best calculation, six pairs of hands or six eyes had some sight or handling of this problem. Certainly some of them at least are smarter than I. But none of them clearly understood that inside this package was the landmine and the ticking timer. I suppose it concerns me somewhat, if I'd seen the same package, however it was packaged, would I have come to a different conclusion? I would hope perhaps, as an outsider with hopefully a more objective view, I would have. But it concerns me a little bit that what was the packaging around this or, again, because it was not core business, that none of this was apparent to a whole range of very experienced and qualified people. But there is no doubt that the plane crashed and now it is appropriate to look for—to mitigate the damage, to stop it from happening again, find out why it happened and put in place systems to ensure it does not happen again.²⁷²

Mr Nase stated:

I do want to say that I was, like the other members of the commission, dismayed when I heard about the release of the documents. One reason I was dismayed is not only that it was not a good thing but also that the safekeeping of those records is not part of the core business of the CMC. The core business of the CMC is found in the act. Its core functions are prevention, crime prevention and misconduct. It also has statutory research functions and a witness protection function. The preservation of the documents that we produce in our work is a by-product of the work that we do. In fact, we employed 14 people to look after those documents and safe-keep them. So it was especially distressing that all of the work in our other functions is held to ransom, in a sense, by a failure in this one area and a failure by only one or two people. That causes me distress.

I am also dismayed because one of the recommendations in that report back in 2010 was that there be a review of the information management framework and systems including a review of the adequacy of the training. We carried out that review, and the structure that was put in place when these events occurred was the structure that was put in place after receiving external advice on how it should be set up. So I am dismayed for all of those reasons.²⁷³

And later Mr Nase in answer to a question stated:

Mr DOWLING: *So you came in at or about the time of the transfer—the files from the CMC were going across to State Archives?*

²⁷¹ PCMC, *Record of Proceedings*, 28 March 2013, page 11.

²⁷² PCMC, *Record of Proceedings*, 28 March 2013, page 13.

²⁷³ PCMC, *Record of Proceedings*, 28 March 2013, page 17.

Mr Nase: Yes.

Mr DOWLING: Did you have any involvement?

Mr Nase: I had no knowledge of that transfer at all.

Mr DOWLING: I am led to believe it was quite a significant event and you are telling me that as a commission when you met for a period of time—if you started in 2008, the last tranche went across in 2010—you were oblivious to it and it never came up in meetings?

Mr Nase: No, I had no knowledge; the issue was not canvassed before the commission. I assumed the decisions were made before I became a commissioner.

Mr DOWLING: But you were aware that the CMC had custody of the—

Mr Nase: No, I was not aware of that.

Mr DOWLING: When did you become aware of that?

Mr Nase: In March.

Mr DOWLING: I find it surprising, Mr Nase, that you can sit on a board and they are transferring and relocating and part of the fallout or casualty of that relocation is that you can no longer house Fitzgerald inquiry documentation and you were oblivious to it.

Mr Nase: I think that is very loaded language. I was very alert to my duties and responsibilities. I tried to explain that looking after documents is not a part of the core business of the CMC. The CMC at that time employed 14 people to look after its documents. It produces in the in the course of investigations similar sorts of documents that Fitzgerald produced, and the CMC has 14 people with a job of looking after that. It is non-contentious, it is governed by policies and all the rest of it. It is not a current issue. The issues we have are to do with organised crime and serious issues of misconduct. They are not looking after old documents.

Mr DOWLING: It was not a loaded question. I am surprised you—

Mr Nase: It sounded like a loaded question. You said I was oblivious as if I was neglectful.

Mr DOWLING: No, I said that something as significant as a relocation—you were aware that the CMC moved offices?

Mr Nase: When I arrived at the CMC it was located at the present office. I was aware it had been located elsewhere, yes.

Mr DOWLING: Nothing came up for the board? I am imagining—and maybe you can explain it to me. There are a number of commissioners sitting—

Mr Nase: You just have to understand that it was not part of our core business.

Mr DOWLING: But you managed the exceptions and you work with the chair and you—

Mr Nase: Look, I am not making myself clear. It just was not part of our core business. Looking after the old documents—there were sufficient people employed to do that. As far as we knew they had the skill and expertise to do that and that was their job and no issue was raised about it.²⁷⁴

²⁷⁴ PCMC, Record of Proceedings, 28 March 2013, pages 19-20.

Later, the Chair of the Committee challenged Mr Nase about the perception of the custody of documents being “non-core”:

CHAIR: *Mr Nase, you talked about information management not being core business. You said that on a number of occasions.*

Mr Nase: *Yes.*

CHAIR: *And I can understand that perspective with the commission of inquiry documents because you inherited those, albeit that it has to be acknowledged that some of the commission of inquiry documents were the seed documents for the CJC.*

Mr Nase: *Yes, that is right.*

CHAIR: *But then you went on to say that the investigations the CMC carry out create a quantity of documents similar to a commission of inquiry. Could I put to you, then: management of those documents is part of your core business?*

Mr Nase: *It is a consequence of our core business. As a consequence of fulfilling our core business we end up with lots of documentation—lots of stuff that should never see the light of day.*

CHAIR: *Sure. It just sounded—*

Mr Nase: *Telephone interception is a good example. That amasses large masses of documentation. It is managed under a fairly strict statutory framework and it has to be destroyed eventually. We cannot keep that sort of material.*

CHAIR: *But would you hold the view that because that material is consequential to your core business its management is unimportant?*

Mr Nase: *No, no. I would not say that for a second. I am not saying that at all.*²⁷⁵

Committee Finding 18

The Committee appreciates that an organisation such as the CMC, which has a number of distinct functions separated for operational reasons into functional areas that reflect its various statutory duties (Misconduct, Crime, Research etc.) There are very sound reasons for the CMC to be organised in this manner, including effectiveness, efficiency and the need for walls of confidentiality. This is the healthy side of a “silo” organisation.

The current Committee inquiry has been focussed on only a few of those areas: Corporate Services (in particular Information Management), the Legal Services Unit and the Office of the Chairperson. What the Committee’s inquiry has revealed was a weakness in these distinct functional areas of the CMC working together to conduct a major project: the transfer of the Fitzgerald Inquiry documents to the QSA and their proper classification.

The Committee heard testimony that the management of the Fitzgerald Inquiry material was not core business. The CMC, however, has a statutory obligation to maintain the Fitzgerald Inquiry records on behalf of Queenslanders and failed in its obligation. The view that the Fitzgerald Inquiry material was not core business may have played a part in:

- the various requests for access by third parties to the Fitzgerald Inquiry documents being delayed for a considerable time through a lack of advice from areas like the Legal Services Unit;

²⁷⁵ PCMC, *Record of Proceedings*, 28 March 2013, page 23.

- failure of the organisation to identify people within the organisation who had a very good knowledge of the operations of the Fitzgerald Inquiry (such as Mr Kenzler) from being more involved in assessments relating to the material, thus enabling no discussion or consideration of the “third category of documents”;
- enabling or forcing Mr Duell to act largely autonomously without proper advice and counsel of people with proper knowledge of the documents (such as Mr Kenzler);
- officers in position of authority failing to ensure that formal documented submissions were made and considered; and
- a failure for the organisation to respond appropriately to the alert by Mr Krosch in May 2012.

This particular inquiry has exposed the “unhealthy side” of a silo organisation.

The Committee notes the CMC's positive actions in establishing the Jameson review and the implementation of many of the recommendations of the report of that review.

However, the Committee is concerned that the distinction between core and non-core functions is being used by some in the CMC to diminish responsibility in respect of the Fitzgerald Inquiry material.

6.3 Separating the role of Chairperson and CEO

This Committee, of the 54th Parliament, was not in existence when the Jameson Report was handed down. But the Committee regards the Jameson Report as being a very prescient document. The Committee concurs with many of its conclusions and recommendations.

However, the Committee believes that this current incident has highlighted a need for structural reform well beyond the creation of a Deputy CEO role.

In coming to this conclusion the Committee notes the following matters.

This report has highlighted at section 5.5 the failure of senior CMC officers, including the Chairperson to follow corporate frameworks and policy. This becomes understandable when it is considered that Mr Martin, like most of his predecessors have been eminent lawyers. Whilst this background may qualify them for being exercising the role of a Chair of a standing commission of inquiry, it does not necessarily qualify them as being qualified to effectively and efficiently manage a relatively large organisation with best practice corporate governance.

The risk is that things are handled as “lawyers” would handle them, rather than being managed as a “manager” would handle them.

The Committee concurs in this regard with Commissioner Mr George Fox when he stated:

CHAIR: *Would you like to see the role of the commissioners clarified and entrenched in legislation more clearly?*

Mr Fox: *I would like to see a review of the corporate structure to reflect the needs of a modern, large bureaucratic organisation which has moved beyond—and it is not for me, how can I put it, to say what might have been in the minds of the people when the legislation was originally put in place. But one might think that, as I commented earlier, it does not represent a corporate model that would—if one designed one afresh for an organisation of this size—adequately reflect what is now accepted as corporate needs and responsibilities. As I mentioned earlier, by default we have reached a position of identifying the responsibilities of the part-time commissioners as akin to those of directors of a corporation. But there is no statutory provision for that.*

CHAIR: Thank you.²⁷⁶

Part-time Commissioner Professor McMeniman also appears to concur with Mr Fox on this issue:

CHAIR: Do you have a comment on the effectiveness of the oversight of the part-time commissioners and do you have a view on how that may or may not be improved?

Prof. McMeniman: I think since I have been there, there have been a lot of improvements. Just before I arrived, there was an executive general manager appointed. That is Ms Mendelle. There was nobody in that position before. I think that was an initiative of Justice Moynihan. I think that was an important appointment. I think we have heard at length from Mr Fox about one person fulfilling two roles of COE and also of chair. I think that is part of the governance structure that I think needs further examination.

But I do think that the appointment of external chairs was a good move for both the audit committee and the risk management committee—all of those things. I think the documentation that exists around those committees and the minuting of those four major committees of the commission is quite appropriate and very detailed. The advent of the, as it is now called, applied research and evaluation committee was very important. The establishment of the ethics committee—all those things have come on recently. But I do think the governance structure could be improved.²⁷⁷

Ms Mendelle's role as Executive General Manager was created to alleviate some of the administrative burden from the Chairperson and to fulfil some of the roles traditionally associated with a CEO or Director-General.

Part-time Commissioner, Mr Nase described the appointment in these terms:

CHAIR: Thank you, Mr Nase. Do you have any opening comments?

Mr Nase: Yes, I do. I want to make some comments about the general issue of governance of the CMC. During the year 2010, under the guidance of Judge Moynihan, the CMC engaged outside consultants to conduct an exhaustive review of the governance arrangements at the CMC. An interim report was delivered in June of that year and a final report in November of that year. The recommendations and findings of the review resulted in far-reaching changes in the way in which the governance arrangements took place at the CMC. One thing that happened is that the role of executive general manager was created. The role was envisaged as akin to the role of a director-general in the state Public Service. The new position of executive general manager was the result of a recognition that the blended roles of chairperson and CEO, together with the narrow eligibility criteria for appointment, may result in the appointment of chairpersons who lacked experience in corporate management of complex organisations. That finding and recommendation was implemented. It was designed to accommodate as best we could the legislative strictures in the CM Act.²⁷⁸

The CMC's adoption of the Jameson Report's recommendation to appoint a "Deputy CEO", by appointing the Executive General Manager has not fulfilled the needs identified by the report in terms of corporate management and corporate governance. This is because the Executive General Manager position is, in reality, a Director of Corporate Services.

²⁷⁶ PCMC, *Record of Proceedings*, 28 March 2013, page 8.

²⁷⁷ PCMC, *Record of Proceedings*, 28 March 2013, page 15.

²⁷⁸ PCMC, *Record of Proceedings*, 28 March 2013, page 16.

The current matter has highlighted that the structural changes, by appointing a "Deputy CEO" has failed in this instance – because the "Deputy CEO" Ms Mendelle, responsible for Corporate Governance and Mr Duell's direct supervisor, was never informed of a major risk management issue.

Repeated failures to follow the chain of command in this instance effectively meant that the Executive General Manager was by-passed. It also resulted in the Commission not being informed.

Furthermore, the issue is not just about the management skills of the Chairperson or the alignment of the "Deputy CEO" as regards other Assistant Commissioners or Directors. Fundamentally, the current model is flawed because the Chairperson's role as "Chairperson of the board" and "CEO" is at odds. This dual personality of the Chairperson diminishes the role of the other Commissioners and embeds the culture that the approval of the Chairperson alone is important.

An important aspect of a structural separation is that more directed effort can be aimed towards "effective and efficient" operations by the CEO, whilst the Chairperson can concentrate on oversight of operational matters and the appropriate use of coercive powers.

Committee Finding 19

The Committee finds that the CMC's adoption of the Jameson Report's recommendation to appoint a "Deputy CEO", by appointing the Executive General Manager may have been consistent with the CMA but has not fulfilled the needs identified by the report in terms of corporate management and corporate governance. This is because the Executive General Manager position is, in reality, a Director of Corporate Services.

The current matter has highlighted that the structural change, of appointing a "Deputy CEO" has failed in this instance – because the "Deputy CEO", Ms Mendelle, responsible for Corporate Governance and Mr Duell's direct supervisor, was never informed of a major risk management issue. Repeated failures to follow the chain of command in this instance effectively meant that the Executive General Manager was by-passed. It also resulted in the Commission not being informed.

The Committee does not believe that an organisation such as the CMC can continue to be managed by a CEO who is a skilled lawyer, but has little experience in managing a larger organisation.

The Committee finds that the current model of a Chairperson/CEO is flawed because the Chairperson's role as "Chairperson of the board" and "CEO" is at odds. This dual personality of the Chairperson diminishes the role of the other part-time Commissioners and embeds the culture that the approval of the Chairperson alone is important.

Recommendation 19

The Committee recommends that the *Crime and Misconduct Act 2001* be amended before the appointment of the next Chairperson to cause structural separation of the role of Chairperson and CEO.

Under this new model, the CEO (akin to a Director-General) will report directly to the Commission ("the board").

6.4 CMC Resourcing and Responsibility

During the public hearings, various Committee members, and witnesses, raised the issue of resourcing of the CMC. Whilst some CMC witnesses provided that budget cuts and job losses at the CMC were not responsible for the matters the subject of the Committee's inquiry,²⁷⁹ the matter of budget cuts and resourcing was nonetheless raised during the course of the inquiry. It is, therefore, incumbent on the Committee to briefly deal with the resource issue.

The Committee considers that the CMC must be responsibly resourced to allow it to fulfil its functions, and that, in turn, the CMC must responsibly, and efficiently utilise the resources it receives. The Committee notes the Commission's roles and responsibilities that encapsulate the functions afforded to the former Queensland Crime Commission and the Criminal Justice Commission, and more recently extend to telecommunications interception and civil confiscation responsibilities. The Committee has briefly examined the budget for the CMC for the last five years.

In addition, there has been recent attention drawn to the magnitude of staffing losses at the CMC. The full context of these staff losses as a result of two factors must be explored: budget cuts; and CMC management decisions based on the so called "Churn factor".

Budget as a proportion of the State budget

The Committee considered the functions of the Criminal Justice Commission, and the Queensland Crime Commission and compared the budget allocation of the former entities to the Commission's funding for the last five year period.

In short, the budget for the CMC has increased over time commensurate with the additional functions allocated to the CMC.

Ms Mendelle confirmed that over the last decade the CMC staff establishment increased by approximately 21 per cent. Some of that growth has come from direct funding.

... we have had injections from CBRC to strengthen the Proceeds of Crime team over several years. We also had an injection when we were given telephone interception capability. It is fair to say that there has been growth without funding, which has been historical. It is hard to actually quantify where that growth has come from because we have gone from a manual system to two other payroll systems. The churn factor was something that funded some of that growth, but when the churn factor ceased then we came to the position where we cannot fund all positions.²⁸⁰

Ms Mendelle also provided that funding growth has also increased, from an initial funding base of \$24.5 million to \$49 million in 2011-12.²⁸¹

The Commission's current 2012-13 budget allocation is \$50.04 million which represents 0.103% of the State's budget, and that the Commission's budget cut in 2011/2012 to 2012/2013 period was \$0.52 million, representing a 1.021% cut.²⁸²

Budget expenditure figures for the Crime and Misconduct Commission are the reported operating or recurrent expenses. These expenses include: wages, salaries and accruing leave costs for employees; 'supplies and serviceables' such as electricity and lease expenses, used in the delivery of services;

²⁷⁹ PCMC, *Record of Proceedings*, 14 March 2013, page 13, and 22 March 2013, page 55 (Mr Duell); 15 March 2013, page 50 (Mr Martin); 21 March 2013, page 2 (Ms Mendell); 21 March 2013, page 30 (Mr Strange); 22 March 2013, page 67 (Mr Hutchings); and 28 March 2013, page 9 (Mr Fox).

²⁸⁰ PCMC and CMC Joint Meeting *Record of Proceedings (in camera)* 14 September 2012, page 5.

²⁸¹ PCMC and CMC Joint Meeting *Record of Proceedings (in camera)* 14 September 2012, pages 5-6.

²⁸² Figures provided by the Queensland Parliamentary Library 28 March 2013.

grants and subsidies made to bodies external to Government; depreciation and amortisation costs for the ongoing use of assets; and 'other expenses', consisting of audit fees and sundry expenses.²⁸³

Total State Government Budget figures are the reported recurrent General Government sector expenses, which are similarly comprised of employee expenses; superannuation expenses and interest costs; other operating expenses; depreciation and amortisation; other interest expenses; and grants expenses.

Figures are uniformly drawn from the Income Statements of the relevant Budget Papers, as opposed to Balance Sheet reports of (capital) assets, liabilities and equity; and Cash Flow Statement accounts of cash inflows and outflows (or investing and financing activities).

²⁸³ Queensland Government, 'Financial statement reporting format for Service Delivery Statements,' *Reader's Guide*, last reviewed 26 November 2012. <http://www.budget.qld.gov.au/readers-guide/index.php> (accessed 2 April 2013).

CMC Budget and Percentage of Total State Budget – 2006-07 to 2012-13

	2006-07 Budget ²⁸⁴	2006-07 Est. Actual	2007-08 Budget ²⁸⁵	2007-08 Est. Actual	2008-09 Budget ²⁸⁶	2009-10 Est. Actual	2009-10 Budget ²⁸⁷	2009-10 Est. Actual	2010-11 Budget ²⁸⁸	2010-11 Est. Actual	2011-12 Budget ²⁸⁹	2011-12 Est. Actual	2012-13 Budget
CMC Budget (\$million)*	35.56	35.56	38.95	38.00	41.53	42.37	43.27	43.05	48.56	49.24	50.55	49.95	50.04
Total State Budget** (\$million)	28,825	30,164	32,282	33,271	35,772	36,447	39,146	39,976	42,352	43,310	47,065	46,021	48,518
% (CMC Budget of Overall Budget)	0.123	0.118	0.121	0.114	0.116	0.116	0.111	0.108	0.115	0.114	0.107	0.109	0.103

*Represented by Total CMC Expenses (Budget/Estimate)

**Represented by Total General Government Sector Expenses (Budget/Estimate)

²⁸⁴ Queensland Government, *Queensland State Budget 2007-08: Ministerial Portfolio Statement: Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland*, 2007, pages 6-14. <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2007/TP1544-2007.pdf> (accessed 2 April 2013); Queensland Government, *State Budget 2007-08: Budget Strategy and Outlook, Budget Paper No. 2*, 2007, page 113. <http://www.budget.qld.gov.au/budget-papers/2007-08/bp2-2007-08.pdf> (accessed 2 April 2013).

²⁸⁵ Queensland Government, 'Part 3: Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland,' *State Budget 2008-09: Service Delivery Statements, Budget Paper No. 5*, 2008, pages 1-203. <http://www.budget.qld.gov.au/budget-papers/2008-09/bp5-part-3-2008-09.pdf> (accessed 2 April 2013); Queensland Government, *State Budget 2008-09: Budget Strategy and Outlook, Budget Paper No. 2*, 2008, page 101. <http://www.budget.qld.gov.au/budget-papers/2008-09/bp2-2008-09.pdf> (accessed 2 April 2013).

²⁸⁶ Queensland Government, 'Part 7: Department of Justice and Attorney-General,' *State Budget 2009-10: Service Delivery Statements, Budget Paper No. 5*, 2009, pages 1-212. <http://www.budget.qld.gov.au/budget-papers/2009-10/bp5-part-7-2009-10.pdf> (accessed 2 April 2013); Queensland Government, *State Budget 2009-10: Budget Strategy and Outlook, Budget Paper No. 2*, 2009, p. 115. <http://www.budget.qld.gov.au/budget-papers/2009-10/bp2-2009-10.pdf> (accessed 2 April 2013).

²⁸⁷ Queensland Government, 'Part 7: Department of Justice and Attorney-General,' *State Budget 2010-11: Service Delivery Statements, Budget Paper No. 5*, 2010, p. 1-200. <http://www.budget.qld.gov.au/budget-papers/2010-11/bp5-part-7-2010-11.pdf> (accessed 2 April 2013); Queensland Government, *State Budget 2010-11: Budget Strategy and Outlook, Budget Paper No. 2*, 2010, p. 90. <http://www.budget.qld.gov.au/previous-budgets/2010-11/budget-papers/bp2.php> (accessed 2 April 2013).

²⁸⁸ Queensland Government, 'Part 16: Department of Justice and Attorney-General,' *State Budget 2011-12: Service Delivery Statements, Book 3*, 2011, p. 3-206. <http://www.budget.qld.gov.au/budget-papers/2011-12/bp5-part-16-2011-12.pdf> (accessed 2 April 2013); Queensland Government, *State Budget 2011-12: Budget Strategy and Outlook, Budget Paper No. 2*, 2011, p. 100. <http://www.budget.qld.gov.au/budget-papers/2011-12/bp2-2011-12.pdf> (accessed 2 April 2013).

²⁸⁹ Queensland Government, 'Department of Justice and Attorney-General,' *State Budget 2012-13: Service Delivery Statements, Budget Paper No. 5*, 2012, p. 50. <http://www.budget.qld.gov.au/budget-papers/2012-13/bp5-djag-2012-13.pdf> (accessed 2 April 2013); Queensland Government, *State Budget 2012-13: Budget Strategy and Outlook, Budget Paper No. 2*, 2012, p. 79. <http://www.budget.qld.gov.au/budget-papers/2012-13/bp2-2012-13.pdf> (accessed 2 April 2013).

The 2011-12 budget papers provided that there were 306 estimated actual FTE Commission staff at 30 June 2011. The notes add that a number of concurrent organisational reviews have resulted in some vacancies not being filled. Additional officers are to be employed to perform the CMC's telecommunications interception function and other high-priority initiatives in 2011-12.²⁹⁰

The 2012-13 budget provides that there were 350 estimated actual FTE Commission staff as at 30 June 2012. The notes add that in 2010-11 a substantial number of long term/permanent positions were held vacant pending the outcome of a governance review (the Jameson review outlined above). The CMC adopted and implemented the Establishment Management Program introduced by the Government in March 2012 and in use across the Queensland Public Service. As a result of that program, a number of staff on temporary contracts ceased employment and all permanent appointments were closely scrutinised. The State budget papers provide that an expected 16 staff would leave the CMC in the six weeks after 30 June 2012. However, the 2012-13 FTE estimate was not reduced by that full number as some staff backfilling in positions ceased employment following the return of the substantive position owner, and a number of other positions are filled by more than one FTE.²⁹¹

The CMC has stated that as a result of the 2012/2013 budget a total of 26 positions were disestablished, resulting in the actual loss of 13 staff.²⁹² The Committee was advised that there was some overlap between the 26 disestablished, the 13 redundancies, and 44 previous separations.

The Committee understands that, as at 1 March 2013, there are 334 CMC officers, 296 of those are permanent, 20 are temporary, and 18 are casual employees.²⁹³

The 'Churn Factor'

Since this Committee was established in May 2012, the budget of the CMC in relation to the ability of the CMC to perform its functions has been one of many issues occupying the Committee's time.

In joint meetings with the CMC, prior to this Inquiry, the Committee questioned how a budget cut amounting to around 1% could result in such reduced staffing numbers.

Part of the CMC's funding provided by the State Government is based on established positions. The Committee received advice from the Chairperson of the CMC that, due to the high staff turnover at the CMC, there were regularly a number of vacant positions, described as the 'churn factor'. This led to surplus funds being used by the CMC to fund further additional positions.

Eventually those new positions, created with the funding from vacant permanent positions became themselves permanent. The problem came to a head when changes in the State finances resulted in a slow-down in the number of secondments from and to different agencies and the 'churn factor' came to an abrupt end. Suddenly, the CMC found itself with a budget for established positions, and too many staff in permanent positions created outside of the State funding which surpassed the CMC's income.

²⁹⁰ 2011-12 Queensland State Budget – Service Delivery Statements – Department of Justice and Attorney-General, pages 3-203.

²⁹¹ 2012-13 Queensland State Budget – Service Delivery Statements – Crime and Misconduct Commission, page 46.

²⁹² 'Crime and Misconduct Commission Statement – 07.11.2012' <http://www.cmc.qld.gov.au/news-and-media/media-releases/cmc-statement-2014-7.11.2012>.

²⁹³ Email from Mr George Fox, dated 3 April 2013.

The Chairperson of the CMC described this issue to the Committee at a joint meeting on 14 September 2013:

Historically over time, a practice – I understand it to be widespread in the public sector – developed of moving resources around so that, for example, an established job might not be filled and the money spent on another job or jobs elsewhere. For example, a senior officer position might be melted down to create a PO3 and an AO2 or something like that. Over time that process gets complicated so that there is a substantial drift from the formally established positions and it is not easy to reconstruct just how the present state – I am speaking hypothetically here – of jobs related to the actual establishment.

A further factor in the mix is a high turnover rate that applied particularly to the CMC. I think we were up to about 15 per cent turnover rate, and it is hard to recruit to the CMC for a variety of reasons. When there is a turnover rate that high, jobs are left vacant for a period. As a result, the money is not being spent. When you combine these two factors – the drift from establishment together with a high turnover rate – that can result in a paradoxical situation where if you add it up the jobs at any one time could be more than the budget.

What is effectively happening – this happened to the CMC – is that jobs are being funded out of that churn, that high turnover ... to the point that it is possible to rely on the churn to stretch the budget. But the way it looked to management every year was alarm at budget time to see how we could get under budget, thinking about the establishment, but at the end of the year there was an underspend because of the churn factor and because the process of drift was not easy to reconcile back to the establishment.

The CMC – and I cannot take credit for this because it occurred before my time – recognised this problem and last year commenced the process of engaging KPMG in trying to rationalise this, to resolve it, to bring it to heel. With that process one would, in other circumstances, have expected a soft landing. The churn was still a relatively reliable basis for expecting that that would be so.

What has happened is that the music has now stopped very suddenly. People who leave typically did so to go to other Public Service jobs and there are not any. As a result, the churn has crashed. We are left with about 10 per cent over budget which means we must cull about 30 people. The process of austerity has created an external effect so that even though we have not been badly hit at all by the budget directly, the indirect blow is quite substantial.

That puts us in a difficult position so far as advocating for relief is concerned. If we were in this position because we had actively been cut by 10 per cent we could sensibly argue that the cut should be less, but we are not. The only way to resolve this is to ask for an increase of 10 per cent, which is not viable in the present environment.²⁹⁴

On 12 October 2012, the Chairperson of the CMC advised the Legal Affairs and Community Safety Committee during the Estimates Hearing that there was a difference between the established positions at the CMC and the actual staffing numbers. He noted that as at 1 July 2012, 44 staff had left the CMC due to funding shortages.

The Chairperson of the CMC advised the Committee that a reduction in staffing levels will have implications for CMC's performance. In particular timeliness of both crime and misconduct investigations, effectiveness of the crime and misconduct prevention functions, quality and breadth

²⁹⁴ PCMC and CMC Joint Meeting *Record of Proceedings (in camera)*, 14 September 2012, pages 1-2.

of its research and intelligence functions, and adequate resourcing of its surveillance capability would be affected.²⁹⁵

As a result of the concerns of the CMC in relation to the potential impact upon the CMC's ability to perform its functions, on 14 September 2012, the Committee sought a meeting with the Attorney-General. The Committee was unsuccessful in that regard and no meeting occurred.

Committee Finding 20

The CMC's budget for 2011-12 was \$50.55 million which represents 0.107% of the State budget.

The Committee considers that the 2012-13 cut to the CMC's budget, which was about \$500,000 or about 1%, did not result in the job losses attributed to that budget cut (of up to 10% of staff positions). This was confirmed by the Chairperson of the CMC during a joint meeting on 16 November 2012, in response to the Chair's question as to how a 1% budget cut could result in such a high number of job losses at the CMC, the Chairperson of the CMC advised: "...we have tried to make it plain that we have only lost one per cent and that these other figures [job losses] are not directly related to that one per cent."²⁹⁶

Rather, it was the decisions of CMC management (successive groups of management) in using surplus funds resulting from vacant positions ("the Churn factor") to create additional unfunded permanent positions that resulted in a large number of job losses at the CMC in 2012 when the public service climate changed.

The CMC's management must work to ensure its workforce sits within its budgeted funding. Where the CMC considers that additional staffing is required to fulfil its functions, the CMC should proceed to request the additional funding through the established budgeting processes, such as the Cabinet Budget Review Committee process.

6.5 Changes to the PCMC oversight of the CMC

The Committee accepts that the effectiveness of its oversight of the CMC has been questioned and embraces the changes to its own processes and procedures that must inevitably follow this event.

One of the criticisms of this Committee has been the secretive nature of its oversight of the CMC. The Committee reports to the Legislative Assembly each term on its legislated three yearly review of the CMC, intermittently on any issues it considers necessary, provides mandatory reports to the Parliament,²⁹⁷ and provides details of its oversight activities in its annual reports. However, the majority of its meetings and other oversight roles in relation to the CMC are closed to public scrutiny.

²⁹⁵ CMC/PCMC correspondence, 14 September 2012.

²⁹⁶ PCMC and CMC Joint Meeting *Record of Proceedings (in camera)* 16 November 2012, pages 4-5.

²⁹⁷ The Committee must report to the Parliament on a range of matters, including reports on audits undertaken by the Parliamentary Commissioner, under the *Crime and Misconduct Act 2001*, see sections 138 and 146ZQ; and the *Police Powers and Responsibilities Act 2000* see sections 269, 314, 363 and 358; and the *Police Service Administration Act 1990*, section 4.7.

Public hearings

The Committee took on board the Attorney-General's constructive criticism of the Committee's closed proceedings in his speech to introduce the motion for this Inquiry terms of reference.

*... the secretive way in which the CMC and the PCMC operate has to be changed. We have to have reform in regard to this issue so that the public knows and is aware of the issues and the public then will have confidence in the process. The public cannot have confidence in these processes if they do not know what is going on.*²⁹⁸

At its meeting on 8 March 2013, the Committee resolved to look at how it can open its proceedings to the public. The Committee has continued to deliberate on how best to open its proceedings during the course of this inquiry.

It is important to note that some information should not be in the public domain, including current CMC operations and intelligence information which could jeopardise operations. However, the Committee considers that it can, and it should, open some of its oversight functions to the public.

To this end, the Committee will move forward with a presumption that all joint meetings with the CMC and with the Parliamentary Crime and Misconduct Commissioner will be open to the public unless the Committee accepts that there are justifiable reasons provided by the CMC or the Parliamentary Commissioner for part of those proceedings to be closed to the public.

These public hearings will throw light on the Committee's, previously private, vigorous examination of the CMC's performance and its activities for the relevant period, along with a CMC report which will be published on the Committee's website.

Complaints about the CMC

The Committee receives complaints about the conduct of the CMC or of any of its officers. As with complaints made to the CMC, some complaints have merit, whilst others contain allegations without basis.

The process of the Committee is to request a report from the CMC on how it handled the matter complained about. The report from the CMC usually contains a covering report and relevant attachments including:

- correspondence;
- memorandums and file notes;
- any internal reports;
- correspondence and reports from agencies (where the matter has been referred to an agency under the devolution principles set out in section 34 of the CM Act); and
- logs of telephone calls in relation to the matter.

The Committee considers the information provided by the complainant along with the information provided by the CMC. The Committee will then determine, based on the information before it, how to proceed with the matter.

Where it considers that the CMC may have acted inappropriately, or has other concerns, the Committee may refer the matter to the Parliamentary Commissioner to investigate under section 295 of the CM Act.

²⁹⁸ Hon Jarrod Bleijie MP, Queensland Parliament *Record of Proceedings*, 8 March 2013, page 617.

The current Committee has not found that the CMC has acted inappropriately in relation to complaints received by this Committee since May 2012. The Committee has, however, made comments and recommendations in relation to the actions of the CMC on occasions. These comments mainly related to the timeliness of assessment, investigation and resolution of matters dealt with by the CMC or matters which were referred to other agencies.

Whilst the Committee reports on the number of complaints it receives and finalises in its annual reports to the Parliament, the Committee does not report on the findings of those complaints.

The Committee will publish, in its annual reports to the Parliament and on the Committee's website, de-identified registers of its determinations in the finalised complaints, including any comments or recommendations made by the Committee in relation to the actions or conduct of the CMC or its officers.

6.6 Section 329

In addition to the changes to the Committee's oversight outlined above, the Committee considers that changes are required to section 329 of the CM Act to require a broader reporting framework.

Suspected improper conduct by Commission officers – notifying the PCMC

Currently, section 329 of the *Crime and Misconduct Act* places a duty upon the CMC Chairperson to notify the PCMC of improper or suspected improper conduct on the part of a CMC officer. The section provides:

The chairperson must notify the parliamentary committee, in the way, and within the time, required by the committee, of all conduct of a commission officer that the chairperson suspects involves, or may involve, improper conduct.

The section goes on to define improper conduct as meaning: —

- (a) disgraceful or improper conduct in an official capacity, or*
- (b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission, or*
- (c) conduct that would, if the officer were an officer in a unit of public administration, be official misconduct.*

Section 15 defines "official misconduct" as follows:

Official misconduct is conduct that could, if proved, be—

- (a) a criminal offence; or*
- (b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment."*

Whilst section 329 had no counterpart in the previous *Criminal Justice Act*, it did give statutory reinforcement to a pre-existing reporting process that had been put in place between the then CJC and PCJC. There are published protocols governing the investigation of complaints of improper conduct against CMC Officers.²⁹⁹

There is no doubt that the events of destruction of and access to the Fitzgerald Inquiry records should have been notified to the Committee, both pursuant to section 329 and as part of proper practice for an agency such as the CMC to proactively keep an oversight committee with a wide monitor and review role appropriately informed of major issues. One difficulty is that the events

²⁹⁹ See: PCMC Exhibit TD_137.

surrounding the destruction issue were apparently not communicated internally within the CMC to the CMC chairperson until very recently.

The failure of the CMC to notify the Committee of these events raises the question whether section 329 in its present form is adequate.

Comment

One difficulty is that the provision is couched in subjective terms – it places an obligation on the CMC Chairperson to notify conduct only if ‘*the chairperson suspects*’ that conduct involves or may involve improper conduct.

Section 329 assumes that the Chairperson will make an assessment of the conduct. It is only where that assessment leads to particular conclusions, that the obligation then arises upon the Chairperson to report the matter. The report is required where the chairperson “suspects” the conduct of a commission officer “involves or may involve improper conduct”. The definition of “improper conduct” is not exhaustive.

For instance, the definitions in section 329(2)(a) and (b) make it clear that “improper conduct” is “disgraceful or improper conduct” which occurs either in an official capacity or in a private capacity, provided that it “reflects seriously and adversely on the commission”. However, there is no guidance as to what amounts to “disgraceful or improper conduct” in either an official capacity or a private capacity. Neither of those terms is further defined and that assessment is obviously left to the Chairperson.

Section 329(2)(c) includes as “improper conduct” conduct that would be “official misconduct”. In turn, the definition of “official misconduct” in section 15 includes conduct which, if proved was a “criminal offence” or conduct which may “[provide] reasonable ground for terminating the person’s services”. Whether the conduct, if proved, would constitute a criminal offence, is a mixed question of fact and law. However, whether the conduct might constitute a disciplinary breach which might provide reasonable grounds for terminating the person’s services is very much a matter of assessment.

There is an obvious shortcoming with the current section 329 in that the obligation upon the Chairperson is to report “conduct”. Therefore it is, up to a point, up to the Chairperson to make investigations to ascertain whether there is “conduct” which “the Chairperson [then] suspects involves, or may involve, improper conduct”. The Chairperson may then have to conduct an investigation to form any suspicion of improper conduct. It would be more appropriate for the obligation to report to arise once there is an “allegation of conduct”. The Committee can then decide how any investigation ought to proceed.

Committee Finding 21

Section 329 in its current form leaves too much dependent upon the value assessments by the Chairperson. It is only upon the assessment by the Chairperson that an obligation arises to report to the Committee.

This section should be amended so that it places a clear duty on the CMC Chairperson to notify the Committee of improper conduct or conduct that might amount to improper conduct. The definition should also expressly include conduct that amounts to, or might amount to, serious maladministration.

Recommendation 20

The Committee recommends that the present, broad and subjective obligations on the Chairperson or the CEO under section 329 of the *Crime and Misconduct Act 2001* be increased to include:

- a) Any allegations of unauthorised disclosure of information or other material that is confidential;
 - i. Whether the dissemination breaches the CMC Act; or
 - ii. Breaches some other legislation; or
 - iii. Might not breach any legislation;
- b) Any instance of registers not being up to date and complete or required documentation is not on file and correctly noted on the registers;
- c) Any instance of required authorisations for the exercise of power not being properly obtained, regardless of whether acting without authority was inadvertent or deliberate;
- d) Any instance of any policy or procedural guidelines set by the Commission not being strictly complied with, regardless of whether the breach was inadvertent or deliberate;
- e) Any allegation of an inappropriate use of power;
- f) Any significant matters (as defined within the CMC's Corporate Governance Framework [see section 5.5 of this report]).

It is important that the redrafted section 329 is inclusive of all definitions required without reference to external documents such as the CMC's Code of Conduct or the provisions of others Acts.

6.7 The Role of the Parliamentary Commissioner

If a complaint is made to the Committee or a matter is reported pursuant to section 329, a number of options are currently available to the Committee under section 295(2)(a)-(f):

- a) ask the commission to give a report on the matter to the committee;
- b) ask the commission to investigate and give a report on the matter to the committee;
- c) ask the police service or another law enforcement agency to investigate and give a report on the matter to the committee;
- d) ask the parliamentary commissioner to investigate and give a report on the matter to the committee;
- e) refer the matter to the director of public prosecutions;
- f) take other action the committee considers appropriate.

Other actions the Committee may consider appropriate in accordance with section 295(2)(f) include:

- asking the Commission to investigate and give a report on the matter in accordance with section 295(b) and ask the Commissioner to supervise the investigation (there are precedents for this);
- ask the Commission to investigate the matter and have the matter investigated by an independent person engaged for that purpose (pursuant to section 256) (there are precedents for this);

- ask the Commission to investigate the matter and have the matter investigated by an independent person engaged for that purpose (pursuant to section 256) and have the Commissioner supervise the investigation (there are precedents for this);
- the Committee itself could investigate the matter itself; or
- the Committee could investigate the matter, assisted by the Commissioner (as in this instance).

Obviously it is practical and efficient for relatively minor matters to be either reported upon by the Commission or investigated and reported upon by the Commission. It has become practice for more serious issues or issues involving more senior officers to be investigated by the Commission using an independent officer – with or without the Commissioner supervising such investigation. The Committee contemplates that only the most serious matters, such as in this instance - would be investigated by the Committee – with or without the assistance of the Commissioner.

The Committee considers that in some instances it would be appropriate and efficient for the Parliamentary Commissioner (or an Acting Commissioner or Counsel Assisting) to undertake the investigation of suspected improper conduct of CMC officers on the referral of the Committee under section 295(2)(d). This may be particularly appropriate if the matter involves a senior officer and there is concern about the Commission or an agent of the Commission (under section 256) conducting the investigation.

Under the current legislative regime, investigations by the Commissioner with a report to the Committee under section 295(2)(d) have proven to be problematic if disciplinary action against any CMC is contemplated or likely to arise for the following reasons:

- a) A former Committee received advice to the effect that the Parliamentary Commissioner's assistance to the Committee in investigating section 329 notifications is hampered as the Parliamentary Commissioner is unable to make findings that can be used in a disciplinary proceedings, due to the investigation and its report constituting a proceeding of the Committee (and thus a proceeding in Parliament under sections 8 and 9 of the *Parliament of Queensland Act 2001* and, therefore, is unable to be used in other proceedings such as disciplinary proceedings [Also, refer to section 3.3 above].
- b) Even after a matter is referred to the Commissioner for investigation, the Commissioner can only conduct hearings after all other reasonable means of obtaining evidence have exhausted and the Committee with a bipartisan vote approves the hearings (section 318). In a practical sense this means that the Commissioner would have to conduct an investigation and report to the Committee providing a basis for and a recommendation that the Commissioner be authorised to conduct a hearing.

It is stressed that neither the Committee or anyone acting on behalf of the Committee, including the Parliamentary Commissioner can determine a discipline matter involving a CMC officer. Section 254 of the CMA makes it clear that CMC officers are subject to the direction and control of the Chairperson. The CMC's Discipline Policy, which is incorporated into the employment contracts of all CMC officers, makes it clear that the Chairperson has a role in determining (a) whether grounds for disciplinary action are established (and if the Chairperson is of the opinion that grounds are established a "show cause notice" must be issued and an opportunity to be heard in response to a specific charge be afforded) and (b) as to what disciplinary action is warranted and imposed. The Commission must approve any sanction recommended by the Chairperson.

The Committee considers that the CMA should be amended to provide that the Committee may refer a matter for the Parliamentary Commissioner to investigate and the report on a matter pursuant to section 295(2)(d) and the report of the investigation may, despite sections 8 and 9 of the *Parliament of Queensland Act 2001*, be forwarded to the Chairperson of the CMC who may use the

Commissioner's investigation and findings in the report as grounds for disciplinary action and an indication of what disciplinary action is warranted. Furthermore, the current impediments to the Parliamentary Commissioner holding hearings in section 318(1) are unduly restrictive in respect of matters already referred to the Commissioner by the Committee under section 295(2)(d) and should be changed.

It is noted that nothing in these recommendations seeks to derogate from the role of the Chairperson in determining if grounds for disciplinary action are established or what disciplinary action is warranted and imposed, or the Commission's authority to sanction the Chairperson's recommendation.

Recommendation 21

The Committee considers that the *Crime and Misconduct Act 2001* should be amended to provide that the Committee may refer a matter for the Parliamentary Commissioner to investigate and the report on a matter pursuant to section 295(2)(d) and the report of the investigation may, despite sections 8 and 9 of the *Parliament of Queensland Act 2001*, be forwarded to the Chairperson of the CMC who may use the Commissioner's investigation and findings in the report as grounds for disciplinary action and an indication of whether disciplinary action is warranted. Furthermore, the current impediments to the Parliamentary Commissioner holding hearings in section 318(1) are unduly restrictive in respect of matters already referred to the Commissioner by the Committee under section 295(2)(d) and should be changed.

It is noted that nothing in these recommendations seeks to derogate from the role of the Chairperson in determining if grounds for disciplinary action are established or what disciplinary action is warranted and imposed, or the Commission's authority to sanction the Chairperson's recommendation.

6.8 Guidelines on the operation of the CMC

Section 296 of the CM Act provides that the Committee may issue guidelines to the CMC about the conduct and the activities of the CMC. Before issuing a guideline, the Committee must consult on the proposed guideline with the CMC. The Committee can only issue a guideline that has the bipartisan support of the Committee. The CMC must comply with any guideline issued by the Committee.³⁰⁰

The Committee must table the guideline in the Legislative Assembly.³⁰¹ It is then treated similarly to that subordinate legislation and may be disallowed by the Parliament. If the Parliament passes a resolution to disallow the guideline it stops having effect.³⁰²

The Committee understands that no former Committees have issued guidelines under this section.

The Committee has considered whether it is necessary to issue guidelines to the CMC in respect of matters identified during this inquiry. Whilst the Committee has considered the potential benefits of a guideline in relation to the timeliness of CMC investigations, there has been insufficient time during this inquiry for the Committee to fully turn its mind to what specific matters a guideline could address and how such a guideline should be framed.

The Committee will consider this option further and will seek further advice from the Parliamentary Commissioner in this regard.

³⁰⁰ *Crime and Misconduct Act 2001*, section 296.

³⁰¹ *Crime and Misconduct Act 2001*, section 297.

³⁰² *Crime and Misconduct Act 2001*, section 298.

6.9 Use of metadata by Queensland State Archives

As noted earlier, an issue which arose early in the Committee's inquiry related to the use of the metadata associated with the Fitzgerald Inquiry records. The metadata, an electronic description of the Fitzgerald Inquiry documents held at the QSA, was published in its entirety on the QSA website.³⁰³ A copy of the metadata was provided to the Committee from which it was evident that the document itself disclosed sensitive information.³⁰⁴

Concerned at the wider implications, the Committee wrote to the Minister for Science, Information Technology, Innovation and the Arts, Hon. Ian Walker MP, on 12 March 2013, to advise him of the possibility of other agencies having open, publicly accessible metadata for closed records held by the QSA.

The Committee heard from Ms Legg, who was tasked with negotiating the transfer of the Fitzgerald Inquiry records to QSA,³⁰⁵ that although she was probably aware that the metadata would be uploaded into the QSA search engines, she assumed that if the document which was the subject of the metadata could not be accessed, then the relevant metadata would also be closed.³⁰⁶

As noted above, other CMC staff were also surprised, when confronted with the metadata, that it was publicly available.³⁰⁷

When questioned about the advice provided to agencies on the metadata, the State Archivist stated that whilst it is 'standard process' for the QSA to discuss the issue of metadata with agencies at the time transfers are negotiated, she could not recall any formalised advice to the CMC during the transfer from the CMC to the QSA, and referred to informal discussions in this regard.³⁰⁸

The State Archivist was unable to confirm whether there is clear information to agencies in the documentation used by the QSA during transfer of agency records to the QSA. Whilst the Archivist considers that the information on how to box items, and how to list items for the metadata, she undertook to seek advice from a non-librarian to seek clarification on whether that information is clear. The State Archivist noted that she has not had a complaint on this issue from any other agency.³⁰⁹

The State Archivist advised the Committee that she will review a number of policies and procedures in light of this matter:

I would suggest that the RAP notice—that consideration that we change the forms and procedures that we have provided—absolutely explicitly what metadata is, how your collection will look on the catalogue, that the metadata may be able to be masked on the RAP notice form to remove all doubt, to take people through it—to actually go away and review every document that is associated with the transfer and RAP process and make it much more explicit on every form and actually, I guess, take a step agency through that with more care. We do—the metadata does come from the agency. They are told that that is the record that we will be using on the catalogue. We have sort of—it has not been a problem with other agencies. So it has been an issue here. I understand that and I

³⁰³ PCMC, *Record of Proceedings*, 7 March 2013, page 13 (Ms Hawkins).

³⁰⁴ PCMC Exhibit TD_25.

³⁰⁵ PCMC, *Record of Proceedings*, 18 March 2013, pages 5-6 (Mr Rigby); PCMC, *Record of Proceedings*, 21 March 2013, page 41 (Ms Legg).

³⁰⁶ PCMC, *Record of Proceedings*, 21 March 2013, pages 49 and 55-56 (Ms Legg).

³⁰⁷ PCMC, *Record of Proceedings*, 19 March 2013, page 37 (Ms Wood); PCMC, *Record of Proceedings*, 20 March 2013, page 85 (Mr Hutchings); PCMC, *Record of Proceedings*, 14 March 2013, page 42 (Mr Duell); PCMC, *Record of Proceedings*, 15 March 2013, page 23 (Mr Martin).

³⁰⁸ PCMC, *Record of Proceedings*, 22 March 2013, pages 30-31 (Ms Prowse).

³⁰⁹ PCMC, *Record of Proceedings*, 22 March 2013, page 33 (Ms Prowse).

*understand the committee's concern. So having said that, we will take on board the need to review all the forms and procedures—written procedures—that can guide any future transfer.*³¹⁰

In relation to other QSA holdings of CMC records, QSA gave evidence that the metadata for those records were closed and always had been.³¹¹ This suggests that the CMC has previously acted to mask the metadata of its records held by the QSA.

Committee Finding 22

The Committee accepts the evidence given by QSA that the QSA has received no complaints from other agencies. The Committee considers that if an agency is unaware that the metadata for its records is publicly available it cannot complain until it is informed.

The Committee considers that the QSA should clearly notify existing and future clients of the use and publication of metadata, and ensure that its policies and procedures are sufficiently clear in this regard. The Committee acknowledges that the State Archivist has already contacted agencies which have closed records but open metadata at the QSA to confirm they understand the metadata is open to the public. The State Archivist also advised that the QSA is reviewing its publications on the transfer of records to the QSA.

Recommendation 22

That the State Archivist review all policies and procedures relating to the transfer of agency records to the QSA to ensure they are clear.

Recommendation 23

That the QSA write to all agencies which has transferred closed records to the QSA where those closed records have publicly accessible metadata to advise those agencies of the public status of the metadata and to seek direction as to whether the metadata should be publicly accessible or not.

Recommendation 24

That the Minister for Science, Information Technology, Innovation and the Arts, report to the Parliament on any other instances where public access to detailed metadata was incorrectly provided by the QSA and the agency involved was unaware.

³¹⁰ PCMC, *Record of Proceedings*, 22 March 2013, page 31 (Ms Prowse).

³¹¹ PCMC, *Record of Proceedings*, 22 March 2013, page 36 (Ms Prowse).

7. The Evidence of Witnesses

The Committee heard from the witnesses listed in **Appendix 4** and received the exhibits listed in **Appendix 5**. As noted earlier in this report, publicly released tabled documents from this inquiry are available on the Committee's website at: www.parliament.qld.gov.au/pcmc. A chronology is at **Appendix 7**.

Summaries of the evidence of the various witnesses appear below.

7.1 Ross Martin SC

Mr Martin took his position as Chairperson of the CMC on 5 March 2012.³¹² Therefore, the process of transferring the Fitzgerald Inquiry holdings to the QSA, the setting of the RAPs, and the changing of the RAPs in February 2012 were all before Mr Martin's appointment. He became aware of the change of the RAPs in May 2012.³¹³

His recollection is that he became aware of the issues probably around 26 May, but by 29 May, he had received the email from Mr Hutchings, which includes the email from Ms Wood and the email from Mr Krosch of 24 May 2012.³¹⁴ (The Committee suspects he may have only received an email on 29 May 2012).

It seems that per Mr Martin's perspective the issue was largely dealt with by a conversation between he and Mr Duell. Mr Duell, to Mr Martin's memory, explained that there was a mistake in the numbering of files. He took the view that it was a modest clerical issue involving a small number of documents.³¹⁵ The basis of that belief is not terribly clear.

The Committee believes that it would have been prudent for Mr Martin to require Mr Duell to prepare a full report on the matter which could then be investigated properly. Mr Martin did, in fact, direct Ms Wood to look into the issue and *"just make sure that everything was as it should be so far as she could."*³¹⁶ It was left on the basis that he expected either Mr Duell or Ms Wood to get back to him if there was a problem.³¹⁷ The Committee believe it would have been appropriate for Mr Martin to require Ms Wood to produce a report as to her investigations. However that direction was not given and there was, in the Committee's opinion, no proper finalisation of the matter.

Mr Martin said that he was not told about the September 2012 incident and knew nothing more about the matter until March 2013.³¹⁸

Mr Martin was asked whether he thought that the matter ought to have been referred under section 329 of the CM Act to the Committee. The Committee believes that the improper disclosure of Fitzgerald Inquiry documents was more significant than some of the other matters that had been reported to the Committee by Mr Martin.³¹⁹

³¹² PCMC, *Record of Proceedings*, 15 March 2013, page 8.

³¹³ PCMC, *Record of Proceedings*, 15 March 2013, page 8.

³¹⁴ PCMC, *Record of Proceedings*, 15 March 2013, page 13; PCMC Exhibit TD_31.

³¹⁵ PCMC, *Record of Proceedings*, 15 March 2013, pages 11-13; PCMC, *Record of Proceedings*, 15 March 2013, pages 22-23.

³¹⁶ PCMC, *Record of Proceedings*, 15 March 2013, page 15.

³¹⁷ PCMC, *Record of Proceedings*, 15 March 2013, page 15.

³¹⁸ PCMC, *Record of Proceedings*, 15 March 2013, page 30.

³¹⁹ PCMC, *Record of Proceedings*, 15 March 2013, page 29; PCMC Exhibit TD_37.

There was some follow-up by Mr Martin and this is evidenced by a file note of Ms Wood on 13 July 2012.³²⁰ This file note evidences a conversation which occurred on the same day as a joint meeting between Mr Martin and the Committee.³²¹ The Committee believes it likely that Mr Martin called the meeting with Ms Wood.

The Committee believes that Mr Martin was genuinely responsive to the questions and evidence in an attempt to assist the Committee in its deliberations. However, the lack of a formal investigation and response when the problem surfaced in May 2012 in the Committee's opinion clearly evidence a lack of judgment.

The Committee notes that, as the Chairperson of the CMC, Mr Martin accepted responsibility for the inappropriate release of the Fitzgerald Inquiry material.³²²

7.2 Janet Prowse

Ms Prowse is the State Archivist. On 17 October 2006, she approved the Retention and Disposal Schedule relating to the CMC records including Fitzgerald Inquiry holdings.³²³ Between 2007 and 2009, the CMC sorted the Fitzgerald Inquiry holdings into "Series", which were called things such as "Documentation", "correspondence" etc.³²⁴

The QSA received the first transfer of Fitzgerald Inquiry items from the CMC on 1 August 2007.³²⁵ Subsequent transfers were received on 2 December 2007, 3 March 2008 and 12 March 2009.³²⁶ Between the period 2007 until 2009, the QSA undertook an inventory of the Fitzgerald Inquiry holdings documents, but it did not discover that there were missing Fitzgerald Inquiry documents.³²⁷

Between the period 1 August 2007 until 3 September 2010, all Fitzgerald Inquiry holdings at the QSA were closed to the public because no RAP was applied.³²⁸ But once Ms Legg applied the RAP of 65 years on 3 September 2010, the metadata became searchable by the public.³²⁹ The metadata was sent to the CMC by the QSA.³³⁰ Ms Prowse says that agencies are ordinarily advised that the metadata will be made available to the public to search.³³¹

In February 2012, the RAPs were changed to 20 years.³³²

On 26 March 2012, Ms Prowse sent Mr Martin a letter outlining key information management and record keeping responsibilities.³³³ On 26 February 2013, Hedley Thomas asked QSA for a record and when the archivist staffer checked, the document was not there. In its place there was a slip of yellow paper with a reference number. Ms Prowse contacted the CMC. The CMC at first said (via

³²⁰ PCMC, *Record of Proceedings*, 15 March 2013, page 33; PCMC Exhibit TD_44.

³²¹ PCMC, *Record of Proceedings*, 15 March 2013, page 37.

³²² PCMC, *Record of Proceedings*, 15 March 2013, page 38.

³²³ PCMC Exhibit TD_106, page 78.

³²⁴ PCMC, *Record of Proceedings*, 7 March 2013, pages 5, 12, 13.

³²⁵ PCMC, *Record of Proceedings*, 7 March 2013, page 2.

³²⁶ PCMC, *Record of Proceedings*, 7 March 2013, page 2.

³²⁷ PCMC, *Record of Proceedings*, 7 March 2013, page 3.

³²⁸ PCMC, *Record of Proceedings*, 7 March 2013, page 2.

³²⁹ PCMC, *Record of Proceedings*, 7 March 2013, pages 3-4.

³³⁰ PCMC, *Record of Proceedings*, 7 March 2013, page 8.

³³¹ PCMC, *Record of Proceedings*, 7 March 2013, pages 3-4; PCMC, *Record of Proceedings*, 22 March 2013, page 30.

³³² PCMC, *Record of Proceedings*, 7 March 2013, page 6; PCMC Exhibit TD_106.

³³³ PCMC Exhibit TD_106.

Mr Duell) that it had transferred the record, then ultimately conceded that it had not. This was a couple of days later.³³⁴

Ms Prowse is reviewing their transfer and RAP forms to expressly state that metadata will be available, how it will look in the catalogue, and that it can be masked.³³⁵

The Fitzgerald Inquiry metadata is now closed. That has been confirmed in writing between the QSA and the CMC in correspondence 19 to 21 March 2013.³³⁶

7.3 Maureen Sullivan

Ms Sullivan is the Manager of Collections and Preservation at the QSA. She said that when agencies transfer items, they also provide an electronic transfer list which is uploaded into the QSA system by QSA. This is the metadata that members of the public can search on the QSA catalogue.³³⁷

Ms Sullivan said that there was a different process in archives for receiving holdings in 2007 – 2008 than now. She is not sure of the process that then applied for the taking of inventory of incoming items.³³⁸

7.4 Warren Strange

Mr Strange appeared before the Committee on 7 March, 21 March and 28 March 2013. His appearance on 7 March 2013 was with Mr Martin and he was present when Mr Martin gave an initial explanation to the Committee. He gave evidence in full on 21 March 2013.

In preparation for his evidence, he prepared and signed a statement. He swore the contents of that statement to be true and it was tabled.³³⁹

There are three particularly significant events involving Mr Strange.

The first was his discussion with Mr Hutchings sometime before 23 December 2011 about the Fitzgerald Inquiry holdings. There were no notes kept of that meeting,³⁴⁰ but it seems that both Mr Hutchings and Mr Strange considered that the only documents which were being considered were the documents which had already been made public and those documents which were made the subject of NPO's by the Fitzgerald Inquiry. Mr Strange knew that there might have been other documents but he did not believe that they were being considered.³⁴¹

The second significant event was the receipt of Mr Hutchings's email of 23 December 2011.³⁴² That email clearly enough only dealt with two categories of documents, namely those that were already the subject of publication and those marked confidential. Again, that is what Mr Strange said he thought he was dealing with. He did not understand that the dissemination of other records was contemplated.³⁴³ In relation to this matter, the following exchange occurred during his evidence.³⁴⁴

Mr Davis: *so this email seems to be about, firstly, the public documents, and, essentially, "Well, why can't they be released?" That is the first issue?*

³³⁴ PCMC, *Record of Proceedings*, 7 March 2013, pages 4-5.

³³⁵ PCMC, *Record of Proceedings*, 22 March 2013, page 31.

³³⁶ PCMC Exhibit TD_119.

³³⁷ PCMC, *Record of Proceedings*, 7 March 2013, page 5; PCMC Exhibit TD_2, page 5.

³³⁸ PCMC, *Record of Proceedings*, 7 March 2013, page 5; PCMC Exhibit TD_2, page 5.

³³⁹ PCMC Exhibit TD_105.

³⁴⁰ PCMC, *Record of Proceedings*, 21 March 2013, page 17.

³⁴¹ PCMC, *Record of Proceedings*, 21 March 2013, pages 18-19.

³⁴² PCMC Exhibit TD_18.

³⁴³ PCMC, *Record of Proceedings*, 21 March 2013, page 20.

³⁴⁴ PCMC, *Record of Proceedings*, 21 March 2013, page 20.

Mr Strange: yes.

Mr Davis: And the second thing that this email seems to be about is if there is a non-publication order in relation to some documents, is there something that ought to be done about that?

Mr Strange: yes and non-publication order relating to exhibits.

Mr Davis: Was it ever raised with you around about this time, December/January 2011/2012 that there was to be a declassification of what I have put to you as the third category of documents?

Mr Strange: No. There was never any discussion around investigative records, all of that material that would have been in the holdings, no. There was never any discussion about that.

It seems that he didn't see Ms Sweeper's memorandum of 7 September 2011³⁴⁵ or any further advice by Mr Hutchings as is contemplated by PCMC Exhibit TD18, that is the email of 23 December 2011.³⁴⁶ Mr Hutchings gave evidence that he did not provide the further advice he alluded to in that 23 December 2011 email.

Thirdly, he had a conversation with Mr Duell on 31 January 2012. He has a diary entry which evidences the fact that a meeting with Mr Duell occurred, but there are no notes recording the conversation at the meeting. At that meeting, Mr Strange authorised the actioning of the steps contemplated by Mr Hutchings through email of 23 December 2011.³⁴⁷ But again, he understood the request to only concern the two categories of documents dealt with in the email and nothing beyond that.

According to Mr Strange, he was never told that anyone was considering allowing access to investigative documents.³⁴⁸

There is no reason to doubt the credibility or reliability of Mr Strange's evidence. Further, it seems that he has clearly been influenced by his discussions with Mr Hutchings and the email of 23 December 2011.³⁴⁹ It is clear enough that Mr Strange did not consider that he was dealing with the third category of documents. The only criticism that can be made of Mr Strange is that he failed to have Mr Duell make a formal submission regarding the change of RAP.

7.5 The Honourable Jarrod Bleijie, Attorney-General and Minister for Justice

The Attorney-General appeared before the Committee *in camera* on 7 March 2013. This evidence was subsequently released by the Committee. The Attorney-General obviously was not involved in the events which are the subject of the Committee's considerations. The Minister appeared voluntarily upon request of the Committee to inform the Committee of the Government's proposed action to limit damage caused by the dissemination of the documents. That response ultimately was the passing of the *Crime and Misconduct Act (Administrative Negligence Rectification) Amendment Act 2013*.

³⁴⁵ PCMC Exhibit TD_7; PCMC Exhibit TD_7A.

³⁴⁶ PCMC, *Record of Proceedings*, 21 March 2013, page 22.

³⁴⁷ PCMC Exhibit TD_18.

³⁴⁸ PCMC, *Record of Proceedings*, 21 March 2013, page 24.

³⁴⁹ PCMC Exhibit TD_18.

7.6 Sidonie Wood

Ms Wood is the Official Solicitor at the CMC. Ms Wood has substantial experience as a solicitor at the CMC, and previously in private practice.

Subsequent to the email of Mr Krosch 24 May 2012 being received, Ms Wood was told by Mr Martin to make sure or check that the 20 year RAP had been removed and replaced with the 65 years.³⁵⁰ She said that Mr Martin had come into her office and said *"Let's fix – make sure it's fixed."*³⁵¹

When she spoke with Mr Duell in consequence of that request, she looked at a letter of 29 May 2012 which he had sent to the QSA which purportedly rectified the problem.³⁵² She did nothing to independently check that the numbers set out in that request for change in fact covered off all the surveillance documentation, apart from asking Mr Duell to show her the documents on the spreadsheet. What he showed her did not reveal the Series number and did not assist her in correlating that referred to in the letter and the surveillance records.³⁵³

When asked if she undertook any audit of looking at the change of access documentation which reduced the RAP to 20 years and crosscheck it with the series numbers in the change of request form attached to the series numbers in the letter of 29 May 2012, she said that she hadn't because she did not interpret that as her task: *"My task was to ensure that it had been changed from 20 to 65. The physical audit itself I relied on Mr Duell to do, seeing that's his expertise."* She would have thought someone would have done the match up.³⁵⁴ Assumptions made by Ms Wood in this regard were purely that: no enquiry was made by her as to whether, in fact, a physical audit or match up was done.

Ms Wood asserted a narrow perception of what Mr Martin tasked her to do was relied upon by her repeatedly when failures to take enquiries or steps to ensure the problem was fixed was put to her. She said that *"My understanding of my task was to ensure it was fixed. Insofar as that I looked at the notice letter"*³⁵⁵ *and assured myself that that information had been actually performed on that day."*³⁵⁶ Even if she genuinely believed that she had complied with what she was told to do, her process of reasoning in coming to that belief was illogical.

Ms Wood said that she assumed that the series that Mr Duell was referring to would have been checked and that that related to the public exhibits. Mr Duell told her that the "Documentation" series was material that was publicly available. She was prepared to rely on his assurances and explanation without qualification even though he was the person responsible for the declassification which led to the problem. Her reason for this preparedness to accept Mr Duell's word, she said, was that she had no reason to doubt that he was competent and diligent and that he had a good grasp of the area: *"it was the CMC's baby. I assumed he knew everything about it."*³⁵⁷ And, *"he had seemed to have a full understanding of what the mistake was. He seemed to be completely familiar with the topic."*³⁵⁸ This was her view, even though when she made the simple request of establishing the series of documents, he did not provide her with that: instead he produced a series of complex spread-sheets which led her to seek further clarification.³⁵⁹ Such clarification was, however, never

³⁵⁰ PCMC, *Record of Proceedings*, 20 March 2013, page 1

³⁵¹ PCMC, *Record of Proceedings*, 20 March 2013, page 5.

³⁵² PCMC, *Record of Proceedings*, 20 March 2013, page 1; PCMC Exhibit TD_86.

³⁵³ PCMC, *Record of Proceedings*, 20 March 2013, page 2.

³⁵⁴ PCMC, *Record of Proceedings*, 20 March 2013, page 2.

³⁵⁵ PCMC Exhibit TD_86.

³⁵⁶ PCMC, *Record of Proceedings*, 20 March 2013, page 3.

³⁵⁷ PCMC, *Record of Proceedings*, 20 March 2013, page 3.

³⁵⁸ PCMC, *Record of Proceedings*, 20 March 2013, page 4.

³⁵⁹ PCMC, *Record of Proceedings*, 20 March 2013, page 4.

achieved. Even after her meeting with Mr Duell on 26 July 2012, during which she sought written evidence showing that the documents had returned to 65 years, what she received were four large spread-sheets which caused her frustration and confusion.³⁶⁰ They did not provide an answer, yet nothing further was done by her to get the clarity she needed in order to have carried out the task of ensuring that the RAP issue was fixed.

What Ms Wood sought by way of clarification was unduly restrictive given the task she had been given. All that she sought by way of clarification was that which showed that the 65 years was documented on the CMC files so that there wasn't any confusion on the occasional request from journalists for information, rather than any further proof that all that had to be changed externally (that is, through the QSA) had done. In terms of the internal clarification she sought, she was looking for number 65 next to the document. But again, she never received this in a meaningful sense.³⁶¹

Ms Wood's assertion that she was prepared to accept the word of Mr Duell, does not sit at all with her view that it was also obvious to her that at some stage this may be a section 329 issue. Somewhat striking is her assumption that Mr Martin and Mr Hutchings would have turned their mind to it, even though she never raised it with either of them or vice versa. To her, it seemed obvious that they would have turned their mind to it. She said that the change to a 20 year RAP seemed like a "gross mistake."³⁶² When queried as to why she was still prepared to accept Mr Duell's assurances of rectification in May 2012, she answered "*I accepted his assurances and relied on his expertise*" and he explained that he didn't get it wrong: his people in a team "*that were tasked with writing on a form those series numbers and they got that connection incorrect, which was those series numbers should not have been put on that form.*"³⁶³ But yet she knew that he had signed off on the form and the responsibility lay with him.³⁶⁴ When queried why, "*where it was obvious to you that a breach of the Act was triggered by a senior officer within the CMC, why was it that you were prepared to accept his assurances when you had been told by Mr Martin, the Chairperson, to make sure it went back to 20 years.*" Again, her answer was that he told her it had been fixed and he appeared to have a very competent knowledge of the area.³⁶⁵

Ms Wood accepted there was nothing which prevented her from taking other steps.³⁶⁶ Yet she took none. And, nothing at all happened in the ensuing two months. Then, when she and Mr Duell did meet on 26 July 2012, the reality is that she did nothing meaningful to satisfy herself that the problem was rectified. In respect of this meeting, she said that "*I'd been assured on 29 May the RAP had changed, the dissemination was lawful and I was satisfied 99 per cent then. My role here was to ensure, from reading my notes, that the dissemination early 2007 - ie the project - was lawful and I was going to get that list of documents. I thought, I think, that was the whole purpose of the meeting.*"³⁶⁷ In regard to the dissemination issue, she wanted to see delegation or the authority in the first place. She says that she saw a memorandum to that effect,³⁶⁸ thus inferring that she sufficient for that purpose.

At that meeting, Mr Duell told her "series" was different categories of exhibits.³⁶⁹ She asked him how he knew that the Mr Krosch surveillance material was definitely not in archives. He said that "*You pop on the website*". That day, Mr Duell sent her the link to the website. Ms Wood said she did go

³⁶⁰ PCMC, *Record of Proceedings*, 20 March 2013, page 17.

³⁶¹ PCMC, *Record of Proceedings*, 20 March 2013, page 4.

³⁶² PCMC, *Record of Proceedings*, 20 March 2013, page 6.

³⁶³ PCMC, *Record of Proceedings*, 20 March 2013, page 6.

³⁶⁴ PCMC, *Record of Proceedings*, 20 March 2013, page 7.

³⁶⁵ PCMC, *Record of Proceedings*, 20 March 2013, page 7.

³⁶⁶ PCMC, *Record of Proceedings*, 20 March 2013, page 8.

³⁶⁷ PCMC, *Record of Proceedings*, 20 March 2013, page 5.

³⁶⁸ PCMC, *Record of Proceedings*, 20 March 2013, page 12.

³⁶⁹ PCMC, *Record of Proceedings*, 20 March 2013, page 8.

onto the website link, but cannot remember whether she did nor not.³⁷⁰ Her look must have been entirely cursory, for we know from the evidence of Ms Prowse, that just a few clicks would have taken her to the item by item metadata which would have shown her precisely the sensitive nature of what was publicly available. Ms Wood's lack of industry in this respect is very disappointing.

Mr Duell also sent her four large spread-sheets. She said that she perused them, but was unable to give evidence as to how that perusal could have satisfied herself that the problem had been fixed. Rather, she says that she saw the number 65 appearing in a column repetitively and assumed that what that meant was that the CMC records were reflecting that. That is the extent of the cross-check she took.³⁷¹ She accepts that it would have been impossible from her perusal to satisfy herself that everything disseminated was up to 65 years and that she again relied upon the word of the individual who had made the mistake in the first place.³⁷²

Ms Wood also said that she made no enquiry of Mr Krosch as to what was available, but accepts that in retrospect that would have been a good idea. Certainly Mr Duell was regarded by her as reputable.³⁷³

Ms Wood acted throughout on the assumption that sensitive documents would not have been disseminated or in the public domain in any way. That assumption was made because Mr Duell "*didn't tell me they were. He would know.*"³⁷⁴

She was not prepared to accept that not checking what documents fell within series 18651 was a very grave error of judgment. Her answer to this proposition, was, once again, narrowness of the task assigned to her by Mr Martin. She said "*I wasn't tasked to physically audit or check what was in the files. My task was to ensure the RAP had gone back to 65 years. Those physical audits I assumed had been done previously and they knew what was in each of the series. I made an inquiry about the nature of those documents to check that it was public and I got that confirmation or assurance from Mr Duell.*"³⁷⁵

She did not accept that her perception of the narrowness of her brief from Mr Martin led to any of the problems.³⁷⁶ She gleaned from Mr Martin he wanted the problem sorted and she accepted that in retrospect it was not. She accepted that in retrospect that perhaps there could have been things she may have been able to do but "*I cannot think of them I possibly could have popped in that series number, for example, looked at – checked what he was giving permission for I guess, yes.*"³⁷⁷ That, however, seems to be the extent of reflection Ms Wood has given to what lead to the problem and what she could have done better.

Records issues with respect to Ms Wood

Informal file

Ms Wood said that she kept an informal file in her office with respect to the matter.³⁷⁸ Such an informal file would ordinarily make its way to a file called "*information management cases*", however it remained with her until the events of March 2013.³⁷⁹ To her mind, the issue with respect to the

³⁷⁰ PCMC, *Record of Proceedings*, 20 March 2013, pages 19-20.

³⁷¹ PCMC, *Record of Proceedings*, 20 March 2013, page 13.

³⁷² PCMC, *Record of Proceedings*, 20 March 2013, page 18.

³⁷³ PCMC, *Record of Proceedings*, 20 March 2013, page 15.

³⁷⁴ PCMC, *Record of Proceedings*, 20 March 2013, page 16.

³⁷⁵ PCMC, *Record of Proceedings*, 20 March 2013, page 19.

³⁷⁶ PCMC, *Record of Proceedings*, 20 March 2013, page 19.

³⁷⁷ PCMC, *Record of Proceedings*, 20 March 2013, page 19.

³⁷⁸ PCMC, *Record of Proceedings*, 20 March 2013, page 5.

³⁷⁹ PCMC, *Record of Proceedings*, 20 March 2013, page 5.

change of RAPs and the dissemination was closed shortly after 26 July 2012 and she thinks she had a conversation with General Counsel along those lines.³⁸⁰ It didn't go to the information management file because she "wasn't sure where it was going to go. Someone could have done a 329 referral, someone could have said there's going to be an internal investigation about this. They weren't decisions for me. I was just performing a particular task to make sure the crisis of May was fixed and then a whole lot of things could have been happening behind the scenes, I don't know. In other words, he could have been subject to an investigation for all I know. I wouldn't know."³⁸¹

Destruction of original file notes (Ms Wood)

On the first day Ms Wood gave evidence, she volunteered, through her solicitor to Counsel Assisting, that she had destroyed original file notes with respect to 13 July and 29 May 2012. She gave evidence that the purpose of this was to make the file comprehensible, her handwriting being illegible. She repeated this reason on 20 March 2013.³⁸² She could provide no further explanation, despite knowing, as a solicitor with extensive experience in criminal law, including having herself witnessed aggressive cross-examination of persons who had destroyed originals, that doing so would raise suspicion.

Of significant concern, the notes were destroyed after she was on notice that the CMC were conducting an internal review. It seems that the destruction occurred, though, prior to her becoming aware that the PCMC was to have an Inquiry.³⁸³

29 May 2012 typewritten file note (Ms Wood)

On the first day Ms Wood gave evidence, she volunteered, through her solicitor to Counsel Assisting, that the typewritten 29 May 2012 file note was not typed contemporaneous with events. On its face, the file note was a misrepresentation of a contemporaneous file note; when it, in fact, was typed after she became aware of the internal review. It was, therefore, an ex post facto reconstruction of events, taken from her handwritten notes of that day, and without notation on it that although the events occurred on 29 May 2012, the note was prepared in March 2013.

The Committee did not find Ms Wood to be a credible or a reliable witness.

7.7 Barry Donald Krosch

Mr Krosch is a former police officer who was in charge of the Fitzgerald Inquiry surveillance unit. After closure of the Fitzgerald Inquiry, he then worked for the CJC. He is now a postgraduate research scholar researching the history of the Queensland Police Special Branch.³⁸⁴ Before February 2012, he had identified Fitzgerald Inquiry documents in which he was interested by reference to the metadata.³⁸⁵

Mr Krosch then sought permission from the DPP to access that information.³⁸⁶ In February 2012, he realised that a good number of Fitzgerald Inquiry documents were then available to the public.³⁸⁷

³⁸⁰ PCMC, *Record of Proceedings*, 20 March 2013, page 6.

³⁸¹ PCMC, *Record of Proceedings*, 20 March 2013, page 6.

³⁸² PCMC, *Record of Proceedings*, 20 March 2013, page 22.

³⁸³ PCMC, *Record of Proceedings*, 20 March 2013, page 22.

³⁸⁴ PCMC, *Record of Proceedings*, 13 March 2013, page 2; Due to transitional arrangements, the Director of Public Prosecutions became the possessor of some Fitzgerald Inquiry documents.

³⁸⁵ PCMC, *Record of Proceedings*, 13 March 2013, pages 3-4.

³⁸⁶ PCMC, *Record of Proceedings*, 13 March 2013, page 4.

³⁸⁷ PCMC, *Record of Proceedings*, 13 March 2013, page 3.

Some of those documents were surveillance logs. Realising the sensitivity of the documents, he queried QSA as to whether he was, in fact, supposed to have access. He was assured he was.³⁸⁸

He advised the CMC (Sidonie Wood) regarding his surprise that Fitzgerald Inquiry documents, including covert surveillance logs, were publicly accessible.³⁸⁹ That led to Mr Duell reclassifying some of the documents. However, many remained with the 20 year RAP and on 18 July 2012, when attending QSA for further research, he received access to bundles of hundreds of documents under one item number, which he thought ought to be confidential.³⁹⁰

7.8 Peter Duell

Mr Duell is the central figure in the incorrect classification of the Fitzgerald Inquiry material. He was the officer who made the decision in February 2012 to reduce the RAPs from 65 years to 20 years. He was the officer who, when the sensitivity of the documents was discovered in May 2012, took ineffective steps to remedy the error made in February 2012. He was the officer who took further ineffective steps in September 2012 to remedy the situation. He was the officer who, in March 2013, finally closed down public access to the documents.

Mr Duell gave evidence before the Committee on two occasions, namely 14 March and 22 March 2013. He was, perhaps understandably, incredibly nervous. The Committee environment was obviously one that was foreign to him. He knew, no doubt, when he appeared before the Committee as a witness, that the primary fault for the public access to the documents lay with him.

On the first occasion he gave evidence, he had, we submit, a tendency to attempt to shift the blame on to others. He said, for instance, that he made enquiries of Mr Kenzler, Ms Legg, Ms Klynsmith and others to attempt to ascertain the categorisation of the Fitzgerald Inquiry holdings before he changed the RAPs to twenty years.³⁹¹ That seems unlikely. For example, Ms Klynsmith is a property officer. Her role was very much a mechanical and clerical one of boxing the documents and attending to their transportation to QSA. It is unlikely that she was in a position to give Mr Duell any real assistance with his determination as to what should have been the focus of the decision with respect to the RAP, that is, the sensitivity, and thus contents, of the documents. Each of Mr Kenzler, Ms Legg and Ms Klynsmith gave evidence denying that they had given Mr Duell information as to the sensitivity or otherwise of the documents.

It is obvious that Mr Kenzler was well aware of the fact that the third category of documents existed (those which had not been tendered at the Fitzgerald Inquiry which had been marked not for publication). Had he been asked about the appropriateness of disclosing all Fitzgerald Inquiry documents other than those marked not for publication, Mr Kenzler would have advised against access being made available. Frankly, had Mr Duell made proper enquiries of Mr Kenzler in February 2012, the inappropriate reduction in the RAP would have been avoided.

Mr Duell also said on the first occasion that he gave evidence, that he reported the incident of September 2012 to Ms Mendelle.³⁹² Ms Mendelle denied this.

³⁸⁸ PCMC, *Record of Proceedings*, 13 March 2013, page 3.

³⁸⁹ PCMC, *Record of Proceedings*, 13 March 2013, pages 6-7; PCMC Exhibit TD_83.

³⁹⁰ PCMC, *Record of Proceedings*, 13 March 2013, pages 6-9.

³⁹¹ PCMC, *Record of Proceedings*, 14 March 2013, pages 9-10.

³⁹² PCMC, *Record of Proceedings*, 14 March 2013, page 46.

In fairness to Mr Duell, the evidence he gave on the second occasion that he gave evidence was far more convincing. It is clear that Mr Duell proceeded on assumption, rather than making real enquiries into the contents of the documents he reclassified. His evidence on the second occasion is that:

*Russell said that if there was a non-publication order placed on any of the material there was a good reason for it and it should stay in place, and I won't put words in his mouth but my interpretation of it was that the rest of the documents were public documents.*³⁹³

He also accepted that he probably did not report the matter to Ms Mendelle in September.³⁹⁴

Two particular issues arose which had the potential to cast serious doubt upon Mr Duell's reliability as a witness.

The first of these concerns the two documents which together form tabled document 26. Those two documents are chronologies prepared by Mr Duell. These were prepared in order to brief Mr Martin on the various changes made to the RAPs. In the first chronology, there is an entry of 19 September 2012 as follows:

Director Information Management changes the RAP of specified items in Series 18651 to 100 years in response to confidential surveillance documents being identified by an ex-CJC staff member. QSA implement the change immediately.

In the second chronology, there is an entry of 29 May 2012 – 8 June 2012 as follows:

Director Information Management changes the RAP of Series 18651 to 20 years, effectively making the Series available to the public with the exception of those exceptions previously noted as having a 100 year RAP.

and an entry of 19 September 2012 as follows:

Director Information Management changes the RAP of specified "Confidential" items in Series 18651 to 100 years in response to sensitive documents being identified by an Archivist at QSA. QSA implement the change immediately.

The first chronology is wrong. It suggested that the incident where an ex-CJC staff member (Mr Krosch) identified sensitive documents occurred in September. In fact, that occurred in May. There is no mention in the first chronology of any incident in May 2012.

It was suggested to Mr Duell that he prepared the first chronology in the way he did so as to cover the fact that he had made an error in May by not properly reclassifying the documents. He denied this and said that the first chronology had been prepared in haste and any error was accidental.³⁹⁵

The Committee believes that Mr Duell should be given the benefit of the doubt in respect of this issue. The first chronology was in fact, obviously, prepared in haste. He surely knew that the May error would be discovered, so the preparation of a deliberately misleading chronology was unlikely to achieve any benefit to Mr Duell. This issue is a collateral one, and is one which the Committee does not need to resolve.

The second issue is that there was a suggestion that Mr Duell had destroyed documents. This, of course, is a very serious suggestion. Ms Sweeper gave evidence that she saw file number AD-11-0157,³⁹⁶ in Mr Duell's office on 12 March 2013. At that stage, she noticed an email which had attached to it various printouts from the QSA indexes to the Fitzgerald Inquiry holdings. When

³⁹³ PCMC, *Record of Proceedings*, 22 March 2013, page 43.

³⁹⁴ PCMC, *Record of Proceedings*, 22 March 2013, page 55.

³⁹⁵ PCMC, *Record of Proceedings*, 14 March 2013, pages 48-49.

³⁹⁶ PCMC Exhibit TD_93.

Ms Sweeper next saw the file (after it had been delivered to the Committee), those printouts were no longer attached to the email. The inference was that Mr Duell had destroyed them.³⁹⁷

Mr Duell gave evidence that the file left his office and he next saw it when it was in the custody of the Committee. Unfortunately perhaps, he actually denied removing the documents before that allegation was put to him. That raises suspicion. However, in fairness to Mr Duell, that line of cross-examination was inevitably leading to such a suggestion so perhaps it is not so surprising that he should pre-emptively leap to his own defence.³⁹⁸

It is obvious that the file had been taken apart on at least one occasion. Many of the documents bear more than one staple hole. There has been no evidence given as to who had access to the file in order to comply with summonses issued by the Committee to the CMC and what was done to the file in order to produce documents from it in response to the summons.

Further, it is difficult to discern any real motivation to Mr Duell to destroy the documents. They did contain a description of the documents the subject of a request for release. That request was probably processed by Mr Duell, although he thought the consideration of the request of it was the responsibility of Ms Sweeper. The descriptions in the print outs is a repeat of the metadata entries. Perhaps those descriptions might have embarrassed Mr Duell. However, the documents are ones that are directly downloaded from the QSA indexes. They can easily be reprinted. It would be naive to say the least for Mr Duell to have thought that destruction of the documents would achieve anything that might benefit him. However, there are various actions or omissions of Mr Duell worthy of strong criticism.

Prior to his reducing the RAP in February 2012, he did not make any proper enquiries or real attempt to ascertain what was in the Fitzgerald Inquiry holdings. His enquires, limited as though they were, to some generalised conversations with witnesses such as Mr Kenzler and Ms Klynsmith were so undirected in their focus as to make it unsurprising that they did not reveal that there was a third category of documents. While Mr Duell ought to have been focusing on ascertaining whether the documents were in fact sensitive, he focussed on whether they had been made public. He just assumed that everything that was not marked "not for publication" was, in fact, publicly available. This is a dangerous assumption to have made without having any genuine understanding of the documents at all.

His purported reliance on Ms Legg's having previously set the RAP at 65 years as somehow justifying, at least in part, his decision to reduce the RAP to 20 years in 2012 is illogical.³⁹⁹ Despite being pressed on the issue, and given the opportunity to explain his response, (and asked why he didn't look at the metadata), his answers disclosed no sensible process of reasoning in that regard.⁴⁰⁰

His failure to make any proper enquiries extends to:

- a) Failing to undertake a physical audit at any stage; and
- b) Failing to examine the metadata, either by self-initiated access of the metadata online, or even by simply reading the metadata (or even just some of it) which had been sent to him by the QSA. This failure persisted in May 2012 after he became aware that sensitive surveillance material was in the public domain; and again in September 2012 when, once again, he became aware that sensitive material was in the public domain. The failure subsisted at least up until early March 2013.⁴⁰¹

³⁹⁷ PCMC, *Record of Proceedings (in camera)*, 20 March 2013.

³⁹⁸ PCMC, *Record of Proceedings*, 22 March 2013, pages 57-60.

³⁹⁹ PCMC, *Record of Proceedings*, 22 March 2013, pages 43-45.

⁴⁰⁰ PCMC, *Record of Proceedings*, 22 March 2013, pages 46-47.

⁴⁰¹ PCMC Exhibit TD_22; PCMC Exhibit TD_23.

His characterisation to Ms Wood in May 2012 of the error as being an “*administrative error/mistake*”⁴⁰² had the tendency to trivialise the nature of the error; as did his description of the mistake in his email to Mr Hutchings on 29 May 2012 as being a “*misunderstanding at our end*” which was being immediately rectified.⁴⁰³ So too was his verbal response to Mr Martin which led him to the view that this was merely a clerical error. On true analysis, the reduction in classification to 20 years arose due to much more than a mere misunderstanding or clerical error: it was a failure of system: there had been no engagement with the relevant considerations to reducing the RAP. The description by Mr Duell of the error as being “*administrative*” / “*misunderstanding*” appears to have coloured the responses of Ms Wood, Mr Hutchings and Mr Martin – they too appeared to trivialise the issue. That is not to mitigate their lack of effective response: collectively, the lack of recognition by Mr Duell, Ms Wood, Mr Hutchings and Mr Martin, all very senior officers, of the importance of there having been sensitive Fitzgerald Inquiry material in the public domain defies belief. It would have only taken one of them to take the issue seriously and to react with some level of industry for the problem to have been properly identified and put to bed.

Mr Duell's assumption that his actions taken in May 2012 to rectify the “*misunderstanding*” (solved the problem) was equally dangerous, particularly given that he, once again, did nothing to ensure that all series which could have contained sensitive information were returned to the 65 year RAP. Instead, he made exceptions to the reversal, such exceptions not being based on any knowledgeable basis whatever. Once again, he did not engage with the relevant considerations to reduce the RAP. That 18651 could remain unchanged, when it was described merely as “*documentation*”, and when there was no effort to ascertain content, is a staggering omission.

In September 2012, when it again came to his attention that sensitive material was still available at QSA, insufficient attention was given to ensuring that the problem was addressed. Again, it is alarming that a senior officer such as Mr Duell still was blinkered as to the provenance of the problem, the seriousness of the infraction and the need to remedy the situation immediately. Most of Mr Duell's actions or omissions can be put down to a lack of proper due diligence (maladministration). However, his failure to alert Senior Officers of the September 2012 issue is much more serious.

To his credit, Mr Duell was contrite and, at the conclusion of his evidence, accepted responsibility for the release of the material.⁴⁰⁴

Mr Duell has provided a statement to the Committee in response to the invitation extended by the Committee to all witnesses.⁴⁰⁵ The Committee has considered Mr Duell's statement, which is included at **Appendix 8**.

7.9 Gregory John Rigby

Mr Rigby, now retired, was the Director of Information Management at the CMC prior to Mr Duell. Although he held the position from 2005 through to February 2010, there were substantial periods when he was absent. For some of that time, he was relieving as Executive Director.⁴⁰⁶ In that role, he oversaw the Director of Information Management role.⁴⁰⁷

Prior to being the Director of Information Management, he was the Deputy Director. This was for 1990 to 2005.

⁴⁰² PCMC Exhibit TD_76, handwritten file note Ms Wood.

⁴⁰³ PCMC Exhibit TD_31.

⁴⁰⁴ PCMC, *Record of Proceedings*, 22 March 2013, page 79

⁴⁰⁵ PCMC, *Record of Proceedings*, 22 March 2013, page 82

⁴⁰⁶ PCMC, *Record of Proceedings*, 18 March 2013, pages 2 and 8; PCMC Exhibit TD_48.

⁴⁰⁷ PCMC, *Record of Proceedings*, 18 March 2013, pages 2 and 8.

When the Fitzgerald Inquiry finished, in the months before the CJA came into being, investigations continued and Fitzgerald Inquiry holdings vested with the CJC Intelligence Division. The holdings came to him as information manager in approximately 1991.⁴⁰⁸ No examination of Fitzgerald Inquiry records was undertaken at the time the records were transferred to him,⁴⁰⁹ nor was a comprehensive itemisation undertaken. The Fitzgerald Inquiry software (TCR) described a portion, but not all of the holdings.⁴¹⁰

Mr Rigby viewed the metadata from QSA.⁴¹¹ Although he was not familiar with that format, the item descriptions were consistent with TCR text.⁴¹² He thinks that the CMC records management, probably with the assistance of the IT section, exported TCR data into a format which was acceptable to the QSA.⁴¹³

He was not aware that Fitzgerald Inquiry documents were removed and placed on CJC intelligence files. He thinks the orthodox approach would have been to copy the Fitzgerald Inquiry documents for the CJC file and retain the originals in the Fitzgerald Inquiry holdings.⁴¹⁴ He said that documents which were taken from the Fitzgerald Inquiry files would have had a TCR descriptor but when it was placed on a CJC file, a RecFind description was assigned. The TCR could not be updated to show that a document had been removed.⁴¹⁵

As to the transfer process to QSA, he was relieving as executive director from November 2006 to January 2008 and was coordinating the CMC relocation. He accepts that he had the responsibility of overseeing the transfer project. He says that Janet Legg was running the project, but he cannot recall the details of project records.⁴¹⁶ He is not aware of any physical examination of the Fitzgerald Inquiry documents upon their transfer, but in any event, that would have not been practical to undertake.⁴¹⁷

Mr Rigby has no knowledge of any Fitzgerald Inquiry holdings being destroyed in 2007, except perhaps for some administrative records which would have been regarded as temporary.⁴¹⁸ He said that it is possible that there are still original Fitzgerald Inquiry documents on current CMC files.⁴¹⁹

Mr Rigby is not aware of any process at CMC to check what QSA made public in terms of metadata.⁴²⁰

Mr Rigby said that there were no policies or procedures in place regarding setting RAP's and that it was an extremely infrequent occurrence. His recollection is that RAP's were set through a negotiation process with QSA.⁴²¹

7.10 Zora Valeska

Ms Valeska is an Acting Senior Legal Officer with the Legal Services Unit. Her substantive position is that of Legal Compliance Officer (AO4).⁴²² Ms Valeska worked on research for Ms Wood in respect of

⁴⁰⁸ PCMC, *Record of Proceedings*, 18 March 2013, pages 2-3.

⁴⁰⁹ PCMC, *Record of Proceedings*, 18 March 2013, page 4.

⁴¹⁰ PCMC, *Record of Proceedings*, 18 March 2013, pages 4-5 and 18.

⁴¹¹ PCMC Exhibit TD_25.

⁴¹² PCMC, *Record of Proceedings*, 18 March 2013, pages 5 and 25.

⁴¹³ PCMC, *Record of Proceedings*, 18 March 2013, page 25; PCMC, *Record of Proceedings*, 18 March 2013, page 31.

⁴¹⁴ PCMC, *Record of Proceedings*, 18 March 2013, pages 3-4, 20 and 24.

⁴¹⁵ PCMC, *Record of Proceedings*, 18 March 2013, page 27.

⁴¹⁶ PCMC, *Record of Proceedings*, 18 March 2013, pages 5-6, 24 and 31.

⁴¹⁷ PCMC, *Record of Proceedings*, 18 March 2013, page 17.

⁴¹⁸ PCMC, *Record of Proceedings*, 18 March 2013, pages 9 and 21.

⁴¹⁹ PCMC, *Record of Proceedings*, 18 March 2013, page 19.

⁴²⁰ PCMC, *Record of Proceedings*, 18 March 2013, pages 13 and 21.

⁴²¹ PCMC, *Record of Proceedings*, 18 March 2013, page 14.

the Mr Condon request for the Brifman transcripts. Ultimately Ms Wood concluded that the non-publication orders “stick forever”.⁴²³

Ms Valeska's understanding is that there was no formal process in place to deal with individual requests to access Fitzgerald Inquiry records and that requests were handled on a case by case basis.⁴²⁴

Her most relevant evidence is that which relates to the series of events which occurred once the Mr Krosch 24 May 2012 email was received by Ms Wood. She had been requested by Ms Wood and Mr Hutchings to make enquiries to determine what Fitzgerald Inquiry documents were held at QSA, what had been released, by whom and under what authority. The initial instructions included being told to go out to QSA to check the material.⁴²⁵ However, she was shortly thereafter told to “hold off” until further notice.⁴²⁶ Mr Hutchings advised her, by email, that “it may avoid wasted effort if we see what [Mr Duell] has to say.”⁴²⁷ She received no further instruction.⁴²⁸

7.11 Stephen Bishop

Mr Bishop is a writer who sought access to Fitzgerald Inquiry holdings through the CMC. His request was first made in early 2011, and as at early 2012, the request still had not been resolved.⁴²⁹ On 2 February 2012, he received an email from Mr Duell advising of the release of Fitzgerald Inquiry documents.⁴³⁰ He then accessed that material at the QSA. Of some significance is the fact that when he accessed the material and saw the nature of it, he asked a QSA staffer whether the material should be publicly available. This reflects the fact that the material is self-evidently sensitive, a fact that would have been obvious to anyone who viewed it.⁴³¹ Mr Bishop used data collected from the QSA, including information obtained through metadata, in a book he wrote which was published on 6 November 2012.⁴³²

7.12 Robert Hutchings

Mr Hutchings gave evidence on two occasions – namely the 20th and 22nd March 2013.⁴³³

The Committee found Mr Hutchings to be a frustrating witness who appeared more concerned with distancing himself from any responsibility in the matter than assisting the Committee. Mr Hutchings continually said that he did not recall events, even when prompted with his own documents.⁴³⁴ At this distance in time, that is understandable to a point.

The Committee found Mr Hutchings lack of recall so excessive as to be unbelievable.

Some of his evidence also suggested a lack of candour. For instance, he was asked whether he supervised the Official Solicitor. This exchange occurred between Dr Mellifont SC and Mr Hutchings:

⁴²² PCMC, *Record of Proceedings*, 18 March 2013, page 47.

⁴²³ PCMC, *Record of Proceedings*, 18 March 2013, pages 34-35, 36 and 47.

⁴²⁴ PCMC, *Record of Proceedings*, 18 March 2013, pages 36-37.

⁴²⁵ PCMC Exhibit TD_59; PCMC Exhibit TD_61; PCMC Exhibit TD_62; PCMC Exhibit TD_32.

⁴²⁶ PCMC Exhibit TD_59.

⁴²⁷ PCMC Exhibit TD_32.

⁴²⁸ PCMC Exhibit TD_32

⁴²⁹ PCMC, *Record of Proceedings*, 18 March 2013, pages 50-55.

⁴³⁰ PCMC, *Record of Proceedings*, 18 March 2013, page 56; PCMC Exhibit TD_19.

⁴³¹ PCMC, *Record of Proceedings*, 18 March 2013, page 56; PCMC Exhibit TD_65, page 3.

⁴³² PCMC Exhibit TD_65, pages 3-4.

⁴³³ He actually appeared on 19 March 2013 and was stood over.

⁴³⁴ PCMC, *Record of Proceedings*, 20 March 2013

Dr Mellifont: "And you supervised the Official Solicitor and Legal Services Unit staff, is that right?"

Mr Hutchings: "I do, although I don't have intimate involvement in the day to day activities of the Official Solicitor and the Deputy Official Solicitor, as their general role is to run the litigation, but the CMC is involved in it, and they have the discretion to run that, subject to the Chairperson's direction, in the way that they see fit."

Dr Mellifont: "And insofar as the Legal Services Unit staff is comprised, apart from the Official Solicitor who is there position wise?"

Mr Hutchings: "The Deputy Official Solicitor and there is a senior lawyer role in the role of telecommunications interception and access applications. There is a substantive AO4 law clerk who is a compliance officer."

Dr Mellifont: "Can I take you to the schematic on page 3.⁴³⁵ The schematic appears to be what might be construed as a flat structure between yourself and the Official Solicitor."

Mr Hutchings: "Yes."

Dr Mellifont: "But I take it that there is some supervisory role by you over the Official Solicitor subject to the qualification you have just mentioned."

Mr Hutchings: "I am not sure I understand what you mean by supervisory role."

Dr Mellifont: "Well we see on the front page that the position supervises the Official Solicitor."

Mr Hutchings: "Yes."

Dr Mellifont: "Well, you tell me. What is the supervisory role?"

Mr Hutchings: "I don't think I can explain it much better than what I already have. My role sometimes has some involvement with the Official Solicitor and her official duties, but often does not. I am generally managing my own practice if you like and reporting direct to the Commission and Chairperson. So I don't have a routine role in supervising the day to day activities, but I can concede that PD⁴³⁶ does say that I do supervise that person, but, on a day to day basis, it doesn't involve much more than approving leave and those sorts of administrative things."

Dr Mellifont: "So for the most part, the Official Solicitor in carrying out her duties acts autonomously?"

Mr Hutchings: "I wouldn't say autonomously, but she does involve me in matters of significance to seek my opinion on matters".⁴³⁷

The position description does not say that Mr Hutchings only has a supervisory role over the Official Solicitor as it relates to "approving leave and those sorts of administrative things". Mr Hutchings is clearly in charge of the Legal Services Unit which the position description reflects

Mr Hutchings was later asked a fairly simple question as to whether an internal inquiry by the CMC was commenced into the declassification of documents. This exchange occurred:

Dr Mellifont: "Mr Hutchings, an internal inquiry by the CMC was commenced into the declassification of documents in recent times, correct?"

⁴³⁵ This is of the job description. See PCMC Exhibit TD_91.

⁴³⁶ 'PD' is a reference to the position description.

⁴³⁷ PCMC, *Record of Proceedings*, 20 March 2013, page 39.

Mr Hutchings: *"I am not sure I know what you mean by an internal inquiry."*

Dr Mellifont: *"All right. It coming to your knowledge that there had been a declassification of sensitive material, was there an internal review commenced in respect to how that came about?"*

Mr Hutchings: *"If you're referring to what I now understand to be the case, which is that the Chairperson asked Ms Wood to investigate certain matters, then I would become aware of that. I am not sure when I became aware of that, but it was either towards the end of last year or this year."*

Dr Mellifont: *"The events to which you are currently referring, I take it, are related to the Krosch communication in May 2012?"*

Mr Hutchings: *"Yes."*

Dr Mellifont: *"Perhaps I could focus my question more directly. On 5 March 2013, it became apparent at least to you, that there had been an issue in terms of sensitive material being available to the public, correct?"*

Mr Hutchings: *"Yes."*

Dr Mellifont: *"And did you in response to that set about a process or set up about steps to start the review it was that in fact had transpired?"*

Mr Hutchings: *"Yes."*

Dr Mellifont: *"I'm calling that an internal review. Is that a proper description of what was started?"*

Mr Hutchings: *"That is a fair description."*

When Mr Hutchings was asked the first question in that exchange with Dr Mellifont SC, he knew that Ms Wood had done investigations and, as the exchange showed, he was happy that *"an internal review"* was a *"fair description"* of what Ms Wood had done. However, it took six questions from counsel to have Mr Hutchings finally admit that an internal inquiry was commenced into the declassification of the documents.

It seems clear that he has a conversation with the then Chairman in late December 2011⁴³⁸ and also with Mr Strange and then gave the advice of 23 December 2011.⁴³⁹ Whereas he can't actually remember seeing the Sweeper memo in 2012,⁴⁴⁰ it seems that by 23 December, he was giving advice only on two categories of documents namely those that had already been made available and those that were subject to non-publication orders. He had not considered the third category of documents.⁴⁴¹ The Committee considers that he may have had no real understanding of commissions of inquiry, let alone the Fitzgerald Inquiry and just did not realise that there was a third category of documents.

On 29 May 2012, at 10.41am, Mr Hutchings emails Ross Martin to advise of the issue. This is the first documented evidence the Committee has found in relation to advice to the Chairperson about this issue which had been within the LSU since at least 24 May 2012 when Mr Krosch emailed Ms Wood about the availability of surveillance material at QSA.

⁴³⁸ The Honourable Martin Moynihan AO QC.

⁴³⁹ PCMC Exhibit TD_18.

⁴⁴⁰ PCMC, *Record of Proceedings*, 20 March 2013, page 73; PCMC Exhibit TD_7.

⁴⁴¹ He considers his role as *"reactive"*. See: PCMC, *Record of Proceedings*, 20 March 2013, page 83.

A draft email authored by Mr Hutchings was discovered dated 30 May, which included the statement that more needed to be done. This draft email was to be sent to Mr Martin but was never sent.⁴⁴² Clearly, the email contemplated that the issue has not been resolved and that further investigation needed to be done. The Committee discovered that Mr Hutchings did nothing further.

In May 2012, he realised that there is a problem, and he realised that there is a need to check the veracity of what Mr Duell told him about the problem being fixed. This is the only way to explain the draft email of 30 May.⁴⁴³ However, he did nothing and told the Committee that this was because Mr Duell is a senior officer and he took him at face value.⁴⁴⁴ That is contradicted by the email of 30 May.⁴⁴⁵

Mr Hutchings was put on notice about the problem in May, he knew that he ought to do further investigations⁴⁴⁶ and he either neglected to do so or neglected to ensure his subordinate, Ms Wood, conducted a proper investigation.

Mr Hutchings has provided a statement to the Committee in response to the invitation extended by the Committee to all witnesses.⁴⁴⁷ The Committee has considered Mr Hutchings' statement, which is included at **Appendix 9**.

The Committee considers that Mr Hutchings did not bring credit to his role of CMC General Counsel due to his lack of candour in his evidence to the Committee.

The Committee did not find Mr Hutchings to be a credible or reliable witness.

7.13 Suzanne Sweeper

Ms Sweeper appeared in obedience of the summons on 19 March 2013. She was stood down and then gave evidence *in camera* on 20 March 2013. By resolution of the Committee that evidence, originally given *in camera*, is now public evidence. That evidence related to the possibility that Mr Duell had destroyed documents relevant to the Committee's inquiry. That evidence is dealt with in our analysis of Mr Duell's evidence.

Ms Sweeper also gave evidence in open sittings on 20 March 2013. Ms Sweeper's evidence was vital to the determinations of the Committee. The genesis of the decision in February 2012 to reclassify the documents from 65 year RAP to 20 year RAP is Ms Sweeper's memorandum of 7 September 2011.⁴⁴⁸

Ms Sweeper prepared a draft of that memorandum.⁴⁴⁹ That draft went to Mr Duell. Mr Duell altered the document. The most significant alteration was to recommendation (1) on page 2 of the memo. The original draft of the memorandum expressed recommendation (1) in these terms:

*(1) Consider removal of the restricted access period of 65 years. Much of this material was tendered at a public hearing and is available from other sources (eg hard copies of transcripts are available through the State Library . . .)*⁴⁵⁰

In its final form, that recommendation reads:

⁴⁴² See: PCMC Exhibit TD_35.

⁴⁴³ PCMC Exhibit TD_35.

⁴⁴⁴ PCMC, *Record of Proceedings*, 20 March 2013, page 82.

⁴⁴⁵ PCMC Exhibit TD_35.

⁴⁴⁶ That's the effect of PCMC Exhibit TD_35.

⁴⁴⁷ PCMC, *Record of Proceedings*, 22 March 2013, page 82

⁴⁴⁸ PCMC Exhibit TD_7; PCMC Exhibit TD_7A.

⁴⁴⁹ PCMC Exhibit TD_114.

⁴⁵⁰ PCMC Exhibit TD_114.

(1) Reduce the restricted access period of 65 years to 20 years, ie no restrictions on this material from this time forward. This material was tendered at a public hearing and is available from other sources (eg hard copies of transcripts are available through the State Library).

It can be seen that Ms Sweeper's recommendation, at least as originally drafted, was simply to "consider removal" of the RAPs. Further, she seemed to recognise that "*much of [the] material was tendered at a public hearing . . .*" whereas the memorandum as finally drafted suggests that all the material was tendered at a public hearing.

It seems that Mr Duell gave instructions to Ms Sweeper to prepare the memorandum, but there was no advice given to her as to the nature of the Fitzgerald Inquiry documents.⁴⁵¹ All that she knew was that some documents had been tendered at the public hearings of the Fitzgerald Inquiry and some had been marked "*Confidential*".⁴⁵²

She never saw a full printout of the metadata⁴⁵³ and never did a physical audit of the documents.⁴⁵⁴ She believed, when she was preparing the memo of 7 September 2011, that all the 65 year RAP documents were, one way or another, non-contentious.⁴⁵⁵ She did not turn her mind to any process whereby there would be consideration of removing the restricted access period of 65 years.⁴⁵⁶ She had no experience with Commissions of Inquiry.⁴⁵⁷

As far as she was concerned, she was just considering a bureaucratic process for the release of the documents without turning her mind as to whether the documents were contentious.⁴⁵⁸ There was also confusion as to how a request for release of material which was the subject of 65 year RAPs was dealt with in the past. Mr Duell thought that those requests were being considered by Ms Sweeper.⁴⁵⁹ Ms Sweeper though only understood that she was printing off the QSA index entry for the particular documents and then Mr Duell was considering whether they ought to be released.⁴⁶⁰

Despite her skills and experience, Ms Sweeper was clearly not the appropriate person to whom this task ought to have been assigned. This is not a reflection on Ms Sweeper, rather on the decision of her supervisor, Mr Duell, in delegating this task. She seemed to have no experience with Commissions of Inquiry and she could not really be expected to appreciate what documents were contentious and what were not. There seemed to be no formal written instruction to her as to what she was expected to consider and her enquiries were based on the wrong premise in any event, namely that there were only two categories of documents namely those that had been disclosed in open hearing and those which are marked "*confidential*".

7.14 Edith Mendelle

Ms Mendelle's role as Executive Director is to establish and facilitate the development of systems, procedures and processes based on strategic direction from the Chairperson to support all areas of the CMC including human resources, financial management, performance management and

⁴⁵¹ PCMC, *Record of Proceedings*, 20 March 2013, page 52.

⁴⁵² PCMC, *Record of Proceedings*, 20 March 2013, page 52.

⁴⁵³ PCMC, *Record of Proceedings*, 20 March 2013, page 53.

⁴⁵⁴ PCMC, *Record of Proceedings*, 20 March 2013, page 53.

⁴⁵⁵ PCMC, *Record of Proceedings*, 20 March 2013, page 53.

⁴⁵⁶ As contemplated by PCMC Exhibit TD_114, page 2; PCMC, *Record of Proceedings*, 20 March 2013, page 54.

⁴⁵⁷ PCMC, *Record of Proceedings*, 20 March 2013, page 54.

⁴⁵⁸ PCMC, *Record of Proceedings*, 20 March 2013, page 54.

⁴⁵⁹ PCMC, *Record of Proceedings*, 20 March 2013, pages 57-58 (Mr Duell).

⁴⁶⁰ PCMC, *Record of Proceedings*, 20 March 2013, page 57.

accountability, professional development, culture and change management. She reports to the CMC Chairperson.⁴⁶¹

Mr Duell has direct authority to manage requests and classifications of Fitzgerald Inquiry records. In that capacity he reported directly to the Chairperson and not to Mendelle, however she would have expected to have been informed of any relevant issue because she manages risk management.⁴⁶²

The CMC has a Risk Incident Register which records incidents of high risk that need to be attended to.⁴⁶³ Although there is no protocol, everyone in her team, including Mr Duell is well aware of the requirement to report on risks and to register them in the Risk Incident Register. In meetings Ms Mendelle has made it very clear of officers' responsibilities to report risks.⁴⁶⁴ The Register attests to various risks and incidents that emanated from Information Management being recorded.⁴⁶⁵

The procedure for reporting risks is very simple: email to Corporate Governance Adviser, Karyn Worth, in charge of Risk Incident Register. The risk incident is then recorded in Register and brought to Ms Mendelle's attention and to the attention of the Risk Management Committee. The matter would be raised with the Executive Leadership Group to ensure a resolution. Instructions on the Register itself are available on CMC intranet and training is provided in its use.⁴⁶⁶

The wrong classification of Fitzgerald Inquiry documents should have generated an entry in the Risk Incident Register. Ms Mendelle has checked the Register and there is no entry of the September 2012 access issue.⁴⁶⁷

She was not aware until recently that Mr Duell's QSA authority lapsed between 1 July – October 2012.⁴⁶⁸

7.15 Janet Legg

Ms Legg worked at the CMC/CJC from 1994 to June 2011. She was in charge of the transfer of the Fitzgerald Inquiry holdings to the QSA. She was also involved in the destruction of CMC documents under retention and disposal protocols. As to destruction of documents, she said protocols existed whereby after expiry of certain times, files would be identified as ones for destruction. A list of documents for destruction would be prepared and then sent back to the director of the relevant CMC area to verify that the documents ought to be destroyed.⁴⁶⁹

It was then up to the director/area manager to make submissions preventing the destruction of documents. As a final step, staff in the records management section would view the documents quickly before the disposal. They were binned and sent for commercial destruction.⁴⁷⁰

Other evidence establishes that the documents were removed from Fitzgerald Inquiry files and placed on the CJC/CMC files. When the CMC / CJC files were destroyed, the Fitzgerald Inquiry files were destroyed with them.⁴⁷¹

The audit did not include reading each document to see if it contained sensitive information, except for the exhibits which had non-publication orders.⁴⁷²

⁴⁶¹ PCMC, *Record of Proceedings*, 21 March 2013, page 2.

⁴⁶² PCMC, *Record of Proceedings*, 21 March 2013, pages 3 and 11.

⁴⁶³ PCMC, *Record of Proceedings*, 21 March 2013, page 3.

⁴⁶⁴ PCMC, *Record of Proceedings*, 21 March 2013, pages 3-4.

⁴⁶⁵ PCMC, *Record of Proceedings*, 21 March 2013, page 3.

⁴⁶⁶ PCMC, *Record of Proceedings*, 21 March 2013, pages 5 and 8.

⁴⁶⁷ PCMC, *Record of Proceedings*, 21 March 2013, page 7.

⁴⁶⁸ PCMC, *Record of Proceedings*, 21 March 2013, page 9.

⁴⁶⁹ PCMC, *Record of Proceedings*, 21 March 2013, pages 54-55.

⁴⁷⁰ PCMC, *Record of Proceedings*, 21 March 2013, pages 54-55.

⁴⁷¹ PCMC, *Record of Proceedings*, 14 March 2013, page 19 (Mr Duell).

Ms Legg gave evidence that she coordinated the transfer of the CMC holdings to the QSA. The metadata was taken from the text character recognition system (TCR) system used by the Fitzgerald Inquiry.⁴⁷³ The work that Ms Klynsmith was doing was in relation to the last of the Fitzgerald Inquiry holdings which apparently had not been indexed. The CMC did not create the metadata (apart from in respect of those documents being dealt with by Ms Klynsmith) as that data came from the TCR system.

Ms Legg was shown the evidence of Ms Klynsmith, 21 March 2013, and provided the following comments:

*I believe that the boxes Ms Klynsmith referred to would have related to the last transfer to State Archives. In my testimony yesterday I stated that the metadata was extracted from the TCR system and imported into the State Archives spreadsheet template. I believed that this was the way the metadata was prepared for all four transfers, however, from Ms Klynsmith's testimony it appears that the metadata was manually entered for the boxes she and other Property Officers prepared. I cannot recall why this transfer was handled differently. It may well be that the documents were not adequately recorded and a decision was made to manually enter the metadata. Without having access to the list of transferred documents I cannot provide any other explanation.*⁴⁷⁴

Once the documents were transferred, Ms Legg (who was an authorised officer under the *Public Records Act 2002* to set RAPs) was required to set the RAPs. She sought advice from Jan Speirs (former CMC General Counsel) but as she did not receive a response from Ms Speirs, she set the RAPs at the maximum of 65 years.⁴⁷⁵ She recalled discussion with Ms Sweeper and Mr Duell and possibly Mr Rigby about whether it was appropriate to apply 65 year RAPs to those at Fitzgerald Inquiry items which were made public during the inquiry.⁴⁷⁶ She could not recall speaking to Mr Duell about the contents of the documents.⁴⁷⁷

She did not realise that the metadata would be publicly available notwithstanding that the documents were subject to a 65 year RAP.⁴⁷⁸

7.16 Wendy-Lea Klynsmith

Ms Wendy-Lea Klynsmith is a Senior Property officer who was involved in the transfer of the last of the Fitzgerald Inquiry holdings to the QSA.⁴⁷⁹ She gave evidence of boxing the documents and applying a descriptor to them.⁴⁸⁰ This evidence was a little puzzling as the descriptions of the documents contained in the metadata had been adopted from a software system maintained during the Fitzgerald Inquiry. Ms Legg provided a supplementary statement explaining that. (Ms Legg's explanation appears in the summary of her evidence – see above).

Ms Klynsmith could not recall any conversations with Mr Duell whereby Mr Duell had enquired of her as to the contents of the documents in the Fitzgerald Inquiry holdings.⁴⁸¹

⁴⁷² PCMC, *Record of Proceedings*, 21 March 2013, page 42.

⁴⁷³ PCMC, *Record of Proceedings*, 21 March 2013, page 42.

⁴⁷⁴ PCMC Exhibit TD_123.

⁴⁷⁵ PCMC, *Record of Proceedings*, 21 March 2013, pages 43-44.

⁴⁷⁶ PCMC, *Record of Proceedings*, 21 March 2013, page 47.

⁴⁷⁷ PCMC, *Record of Proceedings*, 21 March 2013, page 45.

⁴⁷⁸ PCMC, *Record of Proceedings*, 21 March 2013, pages 55-56.

⁴⁷⁹ PCMC, *Record of Proceedings*, 21 March 2013, page 58; PCMC Exhibit TD_108.

⁴⁸⁰ PCMC, *Record of Proceedings*, 21 March 2013, pages 59 and 61.

⁴⁸¹ PCMC, *Record of Proceedings*, 21 March 2013, pages 58-59.

7.17 Russell James Kenzler

Mr Russell Kenzler worked as clerk for Mr Fitzgerald during the Inquiry. He was admitted as a solicitor in 1983. He was the CMC FOI/RTI Coordinator from 1996 until redundancy in November 2012.⁴⁸²

He is familiar with workings of the Fitzgerald Inquiry. It was investigative in nature. Teams of police and other investigators were headed by lawyers. The teams gathered material which was assessed as to whether it went before the hearings of the inquiry. Some material would be used in public hearings. Some of that material marked "Confidential and Not for Publication". Some exhibits were tendered and not so marked. The overwhelming majority of the hearings were public. It was a well published desire of Mr Fitzgerald that as much as possible be conducted in public.⁴⁸³

He confirms that there were three categories of documents created by the Fitzgerald Inquiry: (1) public transcripts and exhibits; (2) documents tendered in public hearings but marked "Not for Publication"; and (3) an enormous amount of material generated by investigative teams but which never found its way to the public hearings. This third category could include such things as intelligence reports, hearsay regarded as too remote and not probative, interviews, reports, memos, surveillance, police notes and conversations with informants etc.⁴⁸⁴ This third category would have contained personal information.⁴⁸⁵

Fitzgerald Inquiry documents did not come within the scope of FOI or RTI, so he had no jurisdiction over that material.⁴⁸⁶ Although officers in Information Management advised him informally on occasions of requests to access Fitzgerald Inquiry exhibits, no-one came to him and had a full discussion about the types of material in Fitzgerald Inquiry holdings.⁴⁸⁷

He gave evidence that he received correspondence from Bishop, and that what Bishop sought were transcripts of the public hearings. He confirmed his view that if the documents are non-contentious and not sensitive, there is a public interest in having them disclosed.⁴⁸⁸

As to the public accessibility of the third category of documents, he opined "I couldn't conceive of that other mass, that third category of documents, being accessed willy-nilly."⁴⁸⁹ He said that "*You would certainly proceed very cautiously if you were contemplating access.*"⁴⁹⁰ He thought that the decision by which Krosch's intelligence reports became accessible was "highly inappropriate" and he wondered how that decision came to be made.⁴⁹¹

Although he spoke with Mr Duell occasionally, for example, after Mr Bishop had attended the CMC, he did not discuss the contents of the Fitzgerald Inquiry holdings with Mr Duell.⁴⁹²

The Committee believes that if Mr Kenzler had been in charge of access, the reduction in classification would not have happened because he, in fact, had knowledge about the holdings, however, he had no involvement in these decisions.⁴⁹³

⁴⁸² PCMC, *Record of Proceedings*, 22 March 2013, page 4.

⁴⁸³ PCMC, *Record of Proceedings*, 22 March 2013, page 5.

⁴⁸⁴ PCMC, *Record of Proceedings*, 22 March 2013, page 6.

⁴⁸⁵ PCMC, *Record of Proceedings*, 22 March 2013, page 7.

⁴⁸⁶ PCMC, *Record of Proceedings*, 22 March 2013, page 8.

⁴⁸⁷ PCMC, *Record of Proceedings*, 22 March 2013, page 8.

⁴⁸⁸ PCMC, *Record of Proceedings*, 22 March 2013, pages 8-11.

⁴⁸⁹ PCMC, *Record of Proceedings*, 22 March 2013, page 13.

⁴⁹⁰ PCMC, *Record of Proceedings*, 22 March 2013, page 15.

⁴⁹¹ PCMC, *Record of Proceedings*, 22 March 2013, page 16.

⁴⁹² PCMC, *Record of Proceedings*, 22 March 2013, pages 13-14.

⁴⁹³ PCMC, *Record of Proceedings*, 22 March 2013, page 17.

As to the metadata,⁴⁹⁴ and access, he said "One would have taken a great deal of care because I see some are marked confidential and so on... If you were considering releasing these things, then more likely than not you certainly wouldn't."⁴⁹⁵

7.18 Kathleen Florian

Following the discovery in early March 2013 that Fitzgerald Inquiry documents had been available for public viewing via the QSA, Ms Florian was tasked with analysing the information that had been viewed or may have been viewed and assessing any risks posed by the public dissemination of that information to persons, especially informants or witnesses.

Analysis was to determine if the release of information posed any risk to any person – on the basis of:

- risk to informants or protected witnesses;
- reputational risks to persons adversely mentioned in the material but never charged or disclosed in the inquiry;
- revelations of investigative methodology; or
- identification of ongoing investigations.

A report of the analysis was prepared. The report reveals that 510 documents have either definitely been accessed or may have been accessed. The Commission has examined at the time of the report 459 of those documents, and of those documents 200 were definitely accessed through the QSA.

In respect of these documents, her examination identified a number of living persons – 13 to be precise – where either a low or moderate risk arises.

Further, of the 281 documents that may have been accessed, three further persons were identified that are still living. And the risk to two of them has been assessed as low and the risk to the other is still under consideration.

In respect of the persons considered at moderate risk, Ms Florian advises that the CMC has taken what it deems appropriate action.

Ms Florian also advises that the CMC has received feedback from some of these persons a desire that the protective legislation passed by the Parliament in early March continue, so as to prevent republication of material.

7.19 Elizabeth Hawkins

Ms Elizabeth Hawkins is the Manager, Archival Collections, QSA. Ms Hawkins provided that Mr Duell would often email a copy of a form then later send the hard copy. Ms Hawkins explained why, in the first instance, the Committee had been provided with an unsigned RAP form and later undertook to provide the Committee with a signed copy of the relevant form. Ms Hawkins also explained that each Series includes a number of records, some of them up to 9,000, and in that case QSA sent Ms Legg (CMC) a form and said '*These are all the Series that we have got. What restricted access period do you want?*', and that Legg used the information the QSA provided to apply the RAP period. Ms Hawkins confirmed that QSA send the CMC a list of every item.⁴⁹⁶

⁴⁹⁴ PCMC Exhibit TD_25.

⁴⁹⁵ PCMC, *Record of Proceedings*, 22 March 2013, page 18.

⁴⁹⁶ PCMC, *Record of Proceedings*, 7 March 2013, pages 7-8.

Ms Hawkins also confirmed that the CMC's confusion regarding the Series number extended beyond the letter dated 3 September 2010, written by Janet Legg, setting the RAP for the first time. The RAP was first changed in February 2012.

Ms Hawkins confirmed that the authorised officer (Mr Duell) may alter the RAP by signed letter, and that the RAP form was *'just an administrative convenience'*.⁴⁹⁷

With regards to the metadata Ms Hawkins said that QSA get the basic information from the agency, for example, the title, and some information about what is in the record, but that QSA provide the detailed description – from the QSA staff looking at the description and working it out – *'we go with the basis of what we are given and then we look at the records and flesh it out so that it is as useful as possible for the researchers.'*⁴⁹⁸

Ms Hawkins confirmed that, as a result of correspondence between herself and Mr Duell going back to 8 June 2012, particular items within Series 18651, marked 'confidential' were converted to closed files and the notification was removed from the public website so that the public could not see that those records existed. This applied only to particular items; the other records in Series 18651 still had a 20 year RAP so were effectively open.⁴⁹⁹

Ms Hawkins said: *'It is common archival practice where a series as a whole has a particular restricted access period but there are some items at item level – in most of the records they may think it is very innocuous, nothing, no problem. But there are one or two things there that are really very sensitive. So it is quite common for them to say, 'Right, as a whole, this series is open. These two items over here? No. We will close those because they are sensitive.'*⁵⁰⁰

Ms Hawkins said, *'the letter received on 29 May, which has the RAP notice attached, refers to all the series except a number including 18651. But on the back of the form he has identified 18651 as one of the ones he wants to change. That is where I emailed Peter and said 'You can't have it both ways; make up your mind' – in the nicest possible way. So he sent a letter through on 8 June. The RAP there does not include 18651 as the one he is changing. So he did ask in an email, which I can provide you with, to pull this one from 29 May – 'Please remove that. It is not valid. The valid one is the one from 8 June.' We have an email trail about that.'*⁵⁰¹

Ms Hawkins confirmed that QSA did not provide the item list, the item list comes directly from the agency. QSA provide the Series that sits above the item list. QSA provide the document series – we would go in and say *'In this series you are likely to find these sorts of records. This is how they are arranged and described. But we do not provide the document list ... or the description of the item'*.⁵⁰²

On 22 March 2013, Ms Hawkins informed the Committee that she only knew of two instances where researchers had alerted QSA staff to material that they (the researchers) felt they should not have access to. Ms Hawkins confirmed that there is no QSA protocol around this as it happens very rarely. At this hearing Ms Hawkins also said that in February 2012, when Mr Bishop told her he had gained access to 'confidential' material containing the names of prominent business people, she telephoned the CMC. Again, there was no protocol in place because QSA consider that the records belong to the agency, and the agency has provided the metadata and the RAP – and that it was this event that gave rise to the email exchange between Ms Hawkins and Mr Duell dated 19 September.⁵⁰³

⁴⁹⁷ PCMC, *Record of Proceedings*, 7 March 2013, page 8.

⁴⁹⁸ PCMC, *Record of Proceedings*, 7 March 2013, page 13.

⁴⁹⁹ PCMC, *Record of Proceedings*, 7 March 2013, page 14.

⁵⁰⁰ PCMC, *Record of Proceedings*, 7 March 2013, page 15.

⁵⁰¹ PCMC, *Record of Proceedings*, 7 March 2013, page 15.

⁵⁰² PCMC, *Record of Proceedings*, 7 March 2013, page 13.

⁵⁰³ PCMC, *Record of Proceedings*, 22 March 2013, page 37.

7.20 Niles Elvery

Mr Niles Elvery is the Manager of Public Access at the QSA. Mr Elvery provided that researchers would first access the QSA catalogue which is available on the QSA website, to identify items. Mr Elvery confirmed that QSA does not send electronic notifications when RAPs are changed. Mr Elvery also confirmed that at the time the Fitzgerald Inquiry documents were open the metadata, including the complete file title was available on the QSA website. Mr Elvery said: *'the client can, as you say, search the catalogue from wherever. They can find that we have the record in our collection. What they need to do then is come into the archives to gain access to that record, or if it is open they can actually write or email us and ask for a copy to be sent to them. From our records we understand that that has not happened with these [records]... but the client can come into the public search room and get a copy of that file. They can access the file in the search room.'*⁵⁰⁴

Mr Elvery also confirmed that, in accordance with the QSA digital camera policy, researchers are able to take photographs of documents, in addition to asking a staff member to copy a document. QSA do not record the research room activities.⁵⁰⁵

Mr Elvery said the QSA only keep records if research requests have been lodged through the online catalogue system. Mr Elvery also explained that if someone does a search and you get the information relating to a particular item, there is an access category information panel that says if it is restricted for 100 years, 50 years or 30 years.

7.21 Mark Pollock

Mr Mark Pollock, Solicitor, Crime and Misconduct Commission, was sworn and appeared before the Committee on 14 March 2013 in respect of additional documents produced under the summons. Mr Pollock produced five volumes of information in response to a summons as well as in response to a verbal request for information made by the Clerk of the Parliament to the Chair. These documents were tabled as TD_04, but not for publication in the first instance. Mr Pollock was stood down on his undertaking to return as required and on his undertaking to provide further documentation.

On 19 March 2013, Mr Pollock provided the Committee with a file that contained a file note of Ms Wood dated 26 July 2012. The file was tabled as TD_85. Mr Pollock provided that the location of the yellow pad within the folder might have been at the back of the folder when it was delivered, and that he thought it was in a plastic sleeve. Mr Pollock said that he had not altered the file in any way, but that he was unsure of the exact location of the yellow pad within the file.

On 20 March 2013, Mr Pollock produced some remaining 114 external emails for the period requested in the summons of 18 March 2013, relating to Mr Horwood's provision on 19 March 2013 regarding a bundle of emails. These emails and the disk were tabled as TD_102.

On 22 March 2013, Mr Pollock responded to a summons dated 21 March 2013, in relation to material related to the draft email for Mr Hutchings. The bundle provided was tabled as TD_109. Mr Pollock also produced a bundle of documents in response to a summons issued 18 March 2013, in relation to IT related searches that have been conducted. The bundle was accepted, initially not for publication, as TD_110. Mr Pollock also provided that IT records were still being interrogated in response to the summons issued on 21 March 2013. The summons was tabled as TD_111.

Mr Pollock produced a screen shot of Mr Hutchings' current outlook account. This document was tabled as TD_118.

⁵⁰⁴ PCMC, *Record of Proceedings*, 7 March 2013, page 10.

⁵⁰⁵ PCMC, *Record of Proceedings*, 7 March 2013, page 11.

7.22 Clifford Horwood

Mr Clifford Horwood appeared before the Committee on 19 March 2013. Mr Horwood is the Information Technology Manager at the Crime and Misconduct Commission, which forms part of the Information Management Directorate. Mr Horwood was tasked with responding to a summons issued 18 March 2013 seeking production of a copy of all documents in the 'In', 'Out' and 'Draft' email folders of Mr Duell's CMC email address for the period 1 February 2011 – 18 March 2013. This involved the retrieval and production of an estimated 13,473 emails. Mr Horwood produced these emails in a text searchable format. The documents were tabled as TD_70. Mr Horwood also provided an additional bundle of documents in response to the summon of 12 March 2013; this bundle of documents was tabled as TD_72.

On 22 March 2013, Mr Horwood confirmed that he prepared the report tabled as TD_109, and that the times and dates in the computer system are correct, and that the report was prepared sometime between 30 May 2012 at 9:45 and before 12 March 2013 at 12:21pm. Mr Horwood confirmed that the email in question (from Mr Hutchings' drafts folder) existed in the copy of the drafts folder in the backup for 23 June 2012 in the form as was provided as attached to the summons, and that the earlier copy, with Ms Valeska's name on it, is annotated as such because she printed it. Records also indicate that that email was put into TRIM on 12 March 2013. Mr Horwood explained that the decision to enter a record on TRIM is an individual's decision, but sometimes an officer's assistant, secretary or PA may enter them into TRIM for the particular individual. Mr Horwood also explained that Outlook offers some level of automation to assist the TRIM-ing process, but not everyone uses that system and that it may not be appropriate for all emails to go to the same TRIM location.

Mr Horwood undertook to check whether the CMC server records when a draft email is first saved.

Mr Horwood confirmed that Mr Hutchings' draft email was found in the backup tapes and on TRIM on 18 March 2013.

Mr Horwood also provided that he is an IT Manager, not a forensic computer person.

The summons to Mr Horwood was tabled as TD_113.

Later on the 22 March 2013, Mr Horwood provided a summary of the expected completion times for compliance with the Committee's requests. In response to the Committee's amended request, for emails between WOOD, HUTCHINGS and VALESKA for the period 20th May to 31 July 2012, Mr Horwood agreed to provide this information by close of business Monday 25 March 2013.

7.23 Janet Speirs

Ms Janet Speirs appeared before the Committee on 20 March 2013. Ms Speirs is the former General Counsel, Crime and Misconduct Commission, and is currently a member of the Migration Review Tribunal and Refugee Review Tribunal. Ms Speirs was provided with a redacted version of her curriculum vitae, TD_97.

Ms Speirs stated that she had no direct knowledge of the transfer of the Fitzgerald Inquiry holding to QSA, as General Counsel, and that she had no recollection now, but offered to comment on anything the Committee wished to show her. When asked, Ms Speirs acknowledged *'a vague recollection of the advice that was prepared by Lisa Brereton'* (TD_14), and commented that she did not believe *'that advice went anywhere'*. Ms Speirs provides:

'At the time the Legal Services unit was very short-staffed. Lisa was a law student working as an administrative assistant and that is the sort of thing that sometimes when you are

*very short-staffed legal assistants were asked to help out by doing some preliminary work on a matter.*⁵⁰⁶

Ms Speirs believes that Ms Brereton's advice went to her but that she did not sign off on it.

Ms Speirs did not recall receiving an email from Janet Legg about the restricted access periods, nor could she remember giving any advice or seeing any advice about setting restricted access periods.

Ms Speirs did not recall giving any advice on the release of the Fitzgerald Inquiry documents that have a 100-year RAP.

Ms Speirs confirmed that she has no memory of concerns about the handling of the Fitzgerald Inquiry documents and provided: *'It was not something that I came across other than what I have been shown here. I know it was one of those issues that was perhaps identified as something that we would work on at some stage when we had the resources available. That's my only recollection.'*⁵⁰⁷

7.24 Amanda Honeyman

Ms Amanda Honeyman appeared before the Committee on 21 March 2013. Ms Honeyman is the Acting Research Director for the Parliamentary Crime and Misconduct Committee (the Committee). Ms Honeyman has held that position since May 2012. Ms Honeyman confirmed that she is familiar with the material provided by QSA on 7 March 2013 which was tabled as TD_106.

Ms Honeyman provided that the Committee's records confirm that no notification or advice had been provided by the CMC to the Committee since May 2012 in respect to access to Fitzgerald Inquiry documents, and that no information was provided to the Committee until March 2013.⁵⁰⁸

7.25 Judith Bell

Mrs Judith Bell is a Commissioner at the Crime and Misconduct Commission. Mrs Bell appeared before the Committee on 28 March 2013. Mrs Bell provided that the Commissioners were assembled on Friday 8 March 2013 for the purpose of being briefed on this issue. Mrs Bell expressed her concern that the Commission had been remiss in this matter, and equally expressed concern that the Inquiry has resulted in the 'heavy-handed' treatment of some CMC staff. Mrs Bell said that the Legal Services Unit has only four people and there are only four investigative teams who have huge numbers of cases, and that this information also needed to be put before the Committee.

Mrs Bell commented that she did not think the lines of authority work very well [within the CMC], and that the extent of the responsibility in relation to the Fitzgerald Inquiry materials was not properly understood or handled. Mrs Bell comments *'I think the overriding feeling of this particular matter was that at the time it was not seen as a major issue because, in fact, my experience of the CMC is that everything is documented very well and everything is reported to this Committee very assiduously. So I think at the time this was not seen as a major issue. That is the only interpretation I can put on it.'*⁵⁰⁹

Mrs Bell confirmed that the Commissioners get reports at the fortnightly meetings, and that the Commissioners also attend in various capacities some of the subcommittees, but that the Commissioner's do not have any involvement with the Legal Services Unit's activities.

⁵⁰⁶ PCMC, *Record of Proceedings*, 20 March 2013, page 67.

⁵⁰⁷ PCMC, *Record of Proceedings*, 20 March 2013, page 69.

⁵⁰⁸ PCMC, *Record of Proceedings*, 21 March 2013, page 39.

⁵⁰⁹ PCMC, *Record of Proceedings*, 28 March 2013, page 2.

In response to a question regarding an alternate approach to the Committee's Inquiry, Mrs Bell provided, 'I think the Parliamentary Committee should have been notified, but I think it could have been handled as an internal inquiry'.⁵¹⁰

7.26 George Fox

Mr Fox acknowledged that this is a matter of serious concern, and that he has concerns and queries as to what may have contributed to this sort of issue. Mr Fox provided:

*I have concerns around things like was it fair for Mr Duell, whose background is in IT, to be given responsibility for something that is a matter of archiving or librarian work. I have concerns with to what extent he could rely on subordinates who may be more skilled in that area. I have concerns about why there does not appear to have been any formal handover when he took that role.*⁵¹¹

Mr Fox said that he would have expected if the information sought from Mr Duell was a formal authority then there would have been written comments about that.

Mr Fox referenced the Jameson report and the importance of corporate governance structures, and the operational demands placed on the Chairperson.

Mr Fox noted that he would like to see a review of the corporate structure to reflect the needs of the organisation that may have evolved beyond the original legislation.

Mr Fox noted that the release of information predates the budget cuts, but provided comment on the shortage of staff in the Legal Services Unit as being a factor associated with, but not an excuse, for these matters.

Mr Fox said that all Commission meetings are minuted with formal agendas and matters for consideration.

Mr Fox commented specifically on the destruction of file notes by Sidonie Wood. Mr Fox stated:

*... in a legal practice standard gospel you keep file notes, and I suspect the prospect of her destroying a file note on any of the litigation files she maintains is minimal. ... I'm not to say what was in her mind or what role she was performing, but if in her role she was performing an administrative function, not running a legal file but as a corporate officer of a corporation producing intelligible documents for what she understood was communicating in a more useful form, then that would be, for me, a different matter.*⁵¹²

7.27 Professor Marilyn McMeniman

Professor McMeniman noted that the Commissioners were briefed on Friday 8 March 2013, and it was then that the Commissioners realised the full extent of what had happened. Professor McMeniman also commented that she would expect that for something as important as altering the RAP, she would expect that there would be some formal documentation of what discussions were had.

With regard to governance issues, Professor McMeniman raised concerns regarding delegations, records management and risk management and referred to the importance of the Executive General Manager's role and the shortcomings around the fact that the Executive General Manager was not appraised of issues when she should have been, specifically that both the Records Manager, and the Manager of Information Services should have escalated matters to her attention.

⁵¹⁰ PCMC, *Record of Proceedings*, 28 March 2013, page 6.

⁵¹¹ PCMC, *Record of Proceedings*, 28 March 2013, page 7.

⁵¹² PCMC, *Record of Proceedings*, 28 March 2013, pages 12-13.

Professor McMenemy noted her surprise that the Legal Services Unit did not provide advice in a timely manner and expressed her opinion that this was an oversight.

7.28 Hon Philip Nase

Mr Nase made an opening statement that referenced Judge Moynihan's engagement of external consultants to conduct an exhaustive review of governance arrangements at the CMC leading to the creation of the Executive General Manager's role to fulfil the function of corporate governance.

Mr Nase also stated that 'the management of the CMC is not the invention of some lawyers who sat down. The key governance framework is a framework that was settled on after an exhaustive review of the existing governance arrangements.'⁵¹³

Mr Nase notes that there is a clear risk reporting chain and that there was a failure to follow existing processes - 'there was a clear reporting chain from information management to the executive general manager and it is unfortunate that that chain was not followed.'⁵¹⁴

Mr Nase also said, 'You cannot ignore the process. I mean, if the process had been followed there would have been a notification to the PCMC and I dare say the PCMC would have wanted an independent person to investigate. And that would have happened.'⁵¹⁵

⁵¹³ PCMC, *Record of Proceedings*, 28 March 2013, page 17.

⁵¹⁴ PCMC, *Record of Proceedings*, 28 March 2013, page 17.

⁵¹⁵ PCMC, *Record of Proceedings*, 28 March 2013, page 21.

Appendix 1 – Chair's statement to the Assembly – 7 March 2013

Mrs CUNNINGHAM (Gladstone—Ind) (2.36 pm), by leave: Section 2.47 of the then *Criminal Justice Act 1989* provided that the Criminal Justice Commission, the CJC, was to assume possession and control of all databases and records documents relating to the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, more commonly known as the Fitzgerald inquiry.

The Crime and Misconduct Commission, the CMC, is now the owner of the documents relating to the Fitzgerald Inquiry. The committee understands that the CMC transferred these documents from the CMC premises to the State Archives between August 2007 and March 2009. The Parliamentary Crime and Misconduct Committee became aware that the CMC had, in error, classified some material as accessible to the public when that material should not, because of its nature, be public.

The committee called an urgent meeting with the CMC yesterday to obtain answers from the chairperson of the CMC as to how this happened. Yesterday the chairperson of the CMC was unable to adequately explain to the committee exactly how or why this had occurred. The chairperson of the CMC advised the committee that the CMC became aware of the public release of the documents around May 2012 when a former CJC officer provided advice to the CMC about the public availability of the documents. Yesterday the chairperson of the CMC was also unable to adequately advise the committee as to which documents were released other than that they belonged to a series of documents within the Fitzgerald Inquiry documents, whether the documents had been widely viewed by the public or whether copies had been taken of these documents.

Given the sensitive nature of the documents and the need for further detailed information, the committee directed the Clerk of the Parliament to issue a summons for the State Archivist to attend before the committee. That summons required the State Archivist to produce all documentation in her possession which would reveal the nature of the documents that were released, the documents that have been viewed, who viewed the documents and whether any copies of the documents were or were able to be taken.

The State Archivist appeared before the committee earlier today. The committee is considering the evidence and information she has provided and I advise the parliament that that hearing is continuing. The committee received further advice from the chairperson of the CMC yesterday that, in addition to the public release of confidential Fitzgerald Inquiry documents, the CMC has also destroyed a number of confidential Fitzgerald Inquiry documents. The committee understands that these files contained intelligence information and were used by the then newly established Criminal Justice Commission to commence investigations into the information provided in those documents. The committee has required the CMC to provide further information to the committee about what documents were destroyed and how and why this occurred.

The committee considers that the CMC had multiple opportunities to advise the committee of the publication of these documents since May 2012 when it first became aware of the matter. The committee holds serious concerns that the CMC did not inform the committee of these events until late on 5 March 2013. The committee is not satisfied with the response from the chairperson of the CMC that he advised CMC officers to 'fix it' in May 2012 as there seems to have been no follow up action to ensure the 'fix' by the CMC was appropriate to the circumstances. The committee understands from the chairperson of the CMC that the CMC did not act to address the matter until September 2012. It is clear that the CMC did not act to ensure that the matter was appropriately addressed.

The committee considers that the lack of advice to the committee by the CMC prior to the articles in the *Australian* is wholly inappropriate given the reporting obligations of the CMC to

inform the committee of significant matters. The committee will carefully consider its options in relation to the lack of governance within the CMC and the lack of accountability in not advising the committee at an earlier time in relation to these matters.

The committee understands the unacceptable situation that has arisen requires a swift, effective response. The committee is considering all options and is in discussions with the Attorney-General in this regard.

The committee has referred this matter to the Parliamentary Crime and Misconduct Commissioner for a thorough and independent investigation. The parliamentary commissioner's investigation will focus on the release and the destruction of the documents. The commissioner is an officer of the parliament, independent of the CMC. The committee expects the parliamentary commissioner's investigation to address the state of knowledge and the roles of CMC officers in relation to the reclassification and subsequent release and the shredding of the Fitzgerald Inquiry documents. This should include the governance and accountability mechanisms within the CMC to prevent matters like this from reoccurring.

In relation to the release of the Fitzgerald Inquiry documents, the committee seeks information on: the circumstances of and authorisation relating to the reclassification of the documents which led to the release; when the advice was received from a former CJC officer as to inappropriate release of the documents; why it took a further four months to action a response; and why there was an inadequate response which continued to allow the public access to a wide range of documents. The committee will also be looking to see if this error by the CMC has been repeated and whether there are other confidential documents in relation to any other matters that may have been released publicly in similar circumstances.

The committee also expects the parliamentary commissioner's report will address the knowledge and actions of CMC officers in relation to the shredding of the Fitzgerald Inquiry documents, including when it occurred, the internal procedures of the CMC in relation to the shredding of the CMC files, and the knowledge, roles and actions of CMC officers in this regard. The committee is prepared to use its extensive powers to ensure this matter is thoroughly investigated. The committee will inform the House of further developments in this matter as appropriate.

Appendix 2 - Correspondence between the Committee, CMC and the Attorney-General

Our Ref: 11,159

5 March 2013

Hon Jarrod Bleijie MP
Attorney-General and Minister for Justice
GPO BOX 149
BRISBANE QLD 4001

Dear Minister,

Request for urgent legislation in relation to released Fitzgerald Inquiry documents

I write on behalf of the Parliamentary Crime and Misconduct Committee in relation to documents from the Fitzgerald Inquiry which were made available for public access following an error on the part of the Crime and Misconduct Commission.

At a meeting today, the Committee resolved to request that you commence drafting urgent legislation to prohibit the republication of the information from the Fitzgerald Inquiry files in the possession of the State Archivist which were transferred from the CMC to the State Archives between July 2007 and February 2010.

The Committee envisages that any urgent legislation would contain a sunset clause for review after three months.

Please contact myself, or the Committee's A/Research Director, Amanda Honeyman, on 3406 7278 to discuss this matter further.

Yours sincerely

Mrs Liz Cunningham MP
Chair



The Hon Jarrod Bleijie MP
Attorney-General and Minister for Justice

7 March 2013

URGENT/PRIVATE AND CONFIDENTIAL

Mrs Liz Cunningham MP

Chair

Parliamentary Crime and Misconduct Committee

Parliament House

George Street

BRISBANE QLD 4000

COPY BY EMAIL: pcmc@parliament.qld.gov.au

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GPO Box 149 Brisbane
Queensland 4001 Australia
Telephone +61 7 3247 9048
Facsimile +61 7 3221 4352
Email: attorney@infrastructure.qld.gov.au

Dear Mrs Cunningham,

Request for urgent legislation in relation to released Fitzgerald Inquiry documents

I refer to your letter dated 6 March 2013 regarding the Parliamentary Crime and Misconduct Committee's request for urgent legislation in relation to the released Fitzgerald Inquiry documents.

I note that at a meeting on 6 March 2013 the Committee resolved to request that I commence drafting urgent legislation to prohibit the republication of the information from the Fitzgerald Inquiry files in the possession of the State Archivist which were transferred from the CMC to the State Archives between July 2007 and February 2010.

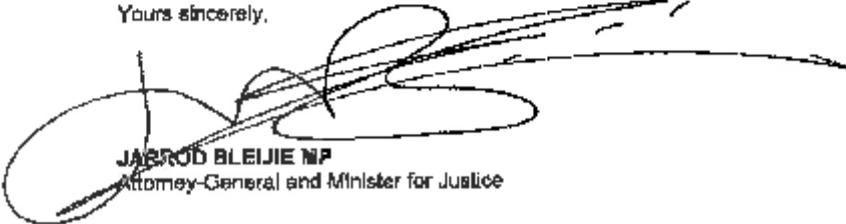
After reviewing the Committee's request I am not convinced that urgent legislation is required at this juncture.

At this point in time, it is not clear to me what documents have been accessed by whom and when.

The Committee is well and truly aware of my concern with regard to the public being informed of such important matters.

Until such time as the CMC publicly calls on the Government to legislate amendments and provides an explanation to the people of Queensland why such legislative amendments are necessary, I am unable to assist the Committee.

Yours sincerely,


JARROD BLEIJIE MP
Attorney-General and Minister for Justice

GPO Box 3123
 Brisbane QLD 4001
 Level 2, North Tower
 515 St Pauls Terrace
 Fortitude Valley, Qld
 Tel: (07) 3360 6060
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CRIME AND MISCONDUCT COMMISSION



Our Ref: AD-01314091/09

7 March 2013

The Honourable J Bleijie MP
 Attorney-General and Minister for Justice
 Level 18
 State Law Building
 50 Ann Street
 BRISBANE QLD 4000

Dear Attorney-General

It is apparent that the Crime and Misconduct Commission (CMC) has been instrumental in the release of information dating from the time of the Fitzgerald Inquiry that should not have been made public.

The reasons for that are still being examined.

Preliminary advice received indicates that on the present state of the law, the retrieval and security of that information is problematic.

I understand that there is some hesitation by the government to act in proposing short term corrective legislation limited to the prevention of the republication of information gained from the Fitzgerald Inquiry without the CMC requesting that legislation.

I make that request. My request is contingent on seeing a copy of the draft legislation proposed.

Yours sincerely

ROSS MARTIN SC
 Chairperson



The Hon Jarrod Bleijie MP
Attorney-General and Minister for Justice

7 March 2013

Mr Ross Martin SC
Chairperson
Crime and Misconduct Commission

Dear Mr Martin,

I refer to your letter dated 7 March 2013 which was only received at 5:30pm.

I note that examinations are currently underway as to how the CMC allowed the release of information gained from the Fitzgerald Commission of Inquiry that should not have been made public.

As you would be fully aware, to request a Government to pass legislation within hours of a request is extraordinary and totally unsatisfactory.

This Government will not pass legislation simply for the sake of covering up the CMC's inability properly perform its functions. The people who have accessed these documents, prima facie, have done so lawfully.

The normal, standard and publicly accepted ways of consulting and due process are proposed to be abandoned, and, in addition, Parliamentary Counsel will need to draft legislation in an unrealistically short time frame. This is a recipe for bad public policy and bad legislation.

Any responsible Government would only accede to such an extraordinary request with caution and only after a full case was presented for such a course of action.

In this case your short and cursory letter, with a caveat at the end, is totally unsatisfactory.

Despite requesting this extraordinarily short turnaround time for legislation, it appears on the face of it that the CMC has known about this issue for some months.

You have requested corrective legislation limited to the prevention of the republication of information gained from the Fitzgerald Inquiry.

Level 16 State Law Building
50 Ann Street Brisbane QLD 4000
GPO Box 149 Brisbane
Queensland 4000 Australia
Telephone +61 7 3242 9600
Facsimile +61 7 3221 4352
Email attorney.general@qld.gov.au

However, your letter is profoundly deficient in that it contains no detail for the type of corrective legislation you desire.

In short, the Government has been placed by the negligence of the CMC and by an extraordinary request made at the very last moment, in an unsatisfactory situation. This also applies to the Legislative Assembly. Neither the Government nor the Parliament can be expected to accede to requests of such a nature other than in extraordinary circumstances.

The Government will use its best endeavours despite this totally unsatisfactory state of affairs to ensure that the public interest is protected, but I place on record my concern and grave disappointment the way in which the CMC has conducted itself.

The Government will reluctantly attempt to assist the CMC with corrective legislation. However, prior to any such corrective legislation, I require more particulars of the type of corrective legislation required and the reason for it. I also require additional information with respect to whether the CMC has pursued other options to rectify the situation, such as a court injunction.

I require your response by 10pm.

Yours sincerely,



JARROD BEEJIE MP
Attorney-General and Minister for Justice

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CRIME AND MISCONDUCT COMMISSION



Our Address: AD-12-010974
Central Office: 30th Floor

7 March 2013

The Honourable J Bleijie MP
Attorney-General and Minister for Justice
Level 18
State Law Building
50 Ann Street
BRISBANE QLD 4000

Dear Attorney-General

I refer to your letter of earlier this evening. The deadline you have set prevents me from answering every issue you raise in your letter. I am sure you will accept that the safety and privacy of the individuals whose affairs are referred to in the material under discussion and which may have become public is the priority in the present circumstances.

You are aware that the Parliamentary Crime and Misconduct Committee has sought from you legislation of the sort I drew to your attention in my letter of earlier this evening. The Parliamentary Crime and Misconduct Committee is my oversight body, and I defer to its judgment that legislation was necessary. I also agree with it. In any event, we have preliminary advice as I referred to in my previous letter about the prospects of an injunction. Absent that, there would appear to be no avenues open to resolve the issue otherwise.

I am aware that you declined to introduce the legislation proposed without a letter from me that set out in relatively short order a number of things. I provided that letter in the terms that I understood was requested of me. I was not informed that you required a draft or any preliminary description of such legislation. Indeed, I have had no contact from you about the matter at all.

In an endeavour to address the priority issue which I have identified above, I agreed to your request for my letter. My letter was expressed in cordial terms because you were the one who requested it, as I understood matters, and so I was unaware of what you then proposed.

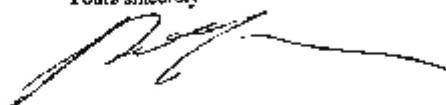
Earlier this evening, and after my letter was sent, your staff and staff of the Department of Justice, as well as the Parliamentary draftsman, engaged with me in preparing legislation of the sort I have referred to. When I arrived at the Parliamentary draftsman's office, it was well under way and close to complete. While in the middle of that process, staff of the Department of Justice acting apparently on instructions indicated that the preparation was to occur without any assistance from the CMC. I am at a loss to understand why, in light of your letter. I have not seen a final draft of the work being prepared in the Parliamentary draftsman's office, but at the point I was required to leave, the matter was well advanced and it seems satisfactory so, subject to perusal of the final draft. I am in no position independently to prepare legislation within the time frame required by you. It would be irresponsible of me, however, not to examine the final draft of the Bill presently under preparation.

Page 2

You make assertions about when the CMC became aware of the problem; given the deadline, now is not the place to engage in debate on that point.

I request that you table this letter this evening and have it read into Hansard. A copy will be provided to the members of the PCMC.

Yours sincerely



ROSS MARTIN SC
Chairperson

Appendix 3 – Motion of the Legislative Assembly

ATTORNEY-GENERAL: Madam Speaker, I move –

- (1) That this House notes the statement by the Chair of the Parliamentary Crime and Misconduct Committee (PCMC) to the House today in relation to the failure by the Crime and Misconduct Commission (CMC) to properly safeguard the records of the Commission of Inquiry into possible illegal activities and associated police misconduct.
- (2) That in addition to any action already undertaken by the Committee, that this House requests the PCMC in accordance with s.292(d) of the *Crime and Misconduct Act 2001* to inquire into and report:
 - a) upon the CMC's incorrect classification of documents lodged with State Archives that were sourced from the Commission of Inquiry into possible illegal activities and associated police misconduct which were transferred to the State Archives from the CMC between 2007 and 2009 that has necessitated the Bill titled Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Bill 2013 passed by the House this evening;
 - b) upon the CMC's failure to remedy the incorrect classification of the above documents in a timely and effective manner;
 - c) upon the destruction of records of the Commission of Inquiry into possible illegal activities and associated police misconduct by the CMC;
 - d) upon the CMC's failure to account to the PCMC in a timely and effective manner with respect to (a) to (c) above;
 - e) as to how the issues arising from the incorrect classification of documents can be remedied in the longer term, including whether some or all of those documents have to remain confidential; and
 - f) on any other matters and make any other recommendations the PCMC believes necessary to address issues raised in its inquiry.
- (3) That in addition to any action already undertaken by the PCMC, in accordance with s.314(2) of the *Crime and Misconduct Act 2001*, requests the PCMC to require the Parliamentary Commissioner to assist the PCMC in its inquiry, including enabling the Commissioner to examine witnesses at all hearings of the Committee on the matter.

- (4) That the Parliamentary Crime and Misconduct Committee authorise the publication of any evidence already taken by the Committee in relation to this matter, redacted only to the extent necessary to protect third parties.
- (5) That the PCMC conduct its proceedings, including the examination by the PCMC and Parliamentary Commissioner of all witnesses under (3) above in public (but excepting its deliberations), unless there is any matter arising which involves current operational files.
- (6) That the PCMC authorise the publication of all transcripts of examinations and tabled evidence as soon as practicable after the hearing.
- (7) That all witnesses in the Committee's proceedings, be required to give evidence under Oath or Affirmation.
- (8) That the Committee report back to the House by 5 April 2013.

Appendix 4 – Witness List

Witness	Date	Page
Ross MARTIN (CMC Chairperson)	06.03.13	2-10
	07.03.13	21-32
	15.03.13	1-55
Janet PROWSE (QSA State Archivist)	07.03.13	1-20
	13.03.13	6
	22.3.13	30-36
Maureen SULLIVAN (QSA Manager, Collections and Preservation)	07.03.13	5-7
	13.03.13	10
Elizabeth HAWKINS (QSA Manager, Archival Collections)	07.03.13	7-16
	13.03.13	8
	22.03.13	37-38
Niles ELVERY (QSA Manager, Public Access)	07.03.13	9-15
	13.03.13	7
Warren STRANGE (CMC Acting Chairperson)	07.03.13	32
	21.03.13	15-38
	28.03.13	25-28
Hon. Jarrod BLEIJIE (Attorney-General and Minister for Justice)	07.03.13	33-39
Sidonie WOOD (CMC Official Solicitor)	13.03.13	4-5
	14.03.13	50
	19.03.13	4-38
	20.03.13	1-37
Josephine HORNER (QSA Manager, Agency Services)	13.03.13	9
Adrian CUNNINGHAM (QSA Director Digital Archives)	13.03.13	11
Barry KROSCH (Researcher and Former QPS Officer)	13.03.13(pm)	1-11
Mark POLLOCK (CMC Solicitor)	14.03.13	1-2
	19.03.13	40-41
	20.03.13	87
	22.03.13	2-3, 61
Peter DUELL (CMC Director, Information Management)	14.03.13	3-49
	15.03.13	56
	22.03.13	39-60 75-79
Gregory RIGBY (CMC Fmr Director Information Management)	18.03.13	2-33
Zora VALESKA (CMC Acting Senior Lawyer Compliance)	18.03.13	34-48
Stephen BISHOP (Author and Researcher)	18.03.13	49-62
Clifford HORWOOD (CMC Manager Information Technology)	19.03.13	1-3
	22.03.13	19-28 80-81

Witness	Date	Page
Robert HUTCHINGS (CMC General Counsel)	06.03.13	9
	19.03.13	39
	20.03.13	38-48 71-86
	22.03.13	65-74
Suzanne SWEEPER (CMC Principal Information Officer)	19.03.13	42
	20.03.13	private
	20.03.13	49-65
Janet SPEIRS (CMC Fmr General Counsel)	20.03.13	66-70
Edith MENDELLE (CMC Executive General Manager)	21.03.13	1-14
Amanda HONEYMAN (Acting Research Director PCMC)	21.03.13	39
Janet LEGG (CMC Fmr Records Manager)	21.03.13	41-56
Wendy-Lea KLYNSMITH	21.03.13	57-65
Russell KENZLER (CMC Fmr Right to Information Coordinator)	22.03.13	4-18
Kathleen FLORIAN (CMC Assistant Commissioner, Crime)	22.03.13	62-64
Judith BELL (CMC Commissioner)	28.03.13	1-6
George FOX (CMC Commissioner)	28.03.13	7-13
Prof. Marilyn MCMENIMAN (CMC Commissioner)	28.03.13	14-15
Hon. Philip NASE (CMC Commissioner)	28.03.13	16-24

Appendix 5 – Index to Exhibits

Ref	Exhibit
Tabled at hearing on Wednesday 13 March 2013	
TD_01	Summons to Sidonie Wood to provide CMC documents
TD_02	Transcript PCMC in camera hearings with QSA staff 7 March 2013
TD_03	Statement of Barry Krosch
Tabled at hearing on Thursday 14 March 2013	
TD_04	Confidential
TD_05	CV – Peter Duell (inc PD for Dir, IM CMC)
TD_06	Crime & Misconduct Commission Briefing Note (Ref:) – 07/03/2013
TD_06A	Crime & Misconduct Commission Briefing Note (Ref:13/025734) – Addendum – 13/03/2013 (addendum to TD_06)
TD_07	Memorandum – To: General Counsel, From: Suzanne Sweeper – 07/09/2011 – Re. Access to Fitzgerald Inquiry Records
TD_07A	Memorandum – To: General Counsel; Through Peter Duell; From Suzanne Sweeper – Re. Access to Fitzgerald Inquiry Records – 7/9/2011
TD_08	Letter – To: Mr Needham (CMC), From: Janet Prowse (QSA) – 06/07/2009 – Re. Notification of access authorisation officers for archival records
TD_09	Letter – To: Janet Prowse (QSA), From Janet Legg (CMC) – 03/09/2010 – Re. Restricted Access Notice – TR5422
TD_10	Email stream – To: Barry Krosch. From Janet Legg – 29/03/2011 – Re. Response Public Access Enquiry 11/4995 requesting information about Joh Bjelke-Petersen perjury trial and Detective Sergeant Robert Carter
TD_11	QSA Access Authorisation Form – 21/04/2011 – From Peter Duell (CMC), Authorised by Martin Moynihan AO QC
TD_12	Letter – To: Mr Martin Moynihan AO QC, From: Janet Prowse (QSA) – 06/06/2011 – Re. Notification of access authorisation officers
TD_13	Email stream – To: Sidonie Wood, From: Zora Valeska – 02/09/2011 – Re. research request (Originally started by Matthew Condon)
TD_14	Memorandum – To: Sidonie Wood, From: Zora Valeska – 01/09/2011 – Re. RTI Request – Brifman Interview Transcripts

Ref	Exhibit
TD_15	QSA Form – Access to Restricted Records at QSA – Sept 2011 – Requestor: Antony Reeves
TD_16	Email stream – To: Elizabeth Hawkins, From Peter Duell – 04/10/2011 – Re. Access Authorisation Form
TD_17	QSA Access Authorisation Form – 10/10/2011 – From Peter Duell (CMC), Authorised by Martin Moynihan AO QC
TD_18	Email stream – To: Zora Valeska, From: Rob Hutchings – 16/05/2012 – Re. FW: Matt Condon
TD_19	Email stream – To: Russell Kenzler, From: Peter Duell – 27/01/2012 – Re. TRIM: FW Need for response from CMC
TD_20	Letter – To: Michelle Hodgman (CMC), From: Steve Bishop – 05/03/2011 – Re. 4 Forms QSA restricted Access forms
TD_21	Letter – To: Warren Strange (QSA), From Steve Bishop – 14/11/2011 – Re. Lack of response to letters of 5 March and 18 Sept 2011
TD_22	Email – To: Peter Duell, From: Elizabeth Hawkins – 15/02/2012 – Re. Transfer report
TD_23	Email – To: Peter Duell, From: Laura Morales – 15/02/2012 – Re. Fitzgerald Inquiry Transfer report
TD_24	Letter – To: Peter Duell (CMC), From: Janet Prowse (QSA) – Re. Transfer Report – TR 5422 Inquiry into Possible Illegal Activities and Associated Police Misconduct (Fitzgerald Inquiry)
TD_25	Confidential
TD_26	Document – Chronology of Events: Issue 1: Incorrect Restricted Access Period (RAP) applied to sensitive Fitzgerald Inquiry Documents; and Issue 2: Permanent records of the Fitzgerald Inquiry destroyed by the CMC (2 nd page includes missing May-June 2012 period)
Tabled at hearing on Friday 15 March 2013	
TD_27	Transcripts of Ross Martin's attendance before PCMC 6-7 March 2013
TD_28	Letter – To: Steve Bishop, From: Peter Duell (CMC) – Re. Access to Fitzgerald Inquiry Exhibits – 09/02/2012
TD_29	Email stream – To: Tony Reeves; From: Peter Duell – 19/03/2013 – Re. Archival documents query
TD_30	Letter – To: Ross Martin (CMC), From: Janet Prowse (QSA) – Re. Information

Ref	Exhibit
	Management and Record Keeping Issues – 26/03/2012
TD_31	Email stream – To: Rob Hutchings, From: Sidonie Wood – 06/03/2013 – Re. Attention Sidonie Wood
TD_32	Email stream – To: Rob Hutchings and Sidonie Wood; From: Zora Valeska – 29/05/2012 – Re. release of info
TD_33	Email Stream and Bundled Documents, including Suzanne Sweeper memo to General Counsel – 06/03/2013
TD_34	File Note (CMC) – 29/05/2012
TD_35	Email stream – To: Ross Martin; From: Zora Valeska – Re. Attention Sidonie Wood
TD_36	CMC Code of Conduct – Oct 2011
TD_37	Confidential
TD_38	Email stream – To: Peter Duell; From: Elizabeth Hawkins – Re. TRIM Change to RAP for Series 18651 items – 19/09/2012
TD_39	Email – To: Elizabeth Hawkins; From: Peter Duell – Re. TRIM: Urgent Change to RAPS: Series 18501 & 18586
TD_40	Letter – To: Adrian Cunningham (QSA); From: Ross Martin (CMC) – re. Fitzgerald inquiry Holdings – 06/03/2013
TD_41	Letter – To: Adrian Cunningham (QSA); From: Ross Martin (CMC) – re. Fitzgerald inquiry Holdings – 06/03/2013
TD_42	Email – To: Maureen Sullivan and Sue Hutley; From: Rob Hutchings – Re. Researchers requests – open records 6 March 2013 with highlighted descript ... - 08/03/2013
TD_43	Document – Note to File – From: Sidonie Wood – Re. Fitzgerald Inquiry Material - 29/05/2012
TD_44	Document – File Note (CMC) – 13/07/2012
TD_45	Email – To: Ross Martin and Warren Strange; From Rob Hutchings – Re. Archives – 07/03/2013
TD_46	Confidential
Tabled at hearing on Monday 18 March 2013	
TD_47	Document – CMC - Records Retention and Disposal Handbook
TD_48	Document – CV - Gregory John Rigby – March 2005

Ref	Exhibit
TD_49	Document – CMC – Policy Disposal of Records v.1.1 14 April 2008
TD_50	Email stream – To: Alisa Howlett (QSA); From: Nui Marsh (CMC) – Re. CMC Retention and Disposal Schedule – 21/02/2012
TD_51	Fax – To: State Archivist; From: Carmel Lawson – Re. Confirmation of Authorisation Officers – 21/06/2007
TD_52	Document – QSA Access Authorisation Form – Greg Rigby – 21/07/09
TD_53	Confidential
TD_54	Confidential
TD_55	Document – CMC – Position Description – Legal Compliance Assistant – Feb 2010
TD_56	Memorandum – To: Sidonie Wood; From Zora Valeska – Re. RTI Request-Brifman Interview Transcripts – 01/09/2011
TD_57	Email Stream – To: Zora Valeska; From: Sidonie Wood – Re. Research Request – 02/09/2011
TD_58	Email Stream – To: Rob Hutchings; From: Sidonie Wood – Re. Draft reply – Barry Krosch – 06/03/2013
TD_59	Email Stream – To: Rob Hutchings; From: Sidonie Wood – Re. Attention Sidonie Wood 29/05/2012
TD_60	Email Stream – To: Rob Hutchings; From: Zora Valeska – Re. Fitzgerald Instructions – 29/05/2012
TD_61	Email – To: Rob Hutchings; From: Zora Valeska – Re. Fitzgerald Instructions – 29/05/2012
TD_62	Email Stream – To: Rob Hutchings, Sidonie Wood; From: Zora Valeska – Re. Fitzgerald Instructions – 29/05/2012
TD_63	Email Stream – To: Rob Hutchings; From: Sidonie Wood – Re. SS Request for advice – 06/03/2013
TD_64	Document – CV – Peter Duell - Update
TD_65	Email/Statement – Stephen Bishop – 18/03/2013
TD_66	Letter (with applications) – To: Michelle Hodgman; From: Steve Bishop – 05/03/2011
TD_67	Letter – To: CMC Records Manager; From: Steve Bishop – 18/09/2011
TD_68	Letter – To: CMC Records Manager; From: Steve Bishop – 18/09/2009

Ref	Exhibit
	Letter – To: Steve Bishop; From: CMC – 23/12/2009 (page 1 only) Letter – To: Russell Kenzler (CMC); From: Steve Bishop – 15/01/2010 Letter – To: Steve Bishop; From: CMC – 15/01/2010
TD_68A	Letter – To: Steve Bishop; From: Russell Kenzler (CMC) – 23/12/2009 (2 pages)
TD_69	Email stream – Between Kay Dibben (Courier Mail) and Steve Bishop – 08/03/2013
Tabled at hearing on Tuesday 19 March 2013	
TD_70	Confidential
TD_71	Document – Summons – Sidonie Wood
TD_72	Confidential
TD_73	Document – CV – Sidonie Loreece Wood - Update
TD_74	Document – Position Description – Official Solicitor – Feb 2012
TD_75	Document – File Note (CMC) – 29/05/2012
TD_76	Document – File Note (CMC) – May 2012
TD_77	Memorandum – To: Rob Hutchings; From: Sidonie Wood – Re: Fitzgerald Inquiry Documents – 06/03/2013
TD_78	Email stream – To: Rob Hutchings; From: Sidonie Wood – Re. My memo - Fitz docs – 06/03/2013
TD_79	Meeting Appointment – Organizer: Peter Duell; Attendee: Sdonie wood – Re. Fitzgerald Holdings – 13/07/2012
TD_80	Document – Handwritten material – Meeting re. Fitz Material Peter Duell
TD_81	Letter – CMC – To: Barry Krosch; From: Sidonie Wood – 21/05/2012
TD_82	Meeting Appointment – Organizer: Peter Duell; Attendee: Sdonie wood – Re. Transfer of Fitzgerald Holdings – 26/07/2012
TD_83	Email stream – To: Sidonie Wood; From: Russell Kenzler – Re. Attention Sidonie Wood – 24/05/2012
TD_84	Confidential
TD_85	Confidential

Ref	Exhibit
	Tabled at hearing on Wednesday 20 March 2013
TD_86	Letter – To: Elizabeth Hawkins; From: Peter Duell – Re. Fitzgerald Inquiry Holdings – 29/05/2012
TD_87	Document – File Note (CMC) – 26/07/2012
TD_88	Confidential
TD_89	Confidential
TD_90	Confidential
TD_91	Document – Position Description – General Counsel – Oct 2011
TD_92	Document Bundle – Statement dated 20 March 2013 – Russell Hutchings (inc email streams, memorandums and other docs)
TD_93	Confidential
TD_94	Document – Active Audit Events – Access to Fitzgerald Inquiry Records
TD_95	Memorandum – To: General Counsel; Through: Peter Duell; From: Suzanne Sweeper – Re. Access to Fitzgerald Inquiry Records – 7/09/2011
TD_96	Email (with draft memo attached) – To: Peter Duell; From: Suzanne Sweeper – Re. TRIM CMC Document: 11/09799: Memo to General Counsel re: access to Fitzgerald Inquiry holdings at Archives – 07/09/2011
TD_97	Confidential
TD_98	Confidential
TD_99	Email stream – To: Rob Hutchings; From: Zora Valeska – Re. Attention Sidonie Wood – 30/05/2012
TD_100	Confidential
TD_101	Confidential
TD_102	Confidential
	Tabled at hearing on Thursday 21 March 2013
TD_103	Document – CV – Edith Mendelle
TD_104	Confidential

Ref	Exhibit
TD_105	Document – Statement – Warren Geoffrey Strange – 20 March 2013
TD_106	Folder – PCMC – Inquiry into the CMC's release and destruction of inquiry documents – Folder of Evidence 1 Queensland State Archives
TD_107	Confidential
TD_108	Confidential
Tabled at hearing on Friday 22 March 2013	
TD_109	Confidential
TD_110	Confidential
TD_111	Document – Summons – Clifford Horwood – 21/3/2013
TD_112	Email stream – Rob Hutchings printout of draft email
TD_113	Document – Summons – Clifford Horwood – 21/3/2013
TD_114	Email (with memo attachment) To: Peter Duell; From: Suzanne Sweeper – Re. TRIM CMC General Document: 11/097998: Memo to General Counsel re. access to Fitzgerald Inquiry Holdings at Archives – DRAFT -7/9/2011
TD_115	Letter – CMC – To: Elizabeth Hawkins; From: Peter Duell – Re. Transfer ID 5422 – Fitzgerald Inquiry Holdings – 20/9/2012
TD_116	Email – To: QSA Public Access and Fiona Gaske; CC: Maureen Sullivan and Sue Hutley; From: Elizabeth Hawkins – Re. Series 18651 – 4/3/2013
TD_117	Email stream – To: Elizabeth Hawkins; From: Peter Duell – Re. TRIM: Re: Change to RAP – Series 18561 – 5/3/2013
TD_118	Document – Screenshots of Rob Hutchings current Outlook account – 22/3/2013
TD_119	Email – To: PCMC Committee; From: QSA – Re. Correspondence between Ms Prowse and Mr Strange regarding the removal of metadata from AQSA's public catalogue – 22/3/2013
TD_120	Document – CMC – Role Description – Assistant Commissioner, Crime
TD_121	Confidential
TD_122	Document – Statement of Zora Valeska – 22/03/2013
TD_123	Document – Comments in relation to Wendy-Lea Klynsmith's testimony of 21 March 2013 – Janet Legg – 22/03/2013

Ref	Exhibit
TD_124	Memorandum – To: Mark Pollock; From: Jens Sorensen – Re. Trim Active Audit 11/098194 – 21/3/2013
Tabled at meeting on Wednesday 27 March 2013	
TD_125	Document – State of Rob Hutchings – CMC General Counsel – 17/03/2013
TD_126	Document – Notes of Jan Speirs (former CMC General Counsel) – 14/4/2010 & 17/03/2011
TD_127	Bundle of recovered emails (including draft emails) provided Friday 22/03/2013 pursuant to summons (collated in date order)
TD_128	Two draft emails – Peter Duell – recovered by CMC and provided pursuant to summons
TD_129	Confidential
TD_130	Email – To: Ross Martin; From Rob Hutchings – 29/05/2012 at 10:31am
TD_131	Confidential
TD_132	Confidential
TD_133	Confidential
TD_134	Confidential
TD_135	Confidential
TD_136	Confidential
TD_137	Confidential
TD_138	Confidential
TD_139	Confidential
TD_140	Confidential

Appendix 6 – Right to Information Act 2009, Schedules 3 and 4**Schedule 3 Exempt information**

section 48

Note-

Access to a document may be refused to the extent the document comprises exempt information-see section 47(3)(a).

1 Cabinet matter brought into existence before commencement

Matter is exempt information if the matter is —

- (a) brought into existence before the commencement of this section; and
- (b) mentioned in section 36(1) of the repealed *Freedom of Information Act 1992*; and
- (c) not officially published by decision of Cabinet.

2 Cabinet information brought into existence on or after commencement

- (1) Information is exempt information for 10 years after its relevant date if —
 - (a) it has been brought into existence for the consideration of Cabinet; or
 - (b) its disclosure would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations; or
 - (c) it has been brought into existence in the course of the State's budgetary processes.
- (2) Subsection (1) does not apply to —
 - (a) information brought into existence before the commencement of this section; or
 - (b) information officially published by decision of Cabinet.
- (3) Without limiting subsection (1), the following documents are taken to be documents comprised exclusively of exempt information under subsection (1) —
 - (a) Cabinet submissions; (b) Cabinet briefing notes; (c) Cabinet agendas;
 - (d) notes of discussions in Cabinet;

- (e) Cabinet minutes;
 - (f) Cabinet decisions;
 - (g) a draft of a document mentioned in any of paragraphs (a) to (f).
- (4) A report of factual or statistical information attached to a document mentioned in subsection (3) is exempt information under subsection (1) only if —
- (a) its disclosure would have an effect mentioned in subsection (1)(b); or
 - (b) it was brought into existence for the consideration of Cabinet or for the State's budgetary processes.
- (5) In this section —
- Cabinet** includes a Cabinet committee or subcommittee.
- consideration** includes —
- (a) discussion, deliberation, noting (with or without discussion) or decision; and
 - (b) consideration for any purpose, including, for example, for information or to make a decision.
- draft** includes a preliminary or working draft.
- relevant date**, for information, means—
- (a) for information considered by Cabinet—the date the information was most recently considered by Cabinet; or
 - (b) for other information—the date the information was brought into existence.

3 Executive Council Information

- (1) Information is exempt information if —
- (a) it has been submitted to Executive Council; or
 - (b) it was brought into existence for submission to Executive Council and is proposed, or has at any time been proposed, to be submitted to Executive Council by a Minister; or
 - (c) it was brought into existence for briefing, or the use of, the Governor, a Minister or a chief executive in relation to information —
 - (i) submitted to Executive Council; or
 - (ii) that is proposed, or has at any time been proposed, to be submitted to Executive Council by a Minister; or
 - (d) it is, or forms part of, an official record of Executive Council; or
 - (e) its disclosure would involve the disclosure of any consideration of Executive Council or could otherwise

prejudice the confidentiality of Executive Council considerations or operations; or

- (f) it is a draft of matter mentioned in any of paragraphs (a) to (e); or
 - (g) it is a copy of or extract from, or part of a copy of or extract from, information mentioned in any of paragraphs (a) to (f).
- (2) Subsection (1) does not apply to information officially published by decision of the Governor in Council.
- (3) In this section —

chief executive means a chief executive of a unit of the public sector.

consideration includes-

- (a) discussion, deliberation, noting (with or without discussion) or decision; and
- (b) consideration for any purpose, including, for example, for information or to make a decision.

draft includes a preliminary or working draft.

official record, of Executive Council, includes an official record of information submitted to Executive Council.

submit information to Executive Council includes bring the information to Executive Council, irrespective of the purpose of submitting the information to Executive Council, the nature of the information or the way in which Executive Council deals with the information.

4 Information briefing incoming Minister

Information is exempt information for 10 years after the appointment of a Minister for a department if the information is brought into existence by the department to brief an incoming Minister about the department.

4A BCC Establishment and Coordination Committee information

- (1) Information is exempt information for 10 years after its relevant date if —
- (a) it has been brought into existence for the consideration of the committee; or
 - (b) its disclosure would reveal any consideration of the committee or would otherwise prejudice the confidentiality of committee considerations or operations.
- (2) Subsection (1) does not apply to —
- (a) information officially published by decision of the council; or
 - (b) if the council delegates a power to the committee under the *City of Brisbane Act 2010*, section 238-information relating to

the delegation or the power to be exercised under the delegation.

- (3) Without limiting subsection (1), the following documents are taken to be documents comprised exclusively of exempt information under subsection (1) —
- (a) committee submissions; (b) committee briefing notes; (c) committee agendas;
 - (d) notes of discussions in committee; (e) committee minutes;
 - (t) committee decisions;
 - (g) a draft of a document mentioned in any of paragraphs (a) to (f).
- (4) A report of factual or statistical information attached to a document mentioned in subsection (3) is exempt information under subsection (1) only if —
- (a) its disclosure would have an effect mentioned in subsection (1)(b); or
 - (b) it was brought into existence for the consideration of the committee.
- (5) In this section —
- committee** means the Establishment and Coordination Committee under the *City of Brisbane Act 2010* and includes the Establishment and Coordination Committee, as constituted from time to time before the commencement of this section, under a local law of the council.
- consideration** includes —
- (a) discussion, deliberation, noting (with or without discussion) or decision; and
 - (b) consideration for any purpose, including, for example, for information or to make a decision.
- council** means the Brisbane City Council. **draft** includes a preliminary or working draft. **relevant date**, for information, means —
- (a) for information considered by the committee—the date the information was most recently considered by the committee; or
 - (b) for other information—the date the information was brought into existence.

4B Budgetary information for local governments

- (1) Information brought into existence in the course of a local government's budgetary processes is exempt information for

10 years after the date it was brought into existence.

- (2) Subsection (1) does not apply to information officially published by decision of the local government.

5 Information revealing particular Sovereign communications

Information is exempt information if its disclosure would reveal-

- (a) any communications between the Sovereign and the Sovereign's representative; or
- (b) any communications between the Sovereign, or the Sovereign's representative, and the Premier.

6 Information disclosure of which would be contempt of court or Parliament

Information is exempt information if its public disclosure would, apart from this Act and any immunity of the Crown-

- (a) be in contempt of court; or
- (b) be contrary to an order made or direction given by-
 - (i) a royal commission or commission of inquiry; or
 - (ii) a person or body having power to take evidence on oath; or
- (c) infringe the privileges of — (i) Parliament; or
 - (ii) the Parliament of the Commonwealth or a State, or a House of such a Parliament; or
 - (iii) the Legislative Assembly of Norfolk Island.

7 Information subject to legal professional privilege

Information is exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.

8 Information disclosure of which would found action for breach of confidence

- (1) Information is exempt information if its disclosure would found an action for breach of confidence.
- (2) However, deliberative process information is not exempt information under subsection (1) unless it consists of information communicated by an entity other than-
 - (a) a person in the capacity of — (i) a Minister; or
 - (ii) a member of the staff of, or a consultant to, a Minister; or
 - (iii) an officer of an agency; or
 - (b) the State or an agency. (3) In this section —

Deliberative process information means information disclosing —

- (a) an opinion, advice or recommendation that has been obtained, prepared or recorded; or
- (b) a consultation or deliberation that has taken place;

in the course of, or for the purposes of, the deliberative processes involved in the functions of government.

9 National or State security information

- (1) Information is exempt information if its disclosure could reasonably be expected to damage the security of the Commonwealth or a State.
- (2) For subsection (1), the security of the Commonwealth includes —
 - (a) matters relating to detecting, preventing or suppressing activities, whether within or outside Australia, that are subversive of, or hostile to, the interests of the Commonwealth or a country allied or associated with the Commonwealth; and
 - (b) the security of a communications system or cryptographic system of the Commonwealth or another country used for —
 - (i) the defence of the Commonwealth or a country allied or associated with the Commonwealth; or
 - (ii) the conduct of the international relations of the Commonwealth.
- (3) For subsection (1), the security of a State includes matters relating to detecting, preventing or suppressing activities, whether within or outside the State, that are subversive of, or hostile to, the interests of the State.

10 Law enforcement or public safety information

- (1) Information is exempt information if its disclosure could reasonably be expected to —
 - (a) prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case; or
 - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
 - (c) endanger a person's life or physical safety; or
 - (d) result in a person being subjected to a serious act of harassment or intimidation; or
 - (e) prejudice a person's fair trial or the impartial adjudication of a case; or
 - (f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a

- contravention or possible contravention of the law (including revenue law); or
- (g) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
 - (h) endanger the security of a building, structure or vehicle;
or
 - (i) prejudice a system or procedure for the protection of persons, property or the environment; or
 - (j) facilitate a person's escape from lawful custody; or
 - (k) prejudice the wellbeing of a cultural or natural resource or the habitat of animals or plants.
- (2) However, information is not exempt information under subsection (1) if it consists of —
- (a) matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or
 - (b) matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
 - (c) a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
 - (d) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to misconduct under the *Crime and Misconduct Act 2001*); or
 - (e) a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.
- (3) Also, information is exempt information if —
- (a) it consists of information given in the course of an investigation of a contravention or possible contravention of the law (including revenue law); and
 - (b) the information was given under compulsion under an Act that abrogated the privilege against self-incrimination.
- (4) Also, information is exempt information if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body.
- (5) Also, information is exempt information if it consists of information obtained, used or prepared —
- (a) for an investigation by a part of the Queensland Police Service known as the State Intelligence Group; or

- (b) for an investigation by a part of the Queensland Police Service known as the State Security Operations Group; or
 - (c) by Crime Stoppers Queensland Limited ACN 010 995 650.
- (6) However, information is not exempt information under subsection (4) or (5) in relation to a particular applicant if —
- (a) it consists of information about the applicant; and
 - (b) the investigation has been finalised.
- (7) A reference in this section to a repealed Act includes a reference to the repealed Act as originally enacted and as in force from time to time.
- (8) A reference in this section to a contravention or possible contravention of the law includes a reference to misconduct or possible misconduct under the *Crime and Misconduct Act 2001*.
- (9) In this section —
- crime function** see the *Crime and Misconduct Act 2001*, section 25.
- intelligence functions** mean the functions mentioned in the *Crime and Misconduct Act 2001*, section 53.
- law** includes law of the Commonwealth, a State or a foreign country.
- misconduct functions** see the *Crime and Misconduct Act 2001*, section 33.
- prescribed crime body** means —
- (a) the Crime and Misconduct Commission; or
 - (b) the former Criminal Justice Commission; or
 - (c) the former Queensland Crime Commission.
- prescribed functions** means —
- (a) in relation to the Crime and Misconduct Commission the crime function, the intelligence functions and the misconduct functions; and
 - (b) in relation to the former Criminal Justice Commission — the functions of the former Criminal Justice Commission under the repealed *Criminal Justice Act 1989* in relation to organised or major crime, or in relation to misconduct or official misconduct, within the meaning of that Act; and
 - (c) in relation to the former Queensland Crime Commission—the functions of the former Queensland Crime Commission under the repealed *Crime Commission Act 1997* in relation to

relevant criminal activity or major crime within the meaning of that Act.

11 Investment incentive scheme Information

(1) Information is exempt information for the relevant period if its disclosure could reasonably be expected to disclose information about—

- (a) a particular incentive given to, or arranged for, a relevant person under a contract in relation to an investment incentive scheme; or
- (b) an incentive sought by, or proposed for, a relevant person whether or not an incentive was, in fact, given to, or arranged for, the relevant person under an investment incentive scheme.

(2) In this section —

department means the department administered by the Minister having responsibility for business, industry development, and investment opportunities and attraction, as identified in the Administrative Arrangements and within which that responsibility is administered.

incentive includes any of the following —

- (a) an amount that is a refund of all or part of an amount paid as a tax, fee or charge;
- (b) another amount, whether as a lump sum or by instalments;
- (c) a benefit that is not an amount mentioned in paragraph (a) or (b).

investment incentive scheme means a written scheme that — (a) promotes projects by giving incentives; and

- (b) includes processes for assessing an application under the scheme; and
- (c) is administered by the department.

project means a project or proposed project that involves investing or spending money, or the continued investing or spending of money, and is intended to create job opportunities or to continue existing jobs.

relevant period —

- (a) for an incentive given or arranged under a contract, means the period ending at the earlier of —
 - (i) 1 year after the contract ends; or
 - (ii) 8 years after the contract begins; or
- (b) for an incentive that was sought or proposed but that was not given or arranged, means the period ending 8 years after the last written communication between the department and the relevant person in relation to the incentive.

relevant person means a person to the extent the person is or was any 1 or more of the following —

- (a) a person who inquires of, or enters into discussions with, the department or a public service employee about an incentive for a project, whether or not the person makes an application under an investment incentive scheme for an incentive;
- (b) a person who makes an application under an investment incentive scheme, whether or not the person is given an incentive;
- (c) a person who is given an incentive for a project, whether or not the person continues to be subject to a provision of an agreement about the incentive that allows the department to monitor the person or project.

12 Information disclosure of which prohibited by Act

(1) Information is exempt information if its disclosure is prohibited by 1 of the following provisions-

- *Aboriginal Cultural Heritage Act 2003*, section 29(2)
- *Adoption Act 2009*, section 314
- *Auditor-General Act 2009*, section 53
- *Australian Crime Commission (Queensland) Act 2003*, sections 19 and 20, to the extent they apply to a summons or notice that includes a notation under section 21 of that Act
- *Child Protection Act 1999*, sections 186 to 188
- ***Child Protection (Offender Prohibition Order) Act 2008***, section 41
- *Child Protection (Offender Reporting) Act 2004*, section 70
- *Financial Intermediaries Act 1996*, section 239
- *Juvenile Justice Act 1992*, section 288

Editor's note—

Juvenile Justice Act 1992—see the Youth Justice Act 1992, section 344.

- *Maintenance Act 1965*, section 129
- *Public Interest Disclosure Act 2010*, section 65(1)
- *Taxation Administration Act 2001*, part 8, so far as it applies to personal confidential information under that Act
- *Torres Strait Islander Cultural Heritage Act 2003*, section 29(2)
- *Transport (Rail Safety) Act 2010*, part 9, division 2
- *Witness Protection Act 2000*, sections 36 and 38.

- (2) Information is not exempt information under subsection (1) in relation to an access application if it is personal information for the applicant.
- (3) Subject to subsection (2), information is exempt information if it is contained in a document mentioned in section 112(1) of the repealed *Freedom of Information Act 1992*.

Schedule 4 Factors for deciding the public interest

section 49

Note-

Access to a document may be refused to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49-see section 47(3)(b).

Part 1 Factors irrelevant to deciding the public interest

- 1 Disclosure of the information could reasonably be expected to cause embarrassment to the Government or to cause a loss of confidence in the Government.
- 2 Disclosure of the information could reasonably be expected to result in the applicant misinterpreting or misunderstanding the document.
- 3 Disclosure of the information could reasonably be expected to result in mischievous conduct by the applicant.
- 4 The person who created the document containing the information was or is of high seniority within the agency.

Part 2 Factors favouring disclosure in the public interest

- 1 Disclosure of the information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability.
- 2 Disclosure of the information could reasonably be expected to contribute to positive and informed debate on the important issues or matters of serious interest.
- 3 Disclosure of the information could reasonably be expected to inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community.
- 4 Disclosure of the information could reasonably be expected to ensure effective oversight of expenditure of public funds.
- 5 Disclosure of the information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official.
- 6 Disclosure of the information could reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.
- 7 The information is the applicant's personal information.
- 8 The information is the personal information of a child within the meaning of section 25, the agent acting for the applicant is the child's parent within the meaning of section 25 and disclosure of the

information is reasonably considered to be in the child's best interests.

- 9 The information is the personal information of an individual who is deceased (the *deceased person*) and the applicant is an eligible family member of the deceased person.
- 10 Disclosure of the information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.
- 11 Disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.
- 12 Disclosure of the information could reasonably be expected to reveal that the information was —
 - (a) incorrect; or
 - (b) out of date; or (c) misleading; or (d) gratuitous; or
 - (e) unfairly subjective; or
 - (f) irrelevant.
- 13 Disclosure of the information could reasonably be expected to contribute to the protection of the environment.
- 14 Disclosure of the information could reasonably be expected to reveal environmental or health risks or measures relating to public health and safety.
- 15 Disclosure of the information could reasonably be expected to contribute to the maintenance of peace and order.
- 16 Disclosure of the information could reasonably be expected to contribute to the administration of justice generally, including procedural fairness.
- 17 Disclosure of the information could reasonably be expected to contribute to the administration of justice for a person.
- 18 Disclosure of the information could reasonably be expected to contribute to the enforcement of the criminal law.
- 19 Disclosure of the information could reasonably be expected to contribute to innovation and the facilitation of research.

Part 3 Factors favouring nondisclosure in the public interest

- 1 Disclosure of the information could reasonably be expected to prejudice the collective responsibility of Cabinet or the individual responsibility of members to Parliament.
- 2 Disclosure of the information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities.

- 3 Disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.
- 4 The information is the personal information of a child within the meaning of section 25, the applicant is the child's parent within the meaning of section 25 and disclosure of the information is reasonably considered not to be in the child's best interests.
- 5 The information is the personal information of an individual who is deceased (the *deceased person*), the applicant is an eligible family member of the deceased person and the disclosure of the information could reasonably be expected to impact on the deceased person's privacy if the deceased person were alive.
- 6 Disclosure of the information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.
- 7 Disclosure of the information could reasonably be expected to prejudice security, law enforcement or public safety.
- 8 Disclosure of the information could reasonably be expected to impede the administration of justice generally, including procedural fairness.
- 9 Disclosure of the information could reasonably be expected to impede the administration of justice for a person.
- 10 Disclosure of the information could reasonably be expected to prejudice the security or good order of a corrective services facility.
- 11 Disclosure of the information could reasonably be expected to impede the protection of the environment.
- 12 Disclosure of the information could reasonably be expected to prejudice the economy of the State.
- 13 Disclosure of the information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.
- 14 Disclosure of the information could reasonably be expected to prejudice intergovernmental relations.
- 15 Disclosure of the information could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person.
- 16 Disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.
- 17 Disclosure of the information could reasonably be expected to prejudice the competitive commercial activities of an agency.
- 18 Disclosure of the information could reasonably be expected to prejudice the conduct of investigations, audits or reviews by the ombudsman or auditor-general.

- 19 Disclosure of the information could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency.
- 20 Disclosure of the information could reasonably be expected to prejudice a deliberative process of government.
- 21 Disclosure of the information could reasonably be expected to prejudice the effectiveness of testing or auditing procedures.
- 22 Disclosure of the information is prohibited by an Act.

Part 4 Factors favouring nondisclosure in the public interest because of public interest harm in disclosure

1 Affecting relations with other governments

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could—
 - (a) cause damage to relations between the State and another government; or
 - (b) divulge information of a confidential nature that was communicated in confidence by or for another government.
- (2) Subsection (1) applies only for 10 years after the information was brought into existence.
- (3) The information commissioner may, on application by a prescribed entity, extend the 10 year period if the commissioner considers the extension in the public interest.
- (4) An application for an extension may be made before or after the end of the 10 year period.
- (5) In this section —
prescribed entity means —
 - (a) an agency or Minister; or
 - (b) an entity that would be a relevant third party under section 37 in relation to the document containing the information in relation to which the extension is sought.

2 Affecting investigations by ombudsman or audits by auditor-general

Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could prejudice the conduct of—

- (a) an investigation by the ombudsman; or
- (b) an audit by the auditor-general.

3 Affecting particular operations of agencies

Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could—

- (a) prejudice the effectiveness of a method or procedure for the conduct of tests, examinations or audits by an agency; or
- (b) prejudice achieving the objects of a test, examination or audit conducted by an agency; or
- (c) have a substantial adverse effect on the management or assessment by an agency of the agency's staff; or
- (d) have a substantial adverse effect on the conduct of industrial relations by an agency.

4 Disclosing deliberative processes

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm through disclosure of—

- (a) an opinion, advice or recommendation that has been obtained, prepared or recorded; or
- (b) a consultation or deliberation that has taken place;

in the course of, or for, the deliberative processes involved in the functions of government

Examples of information of the type mentioned in subsection (1)-

- a document prepared by an agency about projections of future revenue for the State
- a document prepared to inform a decision by an agency about potential road routes, where disclosure of all potential routes, including those that are subsequently rejected, could have a negative impact on property values or cause community concern

- (2) If the deliberative processes mentioned in subsection (1) include public consultation, subsection (1) applies only until the public consultation starts.
- (3) However, subsection (1) does not apply for information to the extent it consists of—
 - (a) information that appears in an agency's policy document; or
 - (b) factual or statistical information; or
 - (c) expert opinion or analysis (other than expert opinion or analysis commissioned in the course of, or for, the deliberative processes mentioned in subsection (1)) by a person recognised as an expert in the field of knowledge to which the opinion or analysis relates.
- (4) Also, subsection (1) does not apply for information if it consists of—
 - (a) a report of a body or organisation—
 - (i) established within an agency; and
 - (ii) prescribed under a regulation; or

- (b) the record of, as a formal statement of the reasons for, a final decision, order or ruling given in the exercise of—
 - (i) a power; or
 - (ii) an adjudicative function; or
 - (iii) a statutory function; or
 - (iv) the administration of a publicly funded scheme.

5 **Disclosing Information brought into existence for ensuring security or good order of corrective services facility**

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose information that—
 - (a) is in the possession of, or brought into existence by, the department in which the *Corrective Services Act 2006* is administered; and
 - (b) is—
 - (i) a recording of a telephone call made by an offender from a corrective services facility; or
 - (ii) an audio recording made in a corrective services facility for the security or good order of the facility; or
 - (iii) a visual recording of a corrective services facility or a part of a corrective services facility; or
 - (iv) a document to the extent that it refers to or contains any part of a recording mentioned in subparagraph (i), (ii) or (iii).

- (2) In this section—

offender means an offender as defined under the *Corrective Services Act 2006*.

6 **Disclosing personal information**

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead.
- (2) However, subsection (1) does not apply if what would be disclosed is only personal information of the person by whom, or on whose behalf, an application for access to a document containing the information is being made.

7 **Disclosing trade secrets, business affairs or research**

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm because—
 - (a) disclosure of the information would disclose trade secrets of an agency or another person; or
 - (b) disclosure of the information—
 - (i) **would disclose information (other than trade secrets) that has a commercial value to an agency or another**

person; and

- (ii) could reasonably be expected to destroy or diminish the commercial value of the information; or
- (c) disclosure of the information-
 - (i) **would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person; and**
 - (ii) **could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.**
- (2) However, subsection (1) does not apply if what would be disclosed concerns only the business, professional, commercial or financial affairs of the person by, or on whose behalf, an application for access to the document containing the information is being made.
- (3) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure-
 - (a) would disclose the purpose or results of research, whether the research is yet to be started, has started but is unfinished, or is finished; and
 - (b) could reasonably be expected to have an adverse effect on the agency or other person by, or on whose behalf, the research is intended to be, is being, or was, carried out.
- (4) However, subsection (3) does not apply if what would be disclosed concerns only research that is intended to be, is being, or was, carried out by the agency or other person by, or on whose behalf, an application for access to the document containing the information is being made.

8 Affecting confidential communications

- (1) **Disclosure of the information could reasonably be expected to cause a public interest harm if—**
 - (a) the information consists of information of a confidential nature that was communicated in confidence; and
 - (b) disclosure of the information could reasonably be expected to prejudice the future supply of information of this type.
- (2) However, subsection (1) does not apply in relation to deliberative process information unless it consists of information communicated by an entity other than-
 - (a) a person in the capacity of—
 - (i) a Minister; or
 - (ii) a member of the staff of, or a consultant to, a Minister; or
 - (iii) an officer of an agency; or

(b) the State or an agency. (3)

In this section-

Deliberative process information means information

disclosing—

- (a) an opinion, advice or recommendation that has been obtained, prepared or recorded; or
- (b) a consultation or deliberation that has taken place;

in the course of, or for the purposes of, the deliberative processes involved in the functions of government.

9 Affecting Siam economy

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure could-
 - (a) have a substantial adverse effect on the ability of government to manage the economy of the State; or
 - (b) expose any person or class of persons to an unfair advantage or disadvantage because of the premature disclosure of information concerning proposed action or inaction of the Assembly or government in the course of, or for, managing the economy of the State.
- (2) Without limiting subsection (1)(a), that paragraph applies to information the disclosure of which would reveal-
 - (a) the consideration of a contemplated movement in government taxes, fees or charges; or
 - (b) the imposition of credit controls.

10 Affecting financial or property Interests of State or agency

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure could have a substantial adverse effect on the financial or property interests of the State or an agency.
- (2) Subsection (1) applies only for 8 years after the information was brought into existence.

Appendix 7 – Chronology of Events

Date	Event	Document/Source	PCMC Hearing date Witness/Page Number
1987			
December – January 1987	The Courier Mail publishes a series of articles written by DICKIE, concerning vice and police inactivity.	The Fitzgerald Report, at p. 2.	
11 May 1987	The Australian Broadcasting Corporation’s ‘Four Corners’ program telecast ‘Moonlight State’.	A television documentary which suggested that the Queensland Police Force was lying or incompetent or both; The Fitzgerald Report, at p. 2.	
26 May 1987	Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct.	Orders in Council, as amended by Orders in Council of 24 June 1987, 25 August 1988 and 29 June 1989; The Fitzgerald Report, at p. (i).	
1989			
June 1989	An unknown number of Fitzgerald Inquiry documents relevant to continuing investigations are removed from COI files and placed on new files for the proposed Criminal Justice Commission.	PCMC Exhibit 1 - advice from CMC to PCMC received 6 March 2013.	EX-CMC1. Transcript 6 March 2013.
3 July 1989	Report of a Commission of Inquiry Pursuant to Orders in Council.	The Fitzgerald Report.	
31 October 1989	Establishment and operation of the Criminal Justice Commission.	<i>Criminal Justice Act No. 111 of 1989</i> receives Assent.	
	Delivery of Fitzgerald Inquiry documents to the Director of the Intelligence Division.	<i>Criminal Justice Act No. 111 of 1989</i> , section 2.48 – relinquishment of data of Commission of Inquiry.	
1994			
7 September 1994	Letter from McCROHON (CJC) to McGREGOR (QSA) re: proposed destruction of material held by CJC Intelligence Division.		EX-QSA13.
5 October 1994	Letter from McGREGOR (QSA) to McCROHON (CJC) re: CJC Intelligence Division request re: destruction of materials including: Fitzgerald Inquiry transcripts	Material received from QSA 11 March 2013 (records and Retention Disposal).	EX-QSA13 Exhibit Folder 1.

Date	Event	Document/Source	PCMC Hearing date Witness/Page Number
	described as duplicate material; and 19 folders containing COI material ' <i>original is held on file in CJC central registry from which selected information was copied</i> '.		
1995			
24 November 1995	Letter from McGREGOR (QSA) to WALKER (CJC) re: proposed destruction of material held by CJC Intelligence Division.	Material received from QSA 11 March 2013 (records and Retention Disposal).	EX-QSA14 Exhibit Folder 1.
1996			
4 January 1996	Letter from McGREGOR (QSA) to WALKER (CJC) re: proposed destruction of material held by CJC Intelligence Division – CJC Retention and Disposal Schedule F118/49 for Intelligence Division Records.		EX-QSA5.
1997			
27 March 1997	Letter from McGREGOR (QSA) to WALKER (CJC) re: proposed destruction of material held by CJC Intelligence Division.		EX-QSA5.
2 May 1997	Letter from McGREGOR (QSA) to WALKER (CJC) re: proposed destruction of material held by CJC Intelligence Division.		EX-QSA5.
2001			
8 November 2001	<i>Crime and Misconduct Act 2001</i> , date of assent.	Sections 1 and 2 commenced.	
2002			
1 January 2002	<i>Crime and Misconduct Act 2001</i> , remaining provisions commenced, including section 5(1); 375. Purpose - section 5(1) – the Act's purposes are to be achieved primarily by establishing a permanent commission to be called the Crime and Misconduct	<i>Crime and Misconduct Act 2001</i> .	

Date	Event	Document/Source	PCMC Hearing date Witness/Page Number
	<p>Commission.</p> <p>Data and records of commission of inquiry - section 375(1) – this section applies to the commission of inquiry data and records of which the director of the intelligence division under the repealed <i>Criminal Justice Act 1989</i> assumed possession and control under that repealed Act; section 375(2) – the commission must continue possession and control of the data and records and the provisions of the repealed Special Prosecutor Act 1988, sections 20 and 21 apply, with the necessary changes, as if –</p> <ul style="list-style-type: none"> (a) the commission of inquiry referred to in that Act were the commission; and (b) the chairperson referred to in that Act were the chairperson under this Act <p>Section 375(3) – in this section – commission of inquiry data and records means the commission of inquiry data and records mentioned in the repealed <i>Criminal Justice Act 1989</i>, section 50.</p> <p>Confidential material under the Crime Commission Act - section 375B(1) – this section applies if under section 111 of the repealed <i>Crime Commission Act 1997</i>, a person could not publish an answer, document, thing or information mentioned in that section without the written consent of the Queensland Crime Commission.</p> <p>Section 375B(2) – to remove any doubt, it is declared that the commission may give written consent to the</p>		

Date	Event	Document/Source	PCMC Hearing date Witness/Page Number
	publication.		
2003			
26 April 2003	Letter from PROWSE (QSA) to BUTLER (CMC) re: congratulation on appointment and development of Retention and Disposal Schedule.		EX-QSA30 – Exhibit Folder 1.
20 October 2003	Email from QSA to SPENCE, Office of Economic and Statistical Research, Queensland Treasury, re: CMC completion of a Strategic Recordkeeping Implementation Plan (SRIP).	Material received from QSA 11 March 2013 (CMC & Record Keeping).	EX-QSA25 – Exhibit Folder 1.
November 2003	Information Standard 31: Retention and Disposal of Public Records Policy (IS31).	Material received from QSA 11 March 2013 (Records and Retention Disposal).	Ex-QSA15 - Exhibit Folder 1.
5 November 2003	Letter from CMC to QSA submitting Strategic Recordkeeping Implementation Plan (SRIP) for review and endorsement.	Material received from QSA 11 March 2013 (CMC & Record Keeping).	EX-QSA26 – Exhibit Folder 1.
13 November 2003	Letter from QSA to CMC acknowledging receipt of SRIP.	Material received from QSA 11 March 2013 (CMC & Record Keeping).	EX-QSA27 – Exhibit Folder 1.
20 November 2003	Internal QSA memo recommending endorsement of SRIP.	Material received from QSA 11 March 2013 (CMC & Record Keeping).	EX-QSA28 – Exhibit Folder 1.
24 November 2003	Letter from QSA to CMC endorsing SRIP.	Material received from QSA 11 March 2013 (CMC & Record Keeping).	EX-QSA29 – Exhibit Folder 1.
2005			
26 April 2005	Letter from QSA to NEEDHAM, on appointment as CMC Chair, extending an offer to meet to discuss government record keeping and acknowledgement that QSA and CMC have been collaborating on a Retention and Disposal Schedule.	Material received from QSA 11 March 2013 (CMC & Record Keeping).	EX-QSA30 – Exhibit Folder 1.
2006			
26 March 2006	Letter from PROWSE (QSA) to MARTIN (CMC) re: Record keeping Summary for CEOs.	Material received from QSA.	EX-QSA32 – Exhibit Folder 1.

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29 July 2006	Email thread PROWSE (QSA) regarding 65 year RAP on all Series in the Fitzgerald Inquiry transfer.	Material received from QSA.	
August 2006	CMC/QSA publication <i>'Managing public records responsibly'</i> .	Material received from QSA 11 March 2013 (CMC & Record Keeping).	EX-QSA31 – Exhibit Folder 1.
2006	QSA approves the Retention and Disposal Schedule for the CMC.	CMC to PCMC received 6 March 2013.	EX-CMC1– Exhibit Folder 1.
2006	Project commences to sentence 17 years of CMC files in accordance with the approved Retention and Disposal Schedule.	CMC to PCMC received 6 March 2013.	EX-CMC1– Exhibit Folder 1.
13 October 2006	CMC Retention and Disposal Schedule Appraisal Report.	Material received from QSA 11 March 2013 (Records and Retention Disposal).	EX-QSA16 – Exhibit Folder 1.
17 October 2006	QSA correspondence to CMC re: Retention and Disposal Schedule QDAN 630, version 1, relating to CMC records including Fitzgerald holdings: witness protection agreements – temporary status – to be retained for 75 years after last action.	Material received from QSA 11 March 2013 (Records and Retention Disposal).	EX-QSA17 – Exhibit Folder 1, at p. 78. TD_106.
2007			
2007	Guideline for the Implementation of Retention and Disposal Schedules (QSA).	Material received from QSA 11 March 2013 (Records and Retention Disposal).	EX-QSA20 – Exhibit Folder 1.
30 May 2007	QSA to CMC notification of access authorisation officers.	(Received by CMC on 30 May 2007 – no date on document).	EX-CMC- Item 2, Part 2, Doc 4.
19 June 2007	Access authorisation signed by NEEDHAM (CMC) for RIGBY (CMC) delegation, form also signed by RIGBY.		EX-CMC- Item 2, Part 2, Doc 3. TD_52.
21 June 2007	Letter from CMC to QSA re: confirmation of authorisation officers: RIGBY (18/06/2007); LAWSON (19/06/2007); LEGG (18/06/2007).		EX-CMC- Item 2, Part 2, Doc 2.
6 July 2007	Project commences to transfer the bulk of the Fitzgerald Inquiry holdings to Queensland State Archives.	CMC to PCMC received 6 March 2013.	EX-CMC1 – Exhibit folder 1.

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July 2007 – February 2010	Transfer continues for a total of 17 Series (i.e. categories) of Fitzgerald Inquiry items.	CMC to PCMC received 6 March 2013.	EX-CMC1 – Exhibit folder 1.
1 August 2007	First transfer (TR5422) from CMC to QSA includes: Statements (20 boxes); Transcripts (920 boxes); Records of Interviews (27 boxes).	Spread sheet from QSA.	EX-QSA1 – Exhibit Folder 1. TD_26. TD_2, at p. 2.
31 August 2007	PROWSE (QSA) to NEEDHAM (CMC) re: CMC Retention and Disposal Schedule, Fitzgerald Inquiry.		EX-QSA19 TD_106
31 August 2007	Commission of Inquiry into Possibly Illegal Activities and Police Misconduct: Queensland Disposal Authority Number (QDAN) 630 v.1; 606 v.1.		EX-QSA5. EX-QSA18. TD_106.
2 December 2007	Second transfer (TR5422) from CMC to QSA includes: PCMC Exhibits (51 boxes); Correspondence (21 boxes).	Spread sheet from QSA.	EX-QSA1 – Exhibit Folder 1. TD_26. TD_2, at p. 2.
2007	Large quantities of CMC files are identified for destruction and are securely destroyed. This material includes CMC Misconduct Intelligence files containing original COI documents.	CMC to PCMC received 6 March 2013.	EX-CMC1 – Exhibit folder 1.
31 August 2007	QSA Appraisal Report – Agency – Commission of Inquiry – Possible Illegal Activities and Police Misconduct – Appendix 1 – chronology of client interaction.	Material received from QSA 11 March 2013 (Records and Retention Disposal).	EX-QSA18 and 19 – Exhibit folder 1.
2008			
14 April 2008	CMC Policy: Disposal of Records (version 1.1).		EX-CMC-Item 3, Part 3, Doc 81.
3 March 2008	Third transfer of Fitzgerald Files from CMC to QSA: Documentation (135 boxes) – 1 large chart.	Spread sheet from QSA.	EX-QSA1 – Exhibit Folder 1. TD_26. TD_2.

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2009			
4 February 2009	Finalisation of transfer of Fitzgerald Inquiry records to QSA.	Material received from QSA .	EX-QSA1– Exhibit Folder 1.
20 February 2009	Memo approved by PROWSE (QSA) regarding finalisation of transfer of Fitzgerald Inquiry Records to QSA.	Material received from QSA.	
23 February 2009	Email from HORNER (QSA) to KLYNSMITH (CMC) re: recommendations for sentencing remaining Fitzgerald inquiry records.	Material received from QSA 11 March 2013 (Records and Retention Disposal).	EX-QSA22 – Exhibit Folder 1. EX-CMC – Item 4, 2009.
12 March 2009	Final transfer from CMC to QSA: Politicians and police officers correspondence and various.	Spread sheet from QSA.	EX-QSA1 – Exhibit Folder 1. TD_26. TD_2, at p. 2.
June 2009	Information Standard 31: Retention and Disposal of Public Records.	Material received from QSA 11 March 2013 (Records and Retention Disposal).	EX-QSA23 – Exhibit Folder 1.
6 July 2009	PROWSE (QSA) to NEEDHAM (CMC) re: notification of access authorisation officers for archival public records.		EX-CMC- Item 2, Part 2, Doc 2.
21 July 2009	QSA Authorisation Access forms provided by CMC for RIGBY; HODGMAN; STURM.		EX-CMC- Item 2, Part 2, Doc 9.
29 July 2009	Internal QSA email thread re: Fitzgerald Inquiry Restricted Access Period Notice between GASKE, HALE, PROWSE, and HORNER.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA34 – Exhibit Folder 1.
18 December 2009	Letter from BISHOP (Researcher) to KENZLER (CMC RTI Officer), seeking access to Fitzgerald Inquiry documents – correspondence continues to 19 January 2010.		EX-CMC-Item 5, Part 1, Section 2.
2010			
2 September 2010	LEGG, CMC Records Manager, advises QSA that a 65 year RAP applies to all Series, except specific items in	CMC to PCMC received 6 March 2013.	EX-CMC1 – Exhibit Folder 1.

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	Series 18561 which are to have a 100 year RAP applied.		
3 September 2010	Letter from LEGG (CMC) to PROWSE (QSA) re: Restricted Access Notice for TD 5422 Series 18651 (annotated correction on covering letter refers to series 18586 replacing 18651).		EX-QSA-2. TD_09.
3 September 2010	QSA applies a 65 year RAP applies to all Series, except specific items in Series 18561 which are to have a 100 year RAP applied.	QSA RAP form for initial transfer, dated 3 September 2010.	Ex-QSA2 – Exhibit Folder 1.
30 November 2010	CONDON (Journalist), emails DUELL seeking CMC permission to access the Brifman interview transcripts <i>'for the purpose of research for my new book.'</i>	Email subject: RESEARCH REQUEST.	TD_13, at p. 6.
1 December 2010	DUELL replies to CONDON's email request stating that <i>'he is arranging searches of the CMC holdings for all records relating to Shirley Brifman, particularly the interview transcripts, and that he will follow up'.</i>	Email subject: RESEARCH REQUEST.	TD_13 at p. 5.
2011			
18 January 2011	CONDON emails DUELL to follow up of Brifman transcripts request.	Email subject: RESEARCH REQUEST.	TD_13 at p. 5.
21 January 2011	DUELL replies to CONDON providing that he has <i>'asked the legal unit to examine and advise on the issue of lifting the non-publication order placed on the Brifman transcripts.'</i>	Email subject: RESEARCH REQUEST.	TD_13 at p. 4.
10 February 2011	HAWKINS (QSA) to LEGG (CMC) email re: Fitzgerald Inquiry Exhibits thread <i>'unfortunately we are unable to close records without a written RAP'</i> – email trail begins 29 September 2010.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA35 – Exhibit Folder 1. EX-CMC- Item 4, 2011.
5 March 2011	Letter from BISHOP (Researcher) to HODGMAN (CMC) enclosing four QSA forms seeking access to Fitzgerald Inquiry documents.		EX-CMC-Item 5, Part 1, Section 2. TD_20.

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20 March 2011	KROSCHE (Researcher) email to QSA re: General enquiries.		TD_10, at p. 3.
24 March 2011	BOULTON (QSA) email to KROSCHE (Researcher) re: Response Public Access Enquiry 11/4995; directing KROSCHE to HODGMAN (CMC) as item is subject to a 65 year RAP therefore permission is required to access the specific record KROSCHE requests.		TD_10, at p. 2.
24 March 2011	KROSCHE (Researcher) email to HODGMAN (CMC) seeking permission to access to a specific file.		TD_10, at p. 1.
29 March 2011	LEGG (CMC, Acting Records Manager), email to KROSCHE (Researcher) responding to email to HODGMAN (CMC) and providing <i>'the request will be processed and he will be contacted when a decision is made'</i> .		EX-CMC-Item 5, Part 1, Section 3. TD_10, at p. 1.
11 April 2011	CMC provides DUELL Access Authorisation form.		EX-CMC- Item 2, Part 2, Doc 10.
21 April 2011	CMC faxes access authorisation form for DUELL (Acting Director Information Management) to QSA. Form authorised by MOYNIHAN AO QC.		TD_11.
Circa May 2011	RIGBY leaves CMC and DUELL replaces RIGBY.		
6 June 2011	PROWSE (QSA) to MOYNIHAN (CMC) – current access authority to expire on 30 June 2011 – note on document states it was referred to DUELL 09/06/2011.		EX-CMC- Item 2, Part 2, Doc 11. TD_12.
30 June 2011	DUELL'S (CMC) authorisation access expires.	No document.	
15 August 2011	Email CONDON (3:25pm) to DUELL seeking follow-up on request for Brifman transcripts.	Email subject: RESEARCH REQUEST.	TD_13 at p. 4.
15 August 2011	Email DUELL (4:51pm) to CONDON re: Brifman transcripts. DUELL provides <i>'I am yet to receive advice on whether your request is assessed as having sufficient merit to proceed with the process to have the non-</i>	Email subject: RESEARCH REQUEST.	TD_13 at p. 3.

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	<i>publication order lifted.'</i>		
31 August 2011	Email from VALESKA (CMC) (2:11pm) to KENZLER (CMC RTI Coordinator) CC WOOD (CMC) re: CONDON request for Brifman transcripts, <i>seeking (i) KENZLER's advice; (ii) his attitude towards releasing the transcripts.</i>	Email subject: RESEARCH REQUEST.	TD_13 at p. 3.
August 2011	Guideline for the Implementation of Retention and Disposal Schedules – Guideline for Queensland Public Authorities.	Material received from QSA 11 March 2013 (Records and Retention Disposal).	EX-QSA24 – Exhibit Folder 1.
August 2011	DUELL (CMC) requests Acting Records Manager (SWEEPER) to research changing the RAP on Fitzgerald Inquiry material to allow members of the public to access documents that were publicly available during the COI. The Report recommended changing the RAP, to that end General Counsel advice was sought.	CMC Briefing Note dated 07/03/2013.	TD_06.
1 September 2011	Email KENZLER (CMC) (11:32am) to VALESKA (CMC) – <i>(i) were the Brifman transcripts tendered at the Inquiry? (ii) access should be given to bona fide researchers. Although I have not viewed the transcripts in recent times (if they were tendered at the Inquiry?), unless there are persuasive and credible reasons to refuse access, I would encourage the CMC to allow Mr CONDON access to them.</i>	Email subject: RESEARCH REQUEST.	TD_57. TD_13.
1 September 2012	Email from VALESKA (CMC) (11:43am) to KENZLER (CMC) <i>... to answer your question – the bundle of interviews, schedules, etc which were secured with the legal ribbon are headed by a pink manila folder with 'Ex.AF' typed on it. I haven't seen anything else with this listed on it – this is not to say, however, that it isn't. Is this what you</i>	Email subject: RESEARCH REQUEST.	TD_13. TD_57.

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	<i>mean?</i>		
1 September 2011	Email KENZLER (CMC) (11:48am) to VALESKA (CMC) <i>Yes, ... the Brifman transcripts were tendered at p. A81 of the Fitzgerald Report (between exhibit 576 and 577).</i>	Email subject: RESEARCH REQUEST.	TD_57.
1 September 2011	Email VALESKA (CMC) (3:20pm) to KENZLER (CMC) noting that an email between LEGG (CMC) and DUELL (CMC) in December 2010 provides that the Brifman transcripts were tendered as confidential exhibit AF and marked not for publication or inspection. <i>'Can you advise whether this changes you view that they should be released?'</i>	Email subject: RESEARCH REQUEST.	TD_57.
1 September 2011	VALESKA to WOOD – FILE NOTE re: RTI REQUEST – Brifman interview transcripts.		TD_14. EX-CMC- Item 2, Part 3.
2 September 2011	Email KENZLER (CMC) (10:35am) to VALESKA (CMC) <i>'I thought it may be a restricted exhibit ... it might be instructive to examine the transcript ... CONDON first asked for access to the transcripts in November 2010.'</i>	Email subject: RESEARCH REQUEST.	TD_57.
2 September 2011	Email VALESKA (CMC) (10:40am) to KENZLER (CMC) <i>'Thank you, I cannot speak to the delays. I got the query on 16 August and am attending to it. Hence my interest in your opinion.'</i>	Email subject: RESEARCH REQUEST.	TD_57.
2 September 2011	VALESKA (CMC) to WOOD (CMC) forwarding an email thread with KENZLER to WOOD and providing, <i>'now that I have got the final answer, you should have your memo by the end of the day (unless something else comes up). As an aside, I don't think he's thought about the treatment of restricted records under the Public Records Act...'</i>	Email subject: RESEARCH REQUEST.	TD_57.

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2 September 2011	Email KENZLER (CMC RTI COORDINATOR) to VALESKA (CMC LSU); VALESKA to WOOD re CONDON request for Brifman transcripts. KENZLER provides <i>that unless there are persuasive and credible reasons to refuse access, he would encourage the CMC to allow access.</i> VALESKA provides <i>that further consideration needs to be had to the Public Records Act.</i> VALESKA infers she will have a completed file note to WOOD by the end of the day NB – file note dated 1 September 2011 (see above).		TD_13 at p. 1. TD_57.
2 September 2011	Email WOOD (CMC) to VALESKA (CMC) <i>'It was my understanding that her evidence was not tendered at the COI (if it was – he could easily obtain it under RTI). That is why he is seeking it elsewhere. Even if he did make an application under RTI – wouldn't Russell [KENZLER] be obliged to contact her family for permission? (she is deceased?)</i> .	Email subject: RESEARCH REQUEST.	TD_57.
2 September 2009	Email VALESKA (CMC) to WOOD (CMC) <i>'... it largely depends on whether the custodian wants to release or not – records from the Inquiry are classified as restricted records belonging to a public authority (CMC) – the records in question may be restricted for not more than 100 years after the last date they were used. CMC restrict by writing to the Archivist. I have an email suggesting we nominated a restricted record date of 65 years to the Fitz Inquiry, but I have nothing suggesting that we actually went ahead and notified the Archivist of this.'</i>	Email subject: RESEARCH REQUEST.	TD_57.
2 September 2011	Email WOOD (CMC) to VALESKA (CMC) <i>'if it was tendered 'not for publication' unless the Inquiry releases</i>	Email subject: RESEARCH REQUEST.	TD_57.

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	<i>it, I would think that would not qualify as a 'public record'. We are the custodians – but non-publication means just that – and it would take the Commissioner to later make that call.'</i>		
2 September 2011	Email VALESKA (CMC) to WOOD (CMC) discussion continues with VALESKA discussing non-publication orders being subject to a restricted access period and WOOD wanting to ascertain that <i>'we are 100% sure it was an exhibit?'</i> and that a NP order lasts forever.	Email subject: RESEARCH REQUEST.	TD_57.
7 September 2011	Email from SWEEPER to DUELL enclosing <i>draft</i> memo to General Counsel.	Provided in further summon material 14/03/2013.	
7 September 2011	FILE NOTE from SWEEPER through DUELL to General Counsel re: Access to Fitzgerald Inquiry Records. [NB terminology change from draft memo recommendation 1, at p. 2 from 'consider' to 'recommend'].	File No. AD-11-0157.	EX-CMC-Item 2, Part 3. TD_07.
12 September 2011	DUELL, CMC Director, Information Management, provides access to REEVES (Researcher) to the Fitzgerald Inquiry documents to Series 18651, and to 3 Items from Series 18500 and 7 documents from Series 18502, until 11 September 2012.	QSA copy of form 'Access to Restricted Records at Queensland State Archives'.	EX-QSA8 – Exhibit Folder 1.
18 September 2011	Letter from BISHOP (Researcher) to CMC Records Manager – following up on previous requests to access Fitzgerald Inquiry documents.		EX-CMC-Item 5, Part 1, Section 2.
4 October 2011	REEVES accessed Items from Series 18500 (Item Nos: 1273687, 1274022, 1274023), Series 18502 (Item Nos: 1279092, 1280185, 1280218, 1281264, 1281265, 1281944, 1283178) and Series 18651 (Item Nos: 1284084, 1285861, 1285883, 1285886, 1286470,	Spread sheet from QSA.	EX-QSA7 – Exhibit Folder 1.

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	1291659, 1291660, 1291661, 1291663, 1291665, 1291732, 12917331291734, 1291735, 1291738, 1291804).		
4 October 2011	Email from HAWKINS (QSA) to DUELL (CMC) re: REEVES' access asking DUELL to confirm signing REEVES' access form.		EX-QSA9. EX-CMC - Item 5, Part 1, Section 1. TD_16.
10 October 2011	Access authorisation signed by MOYNIHAN AO QC for DUELL and SWEEPER.		EX-CMC - Item 2, Part 2, Doc 12.
14 November 2011	Letter from BISHOP (Researcher) to STRANGE (CMC), re: Lack of response to letters of 5 March and 18 September 2011; requesting access to Fitzgerald Inquiry material held at QSA.		EX-CMC-Item 5, Part 1, Section 1. TD_21.
23 December 2011	<p>Email from HUTCHINGS (CMC) to DUELL (CMC) CC KENZLER (CMC); STRANGE (CMC); SWEEPER (CMC) re: CONDON request for Brifman transcripts. Email provides:</p> <p><i>Having spoken briefly with MARTIN, and in some more detail with STRANGE about this issue I can report that they and I agree that the following general considerations apply:</i></p> <p><i>(1) Documents which were made available to the public during the Inquiry and not otherwise the subject of any restriction on publication, should be made available to the public;</i></p> <p><i>(2) Requests from members of the public made to the CMC for documents which were the subject</i></p>		Ex-CMC- Item 2, Part 4. TD_18 at p. 1 EX-CMC-Item 5, Part 1, Section 1.

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	<p><i>of non-publication orders should not be made available.</i></p> <p>...</p> <p><i>I am unable to identify the precise basis on how those clear non-publication orders could now, post-Inquiry be varied to permit inspection. Some do appear, during the Inquiry, to have been varied, but absent some exhaustive investigation into the circumstances, it is difficult to now identify the factors giving rise to those variations.</i></p> <p>...</p> <p><i>Most importantly, however, MARTIN, Warren [STRANGE] and I consider there are significant practical as well as legal impediments to permitting the public to have access to documents in the second category.</i></p> <p>...</p> <p><i>In the new year, I intend to provide you with a more comprehensive advice addressing the issues contained in your memo of 7 September 2011. Until then, it would be appropriate to arrange for access to category 1 documents as and when required. I can assist with issues arising out of those requests if need be.</i></p>		
2012			
25 January – 2 February 2012	<p>Email DUELL (CMC) to BISHOP (Researcher) re: 'A/Chairperson agrees with DUELL's recommendation to open Fitzgerald Inquiry files to the public.</p> <p>[Note: last two pages include email exchange 06/02/2012 to 15/02/2012 between DUELL and HUTCHINGS re: BISHOP].</p>		TD_19.

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27 January 2012	<p>Email from DUELL (CMC) to KENZLER (CMC) forwarding an email from BISHOP (Researcher) referring to requests lodged with the CMC 5 March 2011; September 2011; November 2011; and a visit to the CMC in December 2011.</p> <p>DUELL comments to KENZLER: <i>'I really feel for him in this matter. Are we any closer to responding?'</i></p>		EX-CMC-Item 5, Part 1, Section 2. TD_19.
January 2012	In late January 2012, DUELL (CMC), in discussion with the Acting Chairperson and General Counsel, agreed and verbally approved changes to the RAP.	CMC Briefing Note.	TD_06, at p. 2.
31 January 2012	<p>Email DUELL (CMC) to BISHOP (Journalist) re: an update on progress, whereby DUELL provides <i>'I have discussed this matter with the Acting Chairperson (STRANGE). He agrees with my recommendation to change the Restricted Access Period on the bulk of the Fitzgerald Inquiry holdings from the current 65 years to 20 years. This will effectively mean these records will then be available from Queensland State Archives without any requirement for CMC authorisation.</i></p> <p><i>Those records subject to 'Not for Publication or Inspection' orders are currently restricted for 100 years and while this term may be considered in the future for reduction ... the Acting Chairperson does not support any other action to lift the orders.'</i></p> <p>...</p>		TD_19 at p. 5.
31 January 2012	Discussion between Acting Chairperson STRANGE (CMC) and DUELL (CMC) regarding alteration to RAP.	'Chronology by date re public access to documents' from POLLOCK (CMC) received 28 March 2013.	
2 February 2012	DUELL (CMC) changes RAP from 65 years to 20 years.		EX-CMC-Item 4, Part 2.

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2 February 2012	<p>Email DUELL (CMC) to BISHOP (Researcher) informing BISHOP that DUELL had submitted the paperwork to alter the RAP for the bulk of the Fitzgerald holdings. DUELL provides - <i>'QSA have committed to implement the update this week so these holdings will be available to all members of the public from Monday. As this change was largely precipitated by your requests, I believe you can claim a major role in making this information so readily available.</i></p> <p><i>The restricted access period for Fitzgerald Inquiry exhibits subject to 'Not for Publication or Inspection' orders will remain at 100 years.</i></p> <p><i>I am currently waiting on the LSU to return the files associated with your access requests and I will respond to you formally as soon as I receive these.'</i></p>		TD_19 at p. 6. EX-CMC-Item 5, Part 1, Section 2.
2 February 2012	<p>Email HAWKINS (QSA) to DUELL (CMC) providing a link to the Restricted Access Period (RAP) change form and stating <i>'This is really good news – thank you!'</i></p>		EX-CMC – Item 4, Part 1.
2 February 2012	<p>Email DUELL (CMC) to HAWKINS (QSA) attaching a copy of the RAP change request form and stating <i>'hard copy to follow tomorrow'</i>.</p> <p>The RAP form changed the RAP of all Fitzgerald Inquiry documents to 20 years, with the exception of those records subject to a 100 year RAP.</p>		EX-CMC- Item 2, Part 2, Doc 13; Item 4, Part 1. EX-QSA2. TD_06, at p. 1.
2 February 2012	<p>Email HAWKINS (QSA) acknowledging DUELL (CMC) as above.</p>		EX-CMC-Item 4, Part 3 2012.

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3 February 2012	CMC Director of Information Management changes the RAP of Series 18499, 18500, 18501, 18502, 18586, 18651, 18855, 18856, 18857, 18858, 18859, 18860, 18862, 18863, 18864, 18880, and 18881 to 20 years, making the Series available to the public with the exception of those items previously classified as having a 100 year RAP applied.	CMC to PCMC received 6 March 2013.	EX-CMC1 – Exhibit Folder 1.
6 February 2012	Email DUELL (CMC) (8:49am) to HUTCHINGS (CMC) DUELL states: <i>'Further to our discussions early last week, would you please advise when all the State Archives/Fitzgerald Inquiry exhibits and access files will be available for collection. I am wanting to prepare responses to the requests for access to the material and some of those requests have been with the Legal Services Unit for well over twelve months. Alternatively, if you would prefer to arrange the responses from the LSU it would be very much appreciated as I find responding after such a delay to be difficult to explain without embarrassing the CMC.'</i>		TD_19 at p. 9. TD-92 at p. 2.
9 February 2012	Letter from DUELL (CMC) to BISHOP (Journalist) re: access to Fitzgerald Inquiry exhibits – apologising for the delay and providing that <i>'this case has become the catalyst to secure a better process for future requests ...</i> Noting that the request for access included several exhibit which are subject to 'Not for Publication or Inspection' orders and that those items have retained their 100 year RAP.		EX-CMC-Item 5, Part 1, Section 1. TD_28 at p. 1.

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13 February 2012	Email HUTCHINGS (CMC) to DUELL (CMC) offering to write letter to access applicants.		TD_19 at p. 10.
14 February 2012	HAWKINS (QSA) - File Note re: Fitzgerald Inquiry Records	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA36 – Exhibit Folder 1.
15 February 2012	Email from DUELL (CMC) (8:11am) to HUTCHINGS (CMC) confirming he had sent the letter to access applicant(s).		TD_10 at p. 20. TD_92 at p. 2.
15 February 2012	QSA transfer report – covering email and sample only sent to DUELL.		EX-CMC-Item 4, Part 1 & 2.
15 February 2012	Email HAWKINS (QSA) to DUELL (CMC) re: electronic transfer report for Transfer: 5422.		EX-CMC – Item 2, Part 2, Doc 13.
15 February 2012	MORALES (QSA) to DUELL (CMC) Transfer Reports 2; 3; 4.		EX-CMC – Item 2, Part 2, Doc 13.
24 February 2012	BISHOP (Researcher), asks QSA to check the RAP relating to certain Fitzgerald Inquiry documents because the extent of the available access is far greater than he expected. BISHOP (Researcher) states that QSA staff advised they checked access with CMC/QSA supervisor.	BISHOP (Researcher) email to PCMC Chair, dated 8 March 2013. Access log provided to PCMC by QSA shows BISHOP did access documents.	EX-Bishop 1. EX-QSA3 – Exhibit Folder 1. EX-QSA4.
7 March 2012	Email DUELL (CMC) to HAWKINS (CMC) re: <i>'waiting on retrieval of the original transfer correspondence'</i>		EX-CMC – Item 4, Part 2, 2012.

Date	Event	Document/Source	PCMC Hearing date Witness/Page Number
19 March 2012	<p>Email DUELL (CMC) to REEVES (Researcher) re: Archival documents query advising:</p> <ul style="list-style-type: none"> • the CMC Chairperson recently agreed to change the RAP on the bulk of the Fitzgerald inquiry holdings for the current 65 years to 20 years, effectively meaning that those records are now available from QSA without any requirement for CMC authorisation; • Those records subject to ‘Not for Publication or Inspection’ orders are currently restricted for 100 years and while this term may be considered in the future for reduction ... the Chairperson did not support any other action to lift the orders. 		TD_29 at p. 1.
26 March 2012	Letter from PROWSE (QSA) to MARTIN (CMC) on appointment as CMC Chair, enclosing a summary of record keeping responsibilities for Chief Executive Officers – to assist in understanding your responsibilities under section 7(2) of the <i>Public Records Act 2002</i> .	Material received from QSA 11 March 2013 (CMC & Record Keeping).	EX-QSA32/33 – Exhibit Folder 1. TD_30. TD_106.
11 May 2012	Email from MUTTON (CMC) to info@archives re: request for advice re sentencing a file that has multiple parts.		EX-CMC- Item 4, Part 3 2012.
15 May 2012	Email DICKSON (QSA) to MUTTON (CMC) replay re: request for advice re QSA’s Guideline for the Implementation of Retention and Disposal Schedules –		EX-CMC – Item 4, Part 3 2012.

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	<i>'...always sentence the file according to the class with the longest retention period'.</i>		
16 May 2012	<p>Email WOOD (QSA) (12:18pm) to VALESKA (CMC) <i>'Zora, please see attached letter drafted by Russell (KENZLER) in response to a request for information by a former CJC/police officer (now retired and writing a book on Special Branch). As you researched the last request for Fitzgerald Inquiry request for transcript – can you tell me:</i></p> <p><i>If this falls into your previous advice (ie. No evidence Mr R appeared as a witness before the Fitz Inquiry; but spoke to investigators). I gather the embargo on the Fitz Inquiry was lifted? Is there any similar embargo on Kimmins Inquiry material that we hold (probably not – it didn't reveal much from memory).</i></p>	Subject: FW: draft reply – Barry Krosch.	TD_127.
16 May 2012	<p>Email from VALESKA (CMC) (1:23pm) to WOOD (CMC) CC HUTCHINGS <i>In response to your queries ... I think you are right in assuming that your scenario may bear some similarity to the situation.. although a large number of exhibits were tendered as 'public' during the Fitzgerald Inquiry, some were marked as 'not for publication or inspection'. My advice dealt with transcripts of police interviews given by Ms Shirley Brifman in 1971, which fell into the second category.</i></p> <p>...</p> <p><i>My advice to Rob discussed whether these interview transcripts could now be released.</i></p>	Subject: RE: draft reply – Barry Krosch.	TD_127.

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16 May 2012	Email from WOOD (CMC) (1:30pm) to VALESKA (CMC) <i>Russell said the embargo was lifted after 25 years (soon up) but that Fitz had originally imposed a 60 year embargo on the evidence). Is that right?</i>	Subject: RE: draft reply – Barry Krosch.	TD_127.
16 May 2012	Email VALESKA (CMC) (1:56pm) to WOOD <i>News to me. I'll have to recheck the Fitz Inquiry Report.</i>	Subject: RE: draft reply – Barry Krosch.	TD_127.
16 May 2012	Email from WOOD (CMC) (2:08pm) to VALESKA (CMC) <i>Apparently, (According to Russell) Fitzgerald imposes the 60 years but that since then someone (I will ask him who) had reduced it to 25 yrs.</i>	Subject: RE: draft reply – Barry Krosch.	TD_127.
16 May 2012	Email from (WOOD) (3:16pm) to VALESKA (CMC) <i>If you have time this week – can you check the info Russell has given me and settle letter to send.</i>	Subject: RE: draft reply – Barry Krosch.	TD_127.
17 May 2012	Email from WOOD (CMC) (11:55am) to KENZLER (CMC) <i>Russell, pls call me regarding the Fitz Inquiry docs. Did you say the embargo/NPO was to be lifted after 25yrs?</i>	Subject: RE: draft reply – Barry Krosch.	TD_127.
17 May 2012	Email from VALESKA (CMC) (12:24pm) to WOOD (CMC) <i>'I believe I have worked out the confusion regarding whether the CMC has the Fitzgerald Inquiry material, as opposed to State Archives (and perhaps some associated issues). I attach a memo created by Lisa BRERETON'. ...</i>	Subject: RE: draft reply – Barry Krosch.	TD_127.
17 May 2012	Email from WOOD (CMC) (3:47pm) to VALESKA (CMC) <i>Good one. Spot on re para 2. I spoke to him [KENZLER] and that's what he was referring to (and conceded the info under a NPO would b restricted). He has a wider interpretation of providing these docs (without any formal processes) – essentially, as a public inquiry his view is disseminate unless subject to NPO.</i>	Subject: RE: draft reply – Barry Krosch.	TD_127.

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21 May 2012	Email HAWKINS (QSA) to DUELL (CMC) re: documentation about the 100 year RAPs and list of items.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA 37 – Exhibit Folder 1. EX-CMC – Item 2, Part 2, Doc 13; Item 4, Part 3, 2012.
21 May 2012	Letter from WOOD (CMC) to KROSCH (Researcher) responding to request for information.		EX-CMC – Item 5, Part 1, Section 3.
24 May 2012	Email from KROSCH (Researcher) (4:20pm) to WOOD (CMC) acknowledging receipt of WOOD’s letter regarding his information requests. KROSCH also provides: <i>‘I do a lot of work through archives around Australia and I was surprised to see all the Fitzgerald Inquiry Surveillance Reports are accessible now. I am sure it was a 60 year access originally?’</i> [Emphasis added] WOOD (CMC) forwarded email from KROSCH (Researcher) to KENZLER (CMC RTI Coordinator) (4:29pm)	Subject: ATTENTION SIDONIE WOOD.	TD_83, at p. 1. EX-CMC- Item 2, Part 4. TD_31.
24 May 2012	Email from KENZLER (CMC)(4:36pm) to WOOD (CMC) acknowledging that he (KENZLER) thought the Fitzgerald material was confined to exhibits tendered at the public hearing.	Subject: ATTENTION SIDONIE WOOD.	TD_83, at p. 1.
29 May 2012	CMC General Counsel is made aware of the concerns of an ex-CJC employee regarding the availability of sensitive COI documents at QSA. DUELL (CMC) Director Information Management checks the original RAP documents and concludes that not all of	CMC Briefing Note.	TD_06, at p. 2.

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	the previous 65 year RAP material is suitable for public disclosure and immediately requests QSA to reapply the 65 year RAP to 15 of the 17 Series.		
29 May 2012	<p>Email from VALESKA (CMC) (8:52am) to HUTCHINGS (CMC) CC WOOD (CMC) <i>'As I was leaving last night Sidonie indicated that you would both like me to follow up on the mystery of what records/documents the State Archives has with regard to the Fitzgerald Inquiry (including covert documents) and who might have released them.</i></p> <p><i>Sidonie advised that you requested I: (i) call property; (ii) call the Director, Information Management to see whether they know who released all documents; and (iii) go to QSA to inspect the holdings.</i></p> <p><i>Before I start, can you confirm that I have understood the above? Note – I am interrogating TRIM before I do either, to see if the mystery lies in a memo or note to file that we already have.'</i></p>	Subject: Fitzgerald Instructions.	EX-CMC-Item 2, Part 4, (Item 17 Hutchings's brief). TD_61. TD_127.
29 May 2012	Email from HUTCHINGS (CMC) (8:53am) to VALESKA (CMC) CC WOOD (CMC) <i>'that's it Zora, thanks'</i>	Subject: Fitzgerald Instructions.	EX-CMC-Item 2, Part 4, (Item 17 HUTCHUNG's brief). TD_127.
29 May 2012	Email WOOD (CMC) (8:54am) to HUTCHINGS (CMC) CC VALESKA (CMC) <i>'Zora, Rob or I will call DUELL first to see what he had disseminated'</i>	Subject: Fitzgerald Instructions.	EX-CMC-Item 2, Part 4, (Item 17 HUTCHING's brief). TD_127.

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29 May 2012	Email from HUTCHINGS (CMC) (8:54am) to WOOD (CMC) to VALESKA (CMC) <i>'Great. I can speak to him if you'd prefer'</i>	Subject: Fitzgerald Instructions.	EX-CMC-Item 2, Part 4, (Item 17 HUTCHUNG's brief). TD_127.
29 May 2012	Email from VALESKA (CMC) (8:58am) to WOOD (CMC) and HUTCHINGS (CMC) <i>'thank you both – would someone be able to let me know outcome when done?'</i>	Subject: Fitzgerald Instructions.	EX-CMC-Item 2, Part 4. TD_62. TD_127.
29 May 2012	Email from WOOD (CMC) (9:00am) to HUTCHINGS (CMC) CC VALESKA (CMC) <i>'Rob, good idea. I will also send you the person's email that states that covert material is released by QSA'. 'If it was released by the CMC, I guess our starting point is whether the release of Fitzgerald covert material is a breach of section 213. Of course, If Warren authorised the dissemination (he has the delegation) under section 60 or 62, then it's fine (I would find it strange if he did). I cannot recall from your advice to PD whether you would have included 'all material' to be disseminated. Zora can you check please?'</i>	Subject: Fitzgerald Instructions.	EX-CMC-Item 2, Part 4, (Item 17 HUTCHING's brief). TD_127.
29 May 2012	Email from VALESKA (CMC) (9:48am) to WOOD (CMC) & HUTCHINGS (CMC) <i>'Sidonie, Rob's email advice to DUELL is attached... two broad categories... I also found an email that confirms: (i) the RAP for the bulk of the Fitz. Holdings have been changed from 65 to 20 years (ii) records subject to 'not for publication or inspection' orders are currently restricted for 100 years'.</i> <ul style="list-style-type: none"> • The Brifman stuff (subject of the initial 	Subject: Fitzgerald Instructions.	EX-CMC-Item 2, Part 4, (Item 17 HUTCHING's brief). TD_127.

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	<p>request/particular advice I did for Rob)</p> <ul style="list-style-type: none"> • Section 62 authorities • Confirmation of archival documents held at State Library 		
29 May 2012	Email from WOOD (CMC) (10:05am) to VALESKA (CMC) <i>Zora, it appears that covert investigative material has been considered as category 1 and was disseminated. Is that your take on it?</i>	Subject: Fitzgerald Instructions.	TD_127.
29 May 2012	Email from VALESKA (CMC) (10:07am) to WOOD (CMC) <i>My take would be that if it wasn't listed as not for publication or inspection, it was assigned the 20 year restricted access period and is now available.</i>	Subject: Fitzgerald Instructions.	TD_127.
29 May 2012	Email from WOOD (CMC) (10:09am) to VALESKA (CMC) <i>I agree. So it was probably an oversight by registry – i.e. if it wasn't subject to a NPO they disseminated it to Archives.</i>	Subject: Fitzgerald Instructions.	TD_127.
29 May 2012	<p>Email from WOOD (CMC) (10:13am) to HUTCHINGS (CMC) FORWARDED TO VALESKA (10:14am) <i>FYI – see below</i></p> <p><i>'I was surprised to see all the Fitzgerald Inquiry Surveillance Reports are accessible now. I am sure it was a 60 year access originally?'</i></p> <p><i>(so am I)</i></p> <p><i>I think what has happened is that anything that was not subject to a NPO was disseminated to Archives including all the covert investigative material. I am unsure whether that material should be available to public.</i></p>	Subject: ATTENTION SIDONIE WOOD.	TD_127.

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29 May 2012	Email from VALESKA (CMC) (10:13am) to WOOD (CMC) <i>I guess so. There is an index of Fitzgerald exhibit that clearly lists restrictions on the documents – I would have hoped that Registry would have looked at this first.</i>	Subject: Fitzgerald Instructions.	TD_127.
29 May 2012	Email from HUTCHINGS (CMC) (10:31am) to MARTIN (CMC) forwarding ATTENTION SIDONIE WOOD trail <i>Over the last 24 hours an issue has emerged about the availability of covert material relating to the Fitzgerald Inquiry at State Archives. The attached email is of some concern – it suggests surveillance report have been made available by the CMC to State Archives, and now those documents are being accessed by members of the public – one of whom is a former Police Officer and he has located documents he produced himself covertly. I’m trying to get to the bottom of the matter with Peter DUELL to find out what and why these documents are now available.</i>	Subject: ATTENTION SIDONIE WOOD.	TD_127.
29 May 2012	Email from HUTCHINGS (CMC) (10:40am) to DUELL (CMC) forwarding ATTENTION SIDONE WOOD trail <i>As we discussed, the attached email suggests that covert material is available publicly. Can we get to the bottom of whether this is correct?</i>	Subject: ATTENTION SIDONIE WOOD.	TD_127.
29 May 2012	Email from WOOD (CMC) (11:12am) to VALESKA (CMC) CC HUTCHINGS (CMC) <i>‘Zora, subject to Rob’s instructions, can you please contact Registry to find out what Fitz Inquiry was released (obtain a list of docs) to Archives and when. ... Rob may wish to ask Peter first whether we disseminated the covert material with the</i>	Subject: RELEASE OF INFO.	TD_32. TD_127.

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	<i>public inquiry material.'</i>		
29 May 2012	Email from VALESKA (CMC) (11:12am) to WOOD (CMC) CC HUTCHINGS (CMC) ' <i>... confirming latest instructions: (i) contact Registry to see when Fitz stuff actually disseminated (ii) contact QSA, identify myself as CMC officer and request information on how stuff came to be there and what kind of holdings we are looking at (iii) anything else?</i>	Subject: RELEASE OF INFO.	TD_32. TD-127.
29 May 2012	Email from WOOD (CMC) (11:18am) to VALESKA (CMC) ' <i>Zora, await Rob's instructions – DUELL's email is peculiar – releasing 'the bulk' of the Fitz material without an authorisation seems ... odd. The change of years from 60 to 25 – where did he get those instructions from? Wouldn't one need a dissemination authority for that?'</i>	Subject: ATTENTION SIDONIE WOOD.	TD_83. TD_127.
29 May 2012	Email from VALESKA (CMC) (11:19am) to WOOD (CMC) ' <i>Yes, I should think that one would need a dissemination. I saw your last email re subject to Rob's instructions, so I've held off doing anything until further notice.'</i>	Subject: ATTENTION SIDONIE WOOD.	TD_83. TD_127.
29 May 2012	Email from HUTCHINGS (CMC) (11:40am) to WOOD (CMC) and VALESKA (CMC) ' <i>I have spoken with Peter. I have forwarded the email to him and have asked him to investigate whether Mr KROSCH's email accurately reflects what is available at State Archives. I will let you know what he reports to me. In the meantime Zora it may avoid wasted effort if we see what Peter has to say. I wouldn't do much yet. Have</i>	Subject: RELEASE OF INFO.	TD_32. TD_127.

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	<i>let the Chairperson know we are looking into the issue.'</i>		
29 May 2012	Email from VALESKA (CMC) (11:40am) to HUTCHINGS (CMC) and WOOD (CMC) <i>'I will await instructions with bated breath'</i> .	Subject: RELEASE OF INFO.	TD_32. TD-127.
29 May 2012	<p>Email from WOOD (CMC) (11:41am) to HUTCHINGS (CMC) forwarding an email from VALESKA (CMC). The email thread demonstrates advice from WOOD to VALESKA stating: <i>'Duell's email is peculiar – releasing 'the bulk' of the Fitz material without an authorisation seems ... odd ... the change of the years from 60 to 25 – where did he get those instns from? Wouldn't one need a dissemination authority for that?'</i></p> <p>VALESKA (CMC) replies: <i>'Yes, I should think that one would need dissemination. I saw your last email re subject to Rob's instructions, so I've held off doing anything until further notice'</i>.</p> <p>WOOD (CMC) attaches a hyperlink to CJC Internal Procedure Dissemination Process and comments to HUTCHINGS (CMC):</p> <p><i>'You will see that a ss 60 or 62 should have been completed for the dissemination in any event. It may have been however according to Peter's email there was no authority needed (even State Archives thought that was needed). It is strange that the covert and public inquiry information was disseminated without an Authority/Form per our policies.'</i></p>	Subject: ATTENTION SIDONIE WOOD.	TD_59 at p. 1. EX-CMC-Item 2, Part 4. TD_127.

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29 May 2012	Email from WOOD (CMC) (12:16pm) to VALESKA (CMC) <i>'Can you check whether we ever responded to Suzanne SWEEPER's email request?'</i>	No subject.	TD_33. TD-127.
29 May 2012	Email from VALESKA (CMC) (12:30pm) to WOOD (CMC) and HUTCHINGS (CMC) <i>'I stand corrected with regard to my verbal assertion earlier (in Sidonie's office) re REEVES.</i>	Subject: Fitzgerald instructions + attachments.	EX-CMC-Item 2, Part 4; (item 17 Hutchings's brief). TD_127.
29 May 2012	<p>Email from VALESKA (CMC) (1:12pm) to WOOD (CMC) CC HUTCHINGS (CMC) <i>'in response to your query below and our subsequent phone conversation ...</i></p> <p><i>I have gone through TRIM to find the following [attached] on RM's requests for advice on Fitzgerald Inquiry records generally:</i></p> <p><i>(d) Email request from LEGG (Acting Records Manager) 16 April 2010 – requesting advice on lifting restrictions on records subject to non-publication orders. The email refers to an index of exhibits (attached). LEGG sent a subsequent request to SPEIRS in September 2010, which I have not included, as it restates the request.</i></p> <p><i>(e) A memo created by BRERETON 19 November 2010 and (I believe) in response to above request for research on this matter. The memo provides ...</i></p> <p><i>(f) A memo to General Counsel from SWEEPER (Acting Records Manager) (through DUELL) 7 September. This memo explains that advice was</i></p>	Subject: SS REQUEST FOR ADVICE.	TD_33. TD_63. TD_127.

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	<p><i>previously sought for the Office of General Counsel on two occasions in April and May 2010 ... - and that same is outstanding. Advice is requested on whether:</i></p> <p><i>(3) A 65 year restricted access period was appropriate; and</i></p> <p><i>(4) Non-publication orders relating to Fitzgerald inquiry records stood indefinitely, thus effectively meaning those exhibits will never be publicly accessible.</i></p> <p><i>I have been unable to find a response from the Office of General Counsel/LSU to the memo above.</i></p> <p><i>(d) a document entitled 'Fitzgerald Holdings Project' – it is undated and unsigned, but refers to KLYNSMITH as Project Supervisor, described the project as one to move Fitz holding to QSA and lists phases of the project as occurring between November 2008 – March 2009.</i></p> <p><i>Note – there are also:</i></p> <ul style="list-style-type: none"> <i>• Advice requests to various units within the CMC (including us), letters, etc relating to requests by journalists, crime writers, etc for specific Fitzgerald Inquiry records.</i> <i>• Correspondence between RM, QSA etc on imposition/lifting of restricted access periods.</i> <p><i>I have not included these ...</i></p>		

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29 May 2012	<p>Email from WOOD (CMC) (1:48pm) to DEVIA (CMC) <i>In 2010 records (SWEEPER) and DUELL asked LSU? GC for advice is requested on (inter alia) whether:</i></p> <p style="padding-left: 40px;"><i>(3) A 65 year restricted access period for the Fitzgerald Inquiry material was appropriate; and</i></p> <p style="padding-left: 40px;"><i>(4) Non-publication orders relating to Fitzgerald Inquiry records stood indefinitely, thus effectively meaning those exhibits will never be publicly accessible.</i></p> <p><i>I have been unable to find a response from the Office of General Counsel/LSU to the memo above. I cannot find any response from Jan or Dom – can you do a search to see if we responded by email or gave an advice.</i></p>	No subject.	TD_127.
29 May 2012	Email from VALESKA (CMC) (5:02pm) to HUTCHINGS (CMC).	Subject: Do you need me to do anything else re the Fitz stuff tonight? EOM.	TD_127.
29 May 2012	Email from HUTCHINGS (CMC) (5:03pm) to VALESKA 'go home'	Subject: Do you need me to do anything else re the Fitz stuff tonight? EOM.	TD_127.
29 May 2012	Handwritten file note – unsigned – unknown author 'Confer Ross MARTIN'		EX-CMC- Item 5, Part 1, Section 3. TD_34.
29 May 2012	Meeting WOOD (CMC)/DUELL (CMC) re RAP change to 65 years.	'Chronology by date re public access to documents' from Mark POLLOCK (CMC) received 28 March 2013.	
29 May 2012	WOOD (CMC) NOTE TO FILE ... <i>I asked how the change in access period came about. He</i>		TD_43. EX-CMC – Item 5, Part 1.

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	<p><i>said the QSA were finding it difficult because the transcripts and exhibits (200+) were publicly available but Archives couldn't release them. They received a lot of requests for legal advice from the then General Counsel but he never got a response, due to her other work commitments ...</i></p> <p><i>He [DUELL] didn't receive an advice from Rob. The request was a Memo from SWEEPER to DUELL proposing a reduction of the RAP to 20 yrs; that NPO's not touched and stay at 100 yrs; and the other documents were grouped with the exhibits and be transferred to the 20 years.</i></p> <p><i>They met with STRANGE Acting Chairperson and he agreed that the documents be classified as 20 yrs and the NPO's stay at 100 yrs. Warren basically said yes, you can proceed with the variation to RAP 56 [sic] yrs to 20 yrs with no change to the NPOs. This meant that the QSA could release the material from Feb this year. This was how the surveillance material was accidentally incorrectly classified at 20 years. There was no corporate memory and these docs were unknown.</i></p> <p><i>I asked what his authority/delegation to change the RAP now. He said has authority under a delegation per ss 16, 18(2) and 19(2) of the Public Records Act. He showed me a copy of the authority. He said the records were permanent records with the QSA so there was no destruction. Also mentioned they still had some remaining material left at CMC. He would get me his file to see the files that the surveillance records are changed</i></p>		

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	<i>RAP.</i>		
May 2012	CMC - undated handwritten file note – unsigned – unknown author ‘ <i>Confer RH</i> ’ ‘ <i>PD response – admin. error/mistake</i> ’		EX-CMC-Item 5, Part 1, Section 3. TD_76.
29 May 2012	Email from HAWKINS, QSA to DUELL, CMC with listing of Fitzgerald Inquiry Series.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA38 – Exhibit Folder 1.
29 May 2012	<p>DUELL provides signed Restricted Access Notice – Change Request form to QSA requesting 65 year RAP be applied to Series 18499, 18500, 18502, 18586, 18651, 18855, 18857, 18858, 18859, 18860, 18862, 18863, 18864, 18880, 18881.</p> <p>Covering letter to HAWKINS dated 29 May 2012 <i>states that the Restricted Access Notice applies to all Fitzgerald Inquiry holdings transfer, with the exception of 18501, 18586, and 18651 which relate to the transcripts, PCMC Exhibits and inquiry documentation.</i></p> <p>The exceptions to Series 18651 continue to apply for items previously listed in the RAP Notice of 3 February 2012 for a RAP of 100 years.</p>	QSA – Letter and Restricted Access Notice from DUELL to QSA dated 29 May 2012 (provided by QSA on 8 March 2013).	EX-QSA 2 – Exhibit Folder 1. EX-QSA 9. EX-CMC- Item 4, Part 3 2012.
29 May 2012	<p>RAPs of all series altered to 65 years, except:</p> <ul style="list-style-type: none"> • 18651 (Documentation); • 18586 (Exhibits); • 18856 (Transcripts of Greg Early’s Shorthand Notebooks); and • 18501 (Transcripts of Hearings). 	‘Chronology by date re public access to documents’ provided by POLLOCK (CMC) received 28 March 2013.	
29 May – 8 June	Email exchange DUELL (CMC) and HAWKINS (QSA) re:		EX-CMC – Item 2,

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2012	two Restricted Access Notice Change Request forms dated 29 May 2012 and 8 June 2012. HAWKINS question problems with covering letter and RAP on 29 May 2012.		Part 2, Doc 13; Item 4, Part 3 2012. EX-QSA 2; EX-QSA 9.
30 May 2012	Email from DUELL (CMC) to HAWKINS (QSA) attaching CMC covering letter and Restricted Access Notice – Change Request. DUELL requests that the RAP remain at 20 years for the transcripts, PCMC Exhibits and related documentation, but returns the remaining holdings, including surveillance reports, to 65 year RAP, and specified, previously discussed documents for 100 year RAP.	Material received from QSA 11 March 2013 (Email and file notes). QSA copies of emails between DUELL and HAWKINS dated 29 May 2012 to 8 June 2012.	EX-QSA9 and 39 – Exhibit Folder 1. EX-CMC- Item 2, Part 2, Doc 13; Item 4, Part 3 2012.
30 May 2012	Email from DUELL (CMC) (9:45am) to HUTCHINGS (CMC) CC WOOD (CMC). <i>'As briefly discussed with Sidonie yesterday, the issue identified by KROSCHE arose from a misunderstanding at our end and was discussed yesterday with QSA. QSA have rectified this immediately and the COI surveillance reports have been returned to their 65 year restricted access period. In the scheme of things it was fortunate that Barry raised this with Sidonie.'</i>	Subject: ATTENTION SIDONIE WOOD.	TD_35. TD_127.
30 May 2012	Email from HUTCHINGS (CMC) (3:22pm) to GRAHAM (CMC) <i>Viki – would you be good enough to remove this from Ross' calendar? I don't have any items to trouble him with tomorrow.</i>	Subject: Declined: Weekly meeting with General Counsel.	TD_127.
30 May 2012	Email from GRAHAM (CMC) (3:22pm) to HUTCHINGS	RE: Weekly meeting with General Counsel.	TD_127.

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	<i>(CMC) Shall do.</i>		
30 May 2012	Email draft from HUTCHINGS (CMC) (3:30pm) to MARTIN (CMC) <i>'Below is DUELL's response to the issue of State Archives having Fitzgerald Inquiry covert material available for inspection. I'm not sure the issue is resolved simply by reverting to a 65 year access period. I would have thought that reports of surveillance undertaking by the Commission (and not tendered in evidence) aren't fell there's more that needs to be do'</i>	Subject: ATTENTION SIDONIE WOOD.	EX-CMC- Item 2, Part 4. TD_35. TD_127.
30 May 2012	Email from HUTCHINGS (5:29pm) to VALESKA (CMC) CC WOOD (CMC) Zora – see attached reply from Peter. Not sure it this addresses the concern we had. In any event, we can discuss tomorrow.	Subject: ATTENTION SIDONIE WOOD.	TD_127.
30 May 2012	Email from VALESKA (CMC) (5:31pm) to HUTCHINGS (CMC) CC WOOD (CMC) <i>Based on the very brief conversation today, I think Sidonie still had a few questions about how the stuff may have initially been released to QSA in the first place minus a section 62 authority; I thought maybe as part of the Fitzgerald Holdings project... (per one of the numerous attachments sent to you both yesterday)? If in doubt, and subject to your instructions, I could always chat with KLYNSMITH about it.</i>	Subject: ATTENTION SIDONIE WOOD.	TD_127.
30 May 2012	Email from HUTCHINGS (CMC) (5:32pm) to VALESKA (CMC) CC WOOD (CMC): Yes that's a separate issue	Subject: ATTENTION SIDONIE WOOD.	TD_127.
4 June 2012	Internal QSA email from HAWKINS to PROWSE re: Fitzgerald Inquiry RAP – change request	QSA.	EX-QSA40 – Exhibit Folder 1.

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8 June 2012	Email from HAWKINS to DUELL advising changed RAPs applied to all Fitzgerald Inquiry Series except 18501, 18586, and 18651 and 100 year RAP for items subject to "Not for Publication or Inspection" orders. Seeks revised notice from DUELL in relation to conflicting advice in Notice that Series 18586 and 18651 to have 65 year RAP, but Covering letter which states 65 year closure period does not apply to Series 18501, 18586, and 18651 and requests revised notice.	QSA copies of emails between DUELL and HAWKINS dated 29 May 2012 to 8 June 2012.	EX-QSA9 – Exhibit Folder 1. EX-CMC- Item 2, Part 2, Doc 13.
8 June 2012	Email HAWKINS (QSA) to DUELL (CMC) re: <i>'we went with what you [sic] knew you meant, but thought we better have the paperwork just right'</i>		EX-CMC- Item 4, Part 3 2012.
8 June 2012	Email from DUELL to HAWKINS to advise revised notice and covering letter mailed to QSA and requesting QSA note the previous notice as recalled.	PCMC Exhibit # - QSA copies of emails between DUELL and HAWKINS dated 29 May 2012 to 8 June 2012.	EX-QSA9 – Exhibit Folder 1. EX-QSA2. EX-CMC- Item 4, Part 3 2012.
8 June 2012	Restricted Access Notice – Change Request, dated 8 June 2012 signed by DUELL, requests 65 year RAP apply to Series 18499, 18500, 18502, 18855, 18857, 18858, 18859, 18860, 18862, 18863, 18864, 18880, 18881.	PCMC Exhibit # - QSA Restricted Access Notice – Change Request dated 8 June 2012.	EX-QSA2 – Exhibit Folder 1.
8 June 2012	Letter DUELL (CMC) to HAWKINS (QSA) re; RAP form.		EX-CMC- Item 2, Part 2 Doc 13. EX-QSA 9.
13 July 2012	Meeting request.		EX-CMC-Item 5, Part 1, Section 3.
13 July 2012	FILE NOTE – unsigned – unknown author <i>'Confer Ross'</i> ; <i>'PD fixed issue re classification'</i>		EX-CMC-Item 5, Part 1, Section 3. TD_44.

Date	Event	Document/Source	PCMC Hearing date Witness/Page Number
26 July 2012	Meeting WOOD (CMC)/DUELL (CMC) re RAP change – DUELL (CMC) emails WOOD (CMC) Fitzgerald Inquiry documents spread sheet.	'Chronology by date re public access to documents' provided by POLLOCK (CMC) received 28 March 2013.	
26 July 2012	FILE NOTE – '3pm'; 'PD'; 'SW'; 'Confer PD'; '65 yrs [tick]'		
27 July 2012	Meeting request DUELL/WOOD annotated 'confer PD' 'Excel skeets [etc]'		EX-CMC-Item 5, part 1, Section 3.
1 August 2012	Email from SPROUTT (CMC) to MACDONALD (QSA) re: 'Thank you - we really benefitted from speaking to you about the classification of records ... I am progressing an advice to General Counsel'		EX-CMC – Item 4, Part 3 2012.
19 September 2012	DUELL (CMC) receives a phone call and an email from QSA raising concerns about a request for sensitive COI documents from Series 18651. DUELL directs QSA not to release the documentation until further advice is provided. DUELL follows up with CMC's Senior Property Officer.	CMC Briefing Note.	TD_06, at p. 2. .
19 September 2012	In response to advice indicating that access was available to confidential surveillance documents, CMC Director of Information Management changes the RAP of specified items in Series 18651 (Documentation) to 100 years. QSA immediately implement the change.	CMC to PCMC received 6 March 2013.	EX- CMC1 – Exhibit Folder 1.
19 September 2012	Email thread DUELL (CMC) to HAWKINS (QSA) re: 'This is to confirm that all items in Transfer ID: 5422, Series ID 18651 with a description commencing the 'CONFIDENTIAL' or '***CONFIDENTIAL***' are to be considered exceptions for the Series RAP. Consistent with the previously advised exceptions to Series 18651, these items will have a RAP of 100 years applied. These items	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA41 – Exhibit Folder 1. EX-CMC- further summons material provided 14 March 2013. TD_38.

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	<i>should also not be web-enabled for online searches.'</i>		
19 September 2012	Email HAWKINS (QSA) to DUELL (CMC) reply – <i>'I have implemented those changes ...'</i>		EX-QSA41. EX-CMC- further summons material provided 14 March 2013.
19 September 2012	Researcher accesses <i>'***confidential***'</i> documents at QSA.		EX-QSA4.
19 September 2012	Email BOULTON (QSA) to DUELL (CMC) cc HAWKINS (QSA) re: Access to Police Files from Fitzgerald Inquiry – customer seeking two police files.		EX-CMC – Item 4, Part 3, 2012.
19 September 2012	Email HAWKINS (QSA) to DUELL (CMC) re: TRIM urgent change to RAPs for Series 18651 items.		EX-QSA 41. TD_38.
20 September 2012	Letter DUELL (CMC) to HAWKINS (QSA) re: Transfer ID 5422 – <i>'further to my email of 19 September 2012, it has come to our attention that a number of items in Series ID 18651 were not included in the listing of exceptions to the RAPs applied to the Series.'</i> <i>'Consistent with the RAP of 100 years applying to the previously advised exceptions for this Series, all items in the Series with a description commencing with 'CONFIDENTIAL' should also have a 100 year RAP applied. These items should not be web-enabled thereby preventing online searching by members of the public.'</i>		EX-CMC – further summons material provided 14 March 2013.
September 2012	QSA/CMC joint publication <i>'Managing public records responsibly'</i> , revised edition.	Material received from QSA 11 March 2013 (CMC & Record Keeping).	EX-QSA33 – Exhibit Folder 1.
2013			
26 February 2013	DUELL receives a phone call from QSA regarding a missing COI document requested by journalist, Mr	CMC Briefing Note.	TD_06, at p. 3. TD_106.

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	Hedley THOMAS.		
26 February 2013	Internal QSA email thread re: request for Fitzgerald Inquiry material in Public Search Room HICKEY, ELVERY, HUTLEY and PROWSE.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA42 – Exhibit Folder 1.
26 February 2013	Email from HAWKINS to PROWSE with empty file details – email copy has handwritten note ‘Warren STRANGE’ and his phone number.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA43 – Exhibit Folder 1.
26 February 2013	Email from PROWSE to REED re: Fitzgerald Inquiry file.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA44 – Exhibit Folder 1.
28 February 2013	QSA Collections Manager contacts DUELL advising that a sheet of paper in the file where the document should have been included the annotation ‘see 104/4/4/5’. DUELL recognised this as an old CJC file numbering sequence.		TD_06 at p. 3.
28 February 2013	Email from HAWKINS to PROWSE re: phone call to DUELL, CMC.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA45 – Exhibit Folder 1.
28 February 2013	Email from HICKEY to PROWSE and other QSA staff re: reference telephone enquiry from THOMAS.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA46 – Exhibit Folder 1.
1 March 2013	Email thread re: Contact with DUELL between PROWSE and HAWKINS – DUELL advising that he had met with STRANGE (CMC) raising the issue of a possible misconduct investigation.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA47 – Exhibit Folder 1.
1 March 2013	QSA asks CMC about a missing document. CMC Director Information Management identifies the destruction of a single COI document and advises QSA.	CMC to PCMC received 6 March 2013.	EX-CMC1 – Exhibit Folder 1.
1 March 2013	DUELL is informed the missing file, as identified 28 February 2013, had been destroyed in 2007, in accordance with the CMC’s approval Retention and Disposal Schedule.	CMC Briefing Note.	TD_06, at p. 3.

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	<p>Further investigation revealed that the file held a number of documents which appeared to have been original COI documents and that the file had been created in June 1989, prior to the close of the COI, with intelligence-type documents apparently removed for their COI file and attached to CJC files.</p> <p>QSA advises of other cases of missing documents, also including handwritten notes referring to file numbers in place of missing documents.</p> <p>DUELL advises QSA that he will investigate 'to get an understanding of the size of the problem'.</p>		
4 March 2013	DUELL is informed that THOMAS is requesting large numbers of highly sensitive documents from the QSA online catalogue. QSA informs DUELL of the content of THOMAS's requests. DUELL resolves to reclassify Series 18561 to a 65 year RAP and undertakes to provide the RAP change form the following day.	CMC Briefing Note.	TD_06 at p. 3.
4 March 2013	Email from HAWKINS to PROWSE re: contact with DUELL.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA48 – Exhibit Folder 1.
4 March 2013	Email from HAWKINS to QSA public access staff and other QSA staff re: change of RAP for Series 18651.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA51 – Exhibit Folder 1.
4 March 2013	Email from HAWKINS, QSA to DUELL with photos of file.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA49 – Exhibit Folder 1. EX-CMC- Item 4, 2013.
4 March 2013	Email from HAWKINS, QSA to PROWSE, QSA re: phone conversation with DUELL.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA50 – Exhibit Folder 1.
4 March 2013	CMC Director Information Management identifies multiple COI documents have been destroyed. Initial	CMC to PCMC received 6 March 2013.	EX-CMC1 – Exhibit Folder 1.

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	estimates indicate that possibly more than 4,000 documents may have been destroyed.		
4 March 2013	Email from HAWKINS, QSA, to PROWSE with copies of THOMAS' request slip and file references.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA54 – Exhibit Folder 1.
5 March 2013	QSA advise CMC Media Advisor that THOMAS is very disappointed to learn that access to Series 18651 has been restricted.	CMC Briefing Note .	TD_06 at p. 3.
5 March 2013	Email thread between HORNER, PROWSE, CUNNINGHAM and HAWKINS re: conversation with DUELL.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA52 – Exhibit Folder 1.
5 March 2013	Email from HAWKINS to PROWSE, forwarding RAP change request from DUELL.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA53 – Exhibit Folder 1.
5 March 2013	In response to QSA advice regarding the nature of documents being accessed by THOMAS, CMC Director of Information Management changes the RAP of all items in Series 18651 to 65 years (excluding exceptions which remain at 100 years).	CMC to PCMC received 6 March 2013. 'Chronology by date re public access to documents' provided by Mark POLLOCK (CMC) received 28 March 2013.	EX-CMC1 – Exhibit Folder 1. EX-CMC-Item 2, Part 2, Doc 13.
5 March 2013	Email from DUELL (CMC) to HAWKINS (QSA) re: change to RAP series 18651.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA55 – Exhibit Folder 1. EX-CMC- Item 2, Part 2, Doc 13.
5 March 2013	Email from DUELL (CMC) to HAWKINS (QSA) with urgent change to RAPs for series 18501 & 18586.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA56 – Exhibit Folder 1.
5 March 2013	In response to CMC concerns that some sensitive documents may possibly be included in Series 18501 and 18586, CMC Director of Information Management changes the RAP of all items in Series 18501 and 18586 to 65 years (excluding exceptions which remain at 100 years).	CMC to PCMC received 6 March 2013.	EX-CMC1 – Exhibit Folder 1. EX-CMC Item 2, Part 2, Doc 13. EX-QSA 2.

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	QSA immediately implement the change.		
5 March 2013	Late in the afternoon the PCMC become aware that the CMC had, in error, released confidential material through holdings in State Archives.	CMC Assistant Commissioner, Misconduct - STRANGE contacts Chair by telephone.	Transcript 6 March 2013, page 1 – Transcript folder 1.
6 March 2013	THOMAS and HART publish ‘CMC blunder exposes dossiers’, in The Australian. The article provides that a CMC error led to the reclassification of files that were mistakenly reopened. The files contained Fitzgerald Inquiry operational documents. The CMC immediately instituted a 65-year restriction on all documents, and determined to review the issue of access to all Fitzgerald Inquiry records (which number in excess of over 19,000 items) and how the administrative error occurred. The review will also seek to determine whether any inappropriate access has occurred.	The Australian, Wednesday 6 March 2013, at pages 1-2.	
6 March 2013	Email from WOOD (CMC) (7:43am) to HUTCHINGS (CMC) forwarding an email from DUELL to HUTCHINGS (CMC) cc WOOD, of 30 May 2012 <i>‘... the issue identified by KROSCH arose from a misunderstanding at our end and was discussed yesterday with QSA. QSA have rectified this immediately and the COI surveillance reports have been returned to their 65 year restricted access period. In the scheme of things it was fortunate that Barry raised this with Sidonie.’</i>	Subject: ATTENTION SIDONIE WOOD.	TD_31.

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6 March 2013	Email WOOD (CMC) (11:41am) to HUTCHINGS (CMC) re: draft reply – KROSCH (Researcher) attaching HUTCHINGS email to DEULL dated 23 December 2011; draft letter to Barry Krosch; Right to Information – request for Brifman interview transcripts; internal advice from VALESKA (CMC); Fitzgerald Report extract And forwarding an email from VALESKA (CMC) re: draft reply to KROSCH.	Subject: Draft reply BARRY KROSCH.	EX-CMC- Item 2, Part 4. TD_58.
6 March 2013	Email from WOOD (CMC) (11:43am) to HUTCHINGS (CMC) – forwarding advice from VALESKA (CMC) <i>‘Zora found this correspondence on Trim, when I asked her to find whether we recorded their request for advice.’</i>	Subject: SS request for advice.	TD_33. TD_63.
6 March 2013	Memo from WOOD (CMC) to HUTCHINGS (CMC) re: Fitzgerald Inquiry Documents File No. AD-12-***.		EX-CMC - Item 5, Part 1, Section 3. TD_77.
6 March 2013	Email HUTCHINGS (CMC) to WOOD re memo.		EX-CMC- Item 2, Part 4 TD_78
6 March 2013	Email thread between DUELL and HAWKINS re: QSA online catalogue – <i>‘would you please ensure no items in the collection are web-enabled for online searching.’</i>	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA 57 – Exhibit Folder 1. EX-CMC- Item 2, part 3, Doc 23; Item 2, Part 2 Doc 13. TD_39.
6 March 2013	Email from DUELL (CMC) to HAWKINS (QSA) requesting change to RAP for Series 18566 [later referred to in email and attached form as 18856].	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA 58 – Exhibit Folder 1. EX-CMC- Item 4, 2013.

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6 March 2013	Email HAWKINS (QSA) to DUELL (CMC) re: <i>'I will implement those changes immediately.'</i>		EX-QSA 57. EX-CMC- Item 2, Part 3, Doc 13.
6 March 2013	Email MARTIN (CMC) to PROWSE (QSA) re: requesting a list of all persons who have had access to material relating to the Fitzgerald Inquiry. <i>'Under Privacy Principle 11, it would seem that there are reasonable grounds for you to be satisfied that the disclosure is necessary to lessen or prevent a serious threat to the life health safety or welfare of an individual or individuals.'</i>		EX-QSA 59. EX-CMC- Item 4, 2013.
6 March 2013	Email SULLIVAN (QSA) to MARTIN (CMC) CC PROWSE (QSA) providing list of researchers who accessed Fitzgerald Inquiry holdings.		EX-CMC- Item 2, Part 3, Section 23.
6 March 2013	MARTIN (CMC) to CUNNINGHAM (QSA) re: Fitzgerald Inquiry holdings.		EX-CMC- Item 2, Part 4. TD_41.
6 March 2013	Letter MARTIN (CMC) to CUNNINGHAM (QSA) enclosing authorisation for ADAMS (CMC) to inspect Fitzgerald Inquiry documents.		EX-CMC- Item 2, Part 4.
6 March 2013	Email thread CUNNINGHAM (QSA) to HUTCHINS (CMC) re: Inspection of Fitzgerald Inquiry holdings by HUTCHINGS (CMC) and ADAMS (CMC).		EX-CMC – Items 2, Part 4.
6 March 2013	PCMC invite CMC to appear at an urgent Committee meeting scheduled for 12pm. CMC Chair, Mr Ross MARTIN is accompanied by Mr Warren STRANGE, Assistant Commissioner, Misconduct. CMC undertake to complete an audit and suggest Mr Stephen LAMBRIDES as a possible candidate. PCMC request a written	Hansard – Chair's statement to the House. PCMC Letter to A-G requesting urgent legislation.	

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	<p>summary of LAMBRIDES career at the CMC.</p> <p>The Committee resolves that the Parliamentary Commissioner would conduct, rather than oversee, the CMC investigation into this matter.</p> <p>The PCMC resolve that they are not satisfied with the explanations provided, and the security of individuals who provided statements to the Fitzgerald Inquiry may be compromised.</p> <p>The Committee canvassed immediate options to address security and confidentiality risks, including the possibility of injunctive relief.</p> <p>The Committee determined that in order to be appraised and informed in the manner it required, a summons would be issued to the Queensland State Archivist.</p> <p>The Committee also agreed to write to the Attorney-General requesting urgent legislation to prohibit the republication of information from the Fitzgerald Inquiry files in possession of the State Archivist which were transferred from the CMC to the QSA between July 2007 and February 2010.</p>		EX-AG1 – Exhibit Folder 1.
6 March 2013	<p>CMC issued a statement providing that, ‘as a result of inquiries from <i>The Australian</i>’ the CMC has become aware of an administrative oversight concerning public access to certain Fitzgerald Inquiry records. As a result of the administrative oversight by the CMC, other documents ... have been potentially accessible from February 2012 to 4 March 2013.</p>		
6 March 2013	PCMC meet to consider further information from CMC	Material from CMC (spread sheet).	EX-CMC 2 – Exhibit

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	<p>regarding access to documents. CMC provide information from QSA via email.</p> <p>The Committee resolve that the Chair make a statement in the House to outline the Committee's actions to date.</p> <p>The PCMC wrote to the Parliamentary Commissioner requesting that he investigate this matter and report to the Committee pursuant to section 295(2)(f) of the <i>Crime and Misconduct Act 2001</i>.</p>	Hansard Chair's statement.	Folder 1.
6 March 2013	Email from MARTIN (CMC) to PROWSE (QSA) requesting a list of people who had access to Fitzgerald documents.	Material received from QSA 11 March 2013 (Email and file notes).	EX-QSA59 – Exhibit Folder 1.
6 March 2013	HUTCHINGS (CMC) and ADAMS (CMC) attend at QSA to identify accessed documents. RAPS of series 18586 (Exhibits), 18856 (Transcripts of Greg EARLY's Shorthand Notebooks), and 18501 (Transcripts of Hearings).	'Chronology by date re public access to documents' provided by POLLOCK (CMC) received 28 March 2013.	
7 March 2013	<p>PCMC holds a private hearing with the State Archivist and her staff. QSA were able to provide some information to assist the Committee and gave an undertaking to provide further information as requested.</p> <p>Based on the information QSA provided regarding access to documents, the Committee again consider the need for urgent legislation. Accordingly the Committee resolve to recall the CMC Chairperson and Assistant Commissioner, Misconduct to discuss the Attorney-General's letter calling on the CMC to publicly call on the Government to legislate amendments and for the CMC to provide an explanation.</p> <p>Hon. Jarrod BLEIJIE, Attorney-General and Minister for Justice appears before the PCMC. The Attorney restates</p>		

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	his position that the CMC will need to publically call for legislation if he is to respond. PCMC Chair makes a further statement in the House.		
7 March 2013	CMC write to Attorney-General in terms agreeable to the Attorney-General, notwithstanding that the CMC Chair's request is contingent on seeing a copy of the draft legislation.	CMC letter to AG.	EX-AG3 and 4 – Exhibit Folder 1.
7 March 2013	Attorney-General introduces the Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Bill. PCMC Chair provides the House with a summary of the Committee's actions to date.		
7 March 2013	The Attorney-General moves a motion in accordance with section 292(d) of the <i>Crime and Misconduct Act 2001</i> , instructing the Committee to inquire and report into the matter.	Motion.	
7 March 2013	Email HUTCHINGS (CMC) (on behalf of MARTIN (CMC)) to PROWSE (QSA) seeking access of CMC records at QSA.		EX-CMC- Item 2, Part 3, Doc 23.
7 March 2013	Email PROWSE (QSA) to LOWTHER (CMC), HUTCHINGS (CMC) and LOWTHER (CMC) to HUTCHINGS regarding inspection of CMC records at QSA.		EX-CMC- Item 2, Part 4.
7 March 2013	DUELL (CMC), provides briefing note to the CMC Chairperson and Assistant Commissioner Misconduct re: Management of COI (Fitzgerald Inquiry) Records TRIM Reference No: 13/025734 – also see addendum tabled 13/03/2013.	Addendum to DUELL briefing note provided 13/03/2013.	TD_06. EX-CMC-Item 2, Part 2, Doc 18. EX-CMC-Item 2, Part 2, Doc 14.
7 March 2013	Email HUTCHINGS (CMC) to MARTIN (CMC) and STRANGE (CMC) re: archives.		TD_45.
7 March 2013	PCMC Chair receives emails from BISHOP (Researcher)	Email correspondence to PCMC.	

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	and DIBBEN (Journalist), regarding BISHOP'S access to Fitzgerald Inquiry documents.		
8 March 2013	The Committee considers the motion in light of its earlier request to the Parliamentary Commissioner, and with respect to the reporting date and the Parliamentary Commissioner's availability.		
8 March 2013	<p>The Committee noted that the Parliamentary Commissioner, Mr Paul FAVELL, pursuant to section 308 of the <i>Crime and Misconduct Act 2001</i>, provided that he cannot perform the duties of office within the allocated timeframe.</p> <p>Pursuant to sections 307 and 308 of the <i>Crime and Misconduct Act 2001</i>, the Committee authorised the Chair to write to the Speaker to appoint an alternative Parliamentary Commissioner for the purposes of this Inquiry.</p> <p>The Committee authorised the Chair to set the final date for attendance of the summons, that being next Wednesday 13 or Thursday 14 March 2013.</p> <p>The Committee resolved to request the Clerk issue summonses for: DUELL; HUTCHINGS; SORENSON; SPEIRS; HOWARD; and SWEEPER, requiring them to attend and produce information regarding the RAPs.</p>		
8 March 2013	MARTIN publicly announces he is commencing sick leave.	CMC media statement.	
8 March 2013	Email HUTCHINGS (CMC) to SULLIVAN and HUTLEY (QSA) regarding retrieval and scanning of CMC records at QSA.		EX-CMC- Item 2, Part 4. TD_42.
8 March 2013	Email SULLIVAN (QSA) to HUTCHINGS (CMC) and HUTLEY		EX-CMC- Item 2,

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	(QSA) regarding retrieval and scanning of CMC records at QSA.		Part 4.
9 March 2013	<p>The Committee noted that no formal advice has been received regarding the CMC Chair's sick leave. Accordingly, the Committee resolved to write to the CMC Chair, and STRANGE, Assistant Commissioner, Misconduct, seeking advice to clarify staffing arrangements.</p> <p>Given MARTIN's announcement regarding sick leave, the Committee resolved to summons MARTIN to appear at an agreed time, to be determined by the Chair.</p> <p>The Committee resolved to send letters of invitation to appear to BISHOP and KROSCH.</p>		
11 March 2013	Email SULLIVAN (CMC) to ADAMS (CMC) CC HUTCHINGS (CMC) regarding retrieval and scanning of CMC records at QSA.		EX-CMC- Item 4, Part 3, 2013.
12 March 2013	CMC Retention and Disposal Schedule – Appraisal Report.		EX-CMC- Item 4, Part 3 2012.
13 March 2013	DUELL provides an addendum to his CMC Briefing Note dated 7 March 2013 – adding that he also asked QSA to provide the CMC with a list of people who accessed Fitzgerald Inquiry documents. QSA provided that Information Privacy legislation restricted their ability to release that information. DUELL accepted the QSA Collection Manager's advice.		TD_06 – addendum.
13 March 2013	<p>Email from DUELL (CMC) to MENDELLE (CMC) & STRANGE (CMC).</p> <p><i>Following searches of the network drives I have found that while progress of the Transfer of Fitzgerald Inquiry</i></p>		TD_128.

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	<i>holdings to State Archives was regularly reported to the Commission throughout 2007 and 2008, there appears to be no reference whatsoever to the Transfer Project in any Information Management contribution to the PCMC reporting.</i>		
17 March 2013	Statement of HUTCHINGS (CMC).		TD_92.
20 March 2013	Statement of STRANGE (CMC).		TD_105.
28 March 2013	POLLCOK (CMC) provides 'Chronology by date re public access to documents' to PCMC.		

Appendix 8 – Statement by Mr Duell

Parliamentary Crime and Misconduct Committee Inquiry into the CMC's release and destruction of Fitzgerald inquiry documents

STATEMENT OF PETER ROBERT DUELL

I, PETER ROBERT DUELL, of c/- Level 2 North Tower 515 St Pauls Terrace Fortitude Valley, in the State of Queensland, Director Information Management, Crime and Misconduct Commission, state as follows:

Role

1. I am the Director Information Management of the Crime and Misconduct Commission (CMC).
2. I have held the position of Director Information Management CMC since 20 August 2011 when I was appointed to the position following an open merit selection process. Prior to my appointment I had relieved in the position on a number of occasions covering short-term and longer term absences by the substantive occupant. The longest of these relieving periods was 1 February 2010 to the time of my appointment.
3. As Director Information Management, I have overall responsibility for the CMC's information management functions and services. This currently includes 26 officers in the Information Technology, Records Management and Information Strategy and Policy work units.
4. Before my appointment to the position of Director Information Management I held the permanent position of Information Technology Manager at the CMC for the preceding 11 years.

Relationship to the Fitzgerald Inquiry records

5. My Position Description, and the role that I fulfill, is largely centred on Information Technology, reflecting the bulk of the duties and budget allocation. My record-keeping responsibilities are focused on strategic management, policy and budget issues together with involvement with the senior records management staff in tactical staffing issues and work-load prioritisation.
6. I have never had a well-defined role in the management of the Fitzgerald Commission of Inquiry (COI) records. There are no specific policies, procedures or work instructions within the CMC regarding the public access to these records. The delegations noted in my Position Description do not include any delegated authority under the *Public Records Act 2002* regarding setting or changing restricted access periods.
7. My first direct knowledge of, or involvement in, the Director Information Management's role with the Restricted Access Period (RAP) for the Fitzgerald Inquiry records occurred in April 2011. This was the first time I was delegated the appropriate authority from the Chairperson under the *Public Records Act 2002*.
8. My direct involvement with the Fitzgerald Inquiry documents dates largely to enquiries from State Archives in 2011 about access to restricted documents. I assumed a default role because these queries did not come under Right to Information (RTI) even though I am of the belief they would be more appropriately dealt with in that way.

Classification of documents

9. The classification of documents is best undertaken by the author at the time of document creation. While I am responsible for providing a framework for classifying records, I am not qualified to classify documents created by others. For the COI documents, that task was appropriate for police or intelligence officers, who would be more aware of the sensitivity of documents and, may at times, be performed in conjunction with a lawyer.
10. It was fair to presume from my discussions with Mr Kenzler that Fitzgerald Inquiry documents had previously been classified by appropriately qualified COI staff who were the most suitable to complete the task given their legal/law enforcement background. Sensitive documents had been identified and these would be assigned a 100 year RAP, appropriate for their sensitivity.
11. The Records Manager's protracted attempts in seeking legal advice before initially setting the RAPs extended over several months without any response. In the face of increasingly strident requests from QSA, the Records Manager then conservatively applied the maximum RAP for the type of record, 65 years. This had the effect of denying public access to records of the COI which had been freely available to the media and the public during the COI, including records such as the public hearing transcripts which continued to be openly available in the State Library's General Collection.

Changing Restricted Access Period

Reasonable actions

12. I considered the approach I took to apprise myself prior to initially changing the 65 year Restricted Access Period (RAP) on the Fitzgerald Inquiry records was reasonable in the circumstances:
 - i. I met with the departing Records Manager who had originally applied the RAPs and discussed the decision process employed, which I noted had included unsuccessfully seeking advice from General Counsel on an appropriate RAP to apply to the records;
 - ii. I requested the acting Records Manager to review the appropriateness of the current RAPs and develop recommendations for the attention of General Counsel. Those recommendations included a change to the 65 year RAP to 20 years, effectively making those items available to the public;
 - iii. I received an email advice from General Counsel seemingly supporting the recommendation to change the 65 year RAP to 20 years;
 - iv. I sought and received approval from the acting Chairperson (who relied on the legal advice provided by General Counsel) to proceed with the RAP change;
 - v. Only then did I proceed with arranging the change to the RAP from 65 years to 20 years.
13. Before, during and after the above, I formed the belief that there were two categories of Fitzgerald Inquiry records, namely the items available to the public during the COI and a second category of sensitive documents with 'not for publication or inspection' orders applied.
14. This belief was reinforced through my discussions with Russell Kenzler, RTI Officer, who had worked closely with Mr Fitzgerald throughout the COI. Mr Kenzler expressed his concern to me regarding the 65 year RAP being applied to items that were openly available to the media and the public during the COI. This was supported in Mr Fitzgerald's report that noted the advantages and disadvantages of the openness of the COI, observing that innocent "individuals had to endure the ignominy of adverse publicity" relating to the publication of evidence and allegations.
15. It was fair to presume from my discussions that Fitzgerald Inquiry documents had previously been classified by appropriately qualified COI staff who were the most suitable to complete the task given their legal/law enforcement background. Sensitive documents had been identified and these would remain with a 100 year RAP, appropriate for their sensitivity.

Response to availability of sensitive documents

16. When I first became aware of the availability of sensitive Fitzgerald Inquiry records in late May 2012, I immediately contacted Queensland State Archives (QSA) and arranged for 15 of the 17 series of the Fitzgerald Inquiry records to be returned to a 65 year RAP. This left only the transcripts series and the exhibit series, less the noted exceptions with a 100 year RAP applied, available to the public. This marked the first time I realised that there were three categories of Fitzgerald Inquiry records: public records, identified sensitive records, and other records that included sensitive material.
17. QSA advised me in the following days that there was a contradiction between the submitted RAP change form and my covering letter regarding Series 18651. I re-checked the appropriate CMC file and inspected the covering letter with the original RAP advice prepared by the Records Manager, Janet Legg - the most experienced person in the CMC regarding Fitzgerald Inquiry records. The letter noted Series 18651 as exhibits which also had exceptions with a 100 year RAP applied.
18. The description of the series was "Documentation" and I concluded this meant the series contained document exhibits, as opposed to three dimensional object exhibits, and this series had already had the sensitive document exhibits identified and an appropriate RAP applied to the sensitive records.
19. I did not believe it was reasonable to disregard Janet's description and conduct my own independent enquiries when I did not have the historical knowledge or the qualifications to determine sensitivity. It was reasonable for me to assume that documents in Series 18651 which had not been marked as sensitive were documents that were non-sensitive and had already been available to the public.
20. I advised QSA verbally and in writing to leave Series 18651 at a 20 year RAP using the same terms contained in Janet's original letter to QSA, unwittingly perpetuating an error from the original setting of the RAPs. It appears, from the evidence provided during the hearings, that QSA were aware of the original error but did not draw Janet Legg's attention to the error at the time.
21. The second time I became aware of the availability of sensitive Fitzgerald Inquiry records was in September 2012 following a phone call from an archivist at QSA in response to a client requesting a document that had "CONFIDENTIAL" at the start of the description. A check of the relevant CMC spreadsheet revealed a number of document descriptions started with either "CONFIDENTIAL" or "*-CONFIDENTIAL***". I discussed this with the QSA Collection Manager, Elizabeth Hawkins, who advised me they could readily identify records with such a description and could include these in the exceptions to the series thereby applying a 100 year RAP to them.
22. I advised QSA by email and then in a hardcopy letter to include these confidential documents in the exceptions with a 100 year RAP applied. QSA confirmed this had been done.
23. The third and final time I became aware of the availability of sensitive Fitzgerald Inquiry records was in early March 2013. Some days earlier, QSA had sought my assistance to locate what appeared to be a missing Fitzgerald Inquiry document from Series 18651 which had been requested by a journalist. In my attempts to locate this document I identified a number of original COI documents that appeared to have been destroyed in 2007 and that the document sought was of a sensitive nature and should not be publicly available.
24. At this point, I realised Series 18651 was not document exhibits and should not be available to the public. I immediately advised QSA to change the RAP on Series 18651 to 65 years.
25. I lost confidence in the cataloguing and classification process of the holdings and advised QSA to change the RAP on the remaining two 'public' series to 65 years.
26. I was subsequently contacted by the QSA Collections Manager asking if I wanted to change the RAP on Series 18856 to 65 years as it was the only one that remained at 20 years. This series was one of the 14 series I had requested the previous year to be changed to 65 years but apparently this series had been missed. I sent another RAP change form for this series to QSA and a 65 year RAP was applied immediately.

Destroyed COI documents

27. On identifying the destruction of the Fitzgerald Inquiry document in March 2013, I used available data to ascertain how this happened. From my preliminary assessment, it appears the destruction of documents is the direct result of actions taken by unknown COI officer/s in 1989 in transferring documents to what were to become CJC files prior to the close of the Inquiry. The destruction of CMC files in 2006-07 was in accordance with the QSA approved retention and disposal schedule and included obtaining approval for each file's destruction from the head of the relevant business unit.
28. I also interrogated the records management legacy database to identify other records likely to have been destroyed. While a much more refined search will be required to detect all documents in this category, it appears that approximately 3,000 COI documents, which should be classified as permanent records have been destroyed. It also appears that more than a thousand other permanent COI documents have been placed on existing CMC files facing the risk of potential destruction.
29. All destruction of CMC files has been suspended at this point of time.

Refuted assertions

30. During the public hearings a number of assertions and inferences were made generally and specifically, which I refute.
31. It was asserted that the person I requested to review and prepare a report on the appropriateness of the original RAPs was not qualified to perform the task. Ms Sweeper was acting as the A07 Records Manager at the time of I requested her to perform this task.
32. Ms Sweeper's tertiary qualifications as a librarian are directly relevant, and sought after, for senior records management roles. Prior to acting as the Records Manager, Ms Sweeper was the permanent Business Analyst in Information Management. Ms Sweeper had formal training in her role and had experienced success in business process mapping, analysis and re-design. Ms Sweeper had more than 10 years' experience with the CMC and had dealt with requests for access to Fitzgerald Inquiry documentation prior to my request to conduct the review. Ms Sweeper's knowledge, experience and competence in information management resulted in her successfully competing in an open merit selection process in late 2011 to be appointed the A08 Principal Information Officer - a position which provides advice and guidance to the Records Manager. At the time I assigned the task to Ms Sweeper, I was not aware of a more suitable officer in the CMC to perform the review of the appropriateness of the RAPs applied to the Fitzgerald Inquiry records.
33. It was asserted that a number of officers involved in the decision process leading to the change in RAPs knew at the time there were three categories of Fitzgerald Inquiry records in contrast to my belief there were just two categories.
34. The acting Records Manager's memorandum of 7 September 2011 centres on only two categories of records: those with a 65 year RAP applied, and those with a 100 year RAP applied. There is no mention of a third category of records that should be treated differently or similarly. Likewise, General Counsel's email of 23 December 2011 refers to only two categories of records and again makes no mention of a third category either specifically or generally.
35. If other officers had known at that time that a third category of records existed, I believe it would have been reasonable for the third category to at least be referred to or acknowledged in the relevant correspondence. A single reference to this by any of the officers involved would have almost certainly halted the RAP review process at that time and the failure to make mention of a known third category of records at that time is concerning.
36. It was asserted I had removed and destroyed documents from file AD-11-0157.
37. This arose from advice from a CMC officer who apparently saw the file on two separate occasions noting that documents were missing from the file. The file had been in my office for the bulk of that period, only being removed to scan all documents in response to a summons from the PCMC Inquiry.

38. I state without qualification that I did not remove documents from that file and I did not destroy documents from that file. I note that, subsequent to the assertion, Mr Davis observed I did not have continuous custody of the file during the period in question and the file had been dis-assembled for scanning and when it was re-assembled some documents had not been correctly stapled together.
39. It was asserted I had been tardy in submitting delegation of authority forms to QSA which had been sent to the CMC in early June 2011. It should be noted this authorisation is only used rarely and does not affect the CMC's ability to set or change RAPs, which can still be performed by the Chairperson.
40. TRIM records show the file with the QSA documents attached was forwarded to me on 5 July 2011, a month after they had arrived. I was interviewed for the permanent position of Director Information Management on 4 July 2011 and I recall putting the file aside pending the interview outcome as it was appropriate that the permanent Director completed the forms.
41. I was advised of my permanent appointment as Director Information Management on 20 August 2011. The TRIM audit trail shows I completed the QSA delegation of authority forms for myself and the Records Manager in August 2011. I have not been able to ascertain the delay in September but the documents were signed and submitted to QSA in early October 2011 following a short period of leave by the Chairperson.

Closing remarks

42. My actions, as I saw them at the time, were directed towards making public records of Mr Fitzgerald's Inquiry once again accessible to the public- even if it was now more than 20 years after the Inquiry had closed. My actions subsequent to the RAP change reflected two things: Firstly, that I maintained the strong belief until recently that there were a significant number of Fitzgerald Inquiry records that were legitimately public documents; and secondly, that I took immediate action to restrict access to sensitive records as soon as I was made aware of them.
43. With the benefit of hindsight, there were opportunities for a number of parties to have prevented or minimised the impact of the misconception that precipitated these events. Unfortunately none of those opportunities were grasped at the time.
44. In the past few weeks, I have re-traced my decision processes relating to these events many times. I have questioned how I missed the signals of incorrect assumptions, which I would normally identify immediately. I can only conclude that I underestimated the extent my reasoning was inhibited through this period by my attention and reaction to other arising and evolving workplace issues. That does not excuse my errors in this matter but provides some basis to explaining them.
45. Notwithstanding any of the above, I made a serious mistake that I regret enormously, not only for the direct consequences arising from the release of sensitive material but also for the adverse impact it has had on my peers, colleagues and the CMC.

Declaration

This statement by me dated 28 March 2013 and contained in pages numbered 1 to 5 is true and correct to the best of my knowledge and belief.


Peter Robert Duell

28/3/2013
Date

Appendix 9 – Statement by Mr Hutchings

PCMC INQUIRY

SUBMISSION OF ROBERT HUTCHINGS

This submission¹ will address three areas:

1. Was there a basis to make a s.329 referral in May 2012?
2. Was it appropriate to rely on the advice from the Director, Information Management?
3. Denial of natural justice.

Was there a basis to make a s.329 referral in May 2012?

1. It was put to me by the Honourable member for South Brisbane that I had a responsibility to advise the Chairperson in late May 2012 to refer Mr Duell's conduct to the Parliamentary Crime and Misconduct Committee (PCMC) pursuant to s.329 Crime and Misconduct Act 2001 (CM Act):

*"Ms TRAD: With all due respect, Mr Hutchings, that is actually about not reporting the fix, reporting the problem. **The problem existed and the committee had a right to know about it under s.329.** As the CMCs general counsel, I think that you should have had a responsibility to advise the chairperson to report the matter..."¹ {emphasis added}*

2. Ms Trad's contention reveals a misunderstanding of s.329 of the CM Act.
5. The evidence is that as at 30 May 2012, my knowledge was limited to the following relevant facts:
 - Matthew Condon, a journalist, had sought access to Brifman transcripts;
 - Legal advice had been sought on 2 discrete matters concerning Fitzgerald documents- one matter related to publically available documents; another concerned exhibits the subject of "not for publication" orders;
 - I had provided advice on those two discrete matters;
 - That advice was legally correct;

¹ This submission has been prepared without proof transcripts of Mr Duell, Ms Wood or Ms Valeska being available.

² Transcript, 22 March 2013, p.70

- A former CJC officer had emailed the Official Solicitor in late May 2012 and suggested Fitzgerald Inquiry surveillance reports were available publically;
 - The Director, Information Management, had misunderstood my advice, and had rectified "the issue" with a discussion with Queensland State Archives (QSA).
6. Accordingly, in reliance on this advice, I took no further action. There was no requirement under the CM Act, or otherwise, to notify the PCMC.
5. What is **now** known is that:
- Mr Duell apparently misunderstood the contents of the Fitzgerald holdings, and the availability of sensitive documents at QSA;
 - Mr Duell had inadvertently but erroneously altered the RAPs of all series of documents in early February 2012, contrary to my advice;
 - Mr Martin had tasked Sidonie Wood, Official Solicitor, to "fix" the issue with Mr Duell.
 - Ms Wood had in fact discussed the issue with Mr Duell on 29 May 2012³.
6. Even if I had known that Mr Duell had "misunderstood" my advice, and made an inadvertent but erroneous RAP change, it could not sensibly be suggested that this would have warranted a referral under s.329 of the CM Act.
7. The reason for this lies in the words of s.329. The Chairperson must suspect a commission officer is guilty of "disgraceful or improper conduct". There are no other words which assist the definition. Accordingly, when assessing impropriety, one interprets Parliament's intention by reference to surrounding words. Mr Duell's conduct could hardly be categorised as "disgraceful"- it was apparently an inadvertent administrative error. There is no basis for characterising an administrative error as disgraceful or improper. If a mere clerical error (as described to me) met the test of "improper conduct", then the words "disgraceful" or "official" misconduct would have no work to do in s.329.

³ I am unaware of the content of that discussion – I have had no discussions with Ms Wood about it, nor was I permitted by the Committee to watch her oral evidence.

8. A further difficulty exists. Improper conduct includes conduct that would, if the officer were an officer in a unit of public administration, be official misconduct. In order to meet the definition of official misconduct, there must be conduct which is or may be a criminal offence or conduct which would warrant dismissal⁴. There is no basis for believing (either then or now) that Mr Duell's actions were anything other than an error based in his misunderstanding of my advice and/or the content of the Fitzgerald holdings. It could not sensibly be suggested that such an error would warrant dismissal (absent other circumstances).
9. Once these matters are properly understood, the error in the contention referred to above becomes manifest.
10. That is not however the end of the matter. A further problem arises. In order for a referral to occur pursuant to s.329 of the CM Act, the Chairperson must reasonably suspect that the conduct of a commission officer involves "improper conduct" as defined.
11. A suspicion requires more than a mere idle wondering whether it exists or not. It is a positive feeling of actual misapprehension or mistrust amounting to a "slight opinion but without sufficient evidence"⁵ A reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existence⁶.
12. A draft email prepared by me on 30 May 2012 but not sent suggests that at the time I felt there was "more that needs to be done". Another email to Ms Valeska later that afternoon reveals I was not sure if Mr Duell's email addressed my concerns. Both emails indicated that the matter was to be looked into further, rather than me holding a positive suspicion that there was, in fact, improper conduct.
13. Of greater importance, however, is that fact that my views on the matter were irrelevant, except in so far as it was incumbent on me to bring the matter to the attention of the Chairperson. As the Committee is aware, I did this at 10:32am on 29 May 2012.

⁴ See ss. 14 and 15 CM Act.

⁵ *Queensland Bacon Pty v Rees* (1966) 115 CLR 266 at 303

⁶ *Ibid.*

14. The Committee is also aware that the Chairperson immediately tasked the Official Solicitor to investigate the matter. In these circumstances, it was appropriate for me simply to await the outcome of any action taken by the Chairperson and advise in relation to the outcome if and when required to do so.

Was it appropriate to rely on the advice from the Director, Information Management?

15. Any suggestion that General Counsel, the Official Solicitor, or the Chairperson should have gone behind the advice given by a Director-level public servant, is fanciful. If that were required, the result would be organisational paralysis. As it transpired, the Chairperson *did* ask for an investigation to be undertaken.
16. The emails of 29 and 30 May 2013 indicate that I had a level of concern about the issue; otherwise I would not have raised it with the head of the organisation.
17. I was sent an email, for my information, from Sidonie Wood on 29 May 2012, which contained Mr Krosch's *assertion* that surveillance material was publically available at QSA.
18. Mr Duell was responsible for Information Management. He is not a mere clerk or junior Records officer. In accordance with established governance principles I emailed him directly, as the responsible head of the relevant department, on 29 May 2012 to ask him if the *assertion* was correct.
19. That issue was not the only significant legal matter being attended to that day. In addition, there was significant concern throughout the CMC about staff job losses. An all-staff briefing was held on the afternoon of 29 May 2012 regarding that matter. The Krosch issue was important, but it was one of a number of important issues.

20. Mr Duell responded the next day:

From: Peter Duell

Sent: Wednesday 30 May 2012 9:45AM

To: Rob Hutchings

Cc: Sidonie Wood

Subject: RE: ATTEMPTING SIDONIE WOOD...

Good morning Rob.

As briefly discussed with Sidonie yesterday, the issue identified by Barry Krosch arose from a misunderstanding at our end and was discussed yesterday with Queens/and State Archives. QSA have rectified this immediately and the COI surveillance reports have been returned to their 65 year restricted access period.

In the scheme of things it was fortunate that Barry raised

this with Sidonie.

Peter

Peter Duell | Director, Information Management | Crime and Misconduct Commission

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Our Values Integrity Accountability Respect Excellence and innovation Collaboration

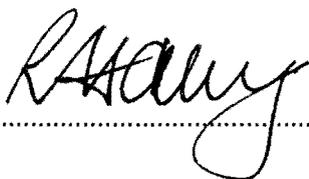
21. The "misunderstanding" was apparently Mr Duell's, or Information Management's. It was not said, for example, that the advice I had previously provided had been unclear- no clarification was ever sought. Nor was I informed a RAP change had actually occurred in February 2012- perhaps this was essential information. Nor was I told that Mr Duell had in fact already been approached by Mr Martin about the issue. The tenor of the email suggested the issue appeared to have had no consequences, was minor, and had been easily administratively rectified- by one discussion with QSA.
22. If I had been told in late May that the RAPs had been changed in February, but that had been done incorrectly, resulting in thousands of sensitive Fitzgerald documents being accessible to the public, my response is likely to have been very different.
23. It would not be appropriate for me to commence an investigation at all, let alone one involving another department, without a direction from the Chairperson. To suggest otherwise demonstrates some confusion about the role of the LSU as having some overarching supervisory role of the CMC's operations.
24. The simple fact is that the LSU does not have the resources to engage in investigations even if it wanted to.

Denial of Natural Justice

25. As I understand it, Counsel Assisting this Inquiry has indicated that there is no intention to make available to witnesses the submissions intended to be made to the Committee- even if those submissions are adverse to that witness.

26. Such a step, in my submission, is contrary to established principles of procedural fairness⁷.

27. I request that I be given notice of any proposed adverse findings and request the opportunity to respond.



Robert Hutchings

General Counsel

Crime and Misconduct Commission

28 March 2013

Date

⁷ *Kioa v Minister for Immigration and Ethnic Affairs* (1985)159 CLR 550; *Ainsworth v Criminal Justice Commission* (1992) 66 AUR 271

Statement of Reservation

Members for Bundamba (Deputy Chair), Nicklin and South Brisbane

Introduction

We the undersigned members of the Parliamentary Crime and Misconduct Committee (PCMC), hereby submit this statement of reservation concerning Report Number 90 of the PCMC in relation to the Inquiry into the Crime and Misconduct Commission's (CMC) release and destruction of Fitzgerald Inquiry Documents.

Whilst we have participated in this unprecedented and historic Inquiry in good faith and for the express purpose of establishing how and why Fitzgerald Commission documents came to be released and some destroyed, we cannot allow this Report to be tabled without expressing reservation.

In the following pages, we will document our specific reservations which go to matters of process, assertions within specific findings and recommendations and more general observations of the conduct of this Inquiry within a heightened climate of criticism and acrimony toward the CMC and the PCMC fuelled by the year old Liberal National Party State Government.

Our reservations should in no way be considered a reflection upon the hard work and diligence of the PCMC Secretariat or the Clerk of the Parliament, Mr Neil Laurie. In particular, we commend the Herculean efforts of Mr Neil Laurie, Ms Amanda Honeyman, Mr Stephen Finnimore, Mr Peter Rogers, Ms Sharon Hunter, Mrs Gail Easton and Ms Melissa Cook.

It is also important to specifically thank the Acting Parliamentary Commissioner Peter Davis SC and Counsel Assisting Dr Kerri Mellifont SC for their expert assistance in this Inquiry.

Matters of Process

The Inquiry into the Crime and Misconduct Commission's (CMC) release and destruction of Fitzgerald Inquiry Documents officially commenced and concluded within one month or 20 working days. The number and hours of hearings and the documentary evidence as presented under summons is well documented in section three of the Report, but without labouring the point, the information obtained under testimony and from documentation was significant.

In the Parliamentary sitting week preceding Easter, it became apparent to some that time was rapidly running out to call some potential witnesses and for adequate deliberation and cross examination of evidence revealed in documentation. This was raised by a Member in Committee and a request for an extension was requested. The Committee determined not to seek an extension however, it became apparent to many within the Committee that a short extension would assist in the proper due diligence required to ensure all findings and recommendations were based in fact and supported in a non-partisan manner.

Reasonable requests to investigate whether the Speaker or Government would entertain a modest extension request of one working day were simply not considered. Consequently, we the undersigned have significant reservations that the Inquiry Report does not reflect deliberations made with due diligence having regard to the enormous information gathered and the lateness of the Report's preparation and delivery to Members.

Speculative Assertions

It is of significant concern to the undersigned Members that a number of findings and recommendations are no more than speculative assertions and not findings based in a fulsome investigation of the facts as presented.

Committee finding 17 includes the assertion that "The Committee found failures and a poor culture of governance within the Executive Management, the LSU and Information Management." The suggestion that the failure to properly classify Fitzgerald documents reflects a poor culture – a term that in itself suggests an endemic way of behaving across these units of the CMC – is simply not an assertion that is based on either testimony or documentary evidence provided to the Inquiry.

This assertion is itself an opinion that we believe does not bear scrutiny under extensive examination. The Committee did not inquire as to whether the governance within the Executive Management, the Legal Services Unit or Information Management demonstrated systemic failures across all areas of the CMC, including major crime and misconduct prevention and investigation.

The Committee did not summons documentary evidence to interrogate and consequently conclude that the governance across these units reflected a poor culture that could be demonstrated in successive failures across the entire CMC and across all its functions.

It is the opinion of the undersigned Members that this assertion has more to do with contributing to the current acrimony toward the CMC and little else.

Committee Finding 18 asserts that some within the CMC are endeavouring to avoid responsibility by asserting that the management of the Fitzgerald Commission documents were not "core business." This assertion simply does not reflect the fact that many officers within the CMC who gave testimony, including former Chair Mr Martin, accepted responsibility for what had happened and were in agreement that the release and destruction of some Fitzgerald Inquiry documents was a grievous mistake.

Again, this assertion does not represent testimony given across all CMC Officers during the Inquiry and has been used selectively and inaccurately.

Parliamentary Commissioner

The Members undersigned also express reservation regarding 6.7 of the Report, namely increasing the powers of the Parliamentary Commissioner, so as to enable the recommendation of disciplinary action against CMC Officers. We have a concern that this

affords the PCMC, which is a body comprised of politicians, the ability to direct the Parliamentary Commissioner to investigate and make findings of a disciplinary nature against CMC Officers. This has the potential to give Queensland politicians the ability to determine investigations and recommend discipline to CMC officials and this is not in the best interests of accountability and transparency in Queensland.

We also observe that this is generally consistent with the recommendations of the Callinan and Aroney Review to increase the powers of the Parliamentary Commissioner.

General Observations

There is no doubt that a failure has occurred in the management and custodianship of the Fitzgerald Commission documents. That is indisputable. However, the failure germinated some eight years ago, when no more the infant product of the Fitzgerald Inquiry, the CMC had evolved into a modern, sophisticated crime and misconduct organisation playing a critical role in Queensland's democracy.

It is of concern to the undersigned Members that the response from the Premier and the Attorney-General in regard to the issue has not afforded due process. This observation is made based on two key facts. Firstly, the Premier and Attorney-General all but demanding the resignation of the Chair, Mr Ross Martin even before the Inquiry had been established and the facts made public. This, ironically, is behaviour not consistent with the treatment of LNP members who have recently had their own failings made public. Secondly, a matter of hours after the Inquiry had been established by way of resolution of the Parliament, the Premier was publicly attributing behaviours to the PCMC which were not based in fact and could only be publicly interpreted as undermining the Inquiry upon its commencement.

Additionally, the members undersigned express deep concern that the Premier felt it acceptable to interrupt the Committee on numerous occasions via direct contact with the PCMC Chairman, Mrs Liz Cunningham MP. It is particularly concerning that on occasion the Premier saw fit to express his strong views in relation to bi-partisan media comments made by the Chair in response to his attacks against the PCMC.

Additionally, we note the Callinan and Aroney summary of conclusions and recommendations has referred to matters which are the subject of this Committee's report.

We believe the Government's actions on having two investigations on foot, at the same time, about the same matter, support our view that this Government has for some time had a "get square" view of the Crime and Misconduct Commission and its independent ability to investigate a wide range of matters able to be referred to it under current legislation.

We believe it would have been more appropriate to await the finalisation of this Inquiry before deciding whether it was necessary to extend the Callinan and Aroney investigation.

We believe the Government has used the Callinan and Aroney investigation and report to support the Government's agenda of restricting the matters the CMC can investigate.

We do not believe real evidence supports some of the assertions made in the Callinan and Aroney report.

We believe the evidence shows most people who make a complaint to the CMC genuinely believe the person they are complaining about has a case to answer and this capacity to freely make genuine complaints needs to be protected at all costs.

At the time of finalising this report, the Government has not provided this Committee or the public with a copy of the full Callinan and Aroney report.

The Premier has not accepted an invitation to meet with the Committee.

Conclusion

The CMC plays a critical role in Queensland's democracy Queensland. For little over 20 years, the CMC has been at the forefront of crime prevention, crime and misconduct investigation and prosecution, witness protection and building the ethical and accountability standards within Queensland's democratic institutions.

The release and destruction of the COI documents was a significant error that was compounded by poor judgement on a number of occasions. However, to claim that this instance is emblematic of the workings and functioning within the CMC is not a conclusion that can be drawn from evidence provided to this Inquiry and, in fact, would only support a political agenda to weaken the very important role of the CMC to keep Government open and accountable.



Jo-Ann Miller MP
Deputy Chair, PCMC
Member for Bundamba



Peter Wellington MP
Member for Nicklin



Jackie Trad MP
Member for South Brisbane