



REPORT OF A  
COMMISSION OF INQUIRY  
PURSUANT TO ORDERS  
IN COUNCIL

DATED: (i) 26 May 1987  
(ii) 24 June 1987  
(iii) 25 August 1988  
(iv) 29 June 1989

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Interpretation Act 1954 - 1989*



## Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct

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3 July, 1989

The Honourable M. J. Ahern M.L.A.  
Premier and Treasurer and  
Minister for State Development  
and the Arts  
Premier's Department  
Executive Building  
100 George Street  
BRISBANE QLD 4000

Dear Premier,

I herewith submit my report in respect of the matters set out in the Order in Council of 26 May 1987 as amended by the Orders in Council of 24 June 1987, 25 August 1988 and 29 June 1989.

Yours faithfully



G. E. FITZGERALD  
(Chairman)

## Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct

---

3 July, 1989

The Honourable T. R. Cooper M.L.A.  
Minister for Police and  
Minister for Emergency Services  
and Administrative Services  
31st Floor  
M.L.C. Centre  
239 George Street  
BRISBANE QLD 4000

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I herewith submit my report in respect of the matters set out in the Order in Council of 26 May 1987 as amended by the Orders in Council of 24 June 1987, 25 August 1988 and 29 June 1989.

Yours faithfully



G. E. FITZGERALD  
(Chairman)

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The Commission expresses appreciation of the part played by the Government Printer, Mr. S. R. Hampson, and the staff of GOPRINT in the production of the printed copies of the Report under conditions of the utmost confidentiality, to meet critical deadlines.

# I. INTRODUCTION

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## 1.1 THE SETTING UP OF THIS INQUIRY

## 1.2 PROGRESSIVE SOCIAL CHANGE

## 1.3 GUILT AND INNOCENCE

## 1.4 THE CONDUCT OF THE INQUIRY

### 1.4.1 Openness

### 1.4.2 Use of powers

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## 1.1 THE SETTING UP OF THIS INQUIRY

On 1 November, 1986, the citizens of Queensland voted in a state election which led to the return of a National Party Government led by the Honourable Sir Johannes Bjelke-Petersen.

Shortly after the election, the then Premier began a campaign to enter federal politics which was abandoned in May, a few weeks before the federal election which had been called early and took place on 11 July 1987.

During the time the then Premier was concentrating on federal politics, he left control of the Government of Queensland in the hands of the Deputy Premier and Minister Assisting the Treasurer, the Honourable William Angus Manson Gunn, M.L.A.

During December and January 1987, the "Courier Mail" newspaper published a series of articles concerning vice and police inactivity which were written by a young journalist, Mr. Philip John Dickie.

There was nothing particularly unusual in this. Similar controversies had surfaced and subsided from time to time for many years. The spokesmen for the Police Department routinely ground out stereotyped denials and hit back at critics.

Parliament was in recess and the opposition parties lacked any effective means of communicating familiar criticisms to an indifferent community, which was in any case slowed by the torpor of late summer and distracted by anticipation of the Easter holidays and the start of the football season. In the ordinary course of events, Queenslanders would have remained complacent, largely unaware of the activities of a greedy minority, and the debilitating effects of those activities on society.

However, on 11 May 1987, the Australian Broadcasting Corporation's "Four Corners" programme telecast the "Moonlight State", a television documentary compiled by another investigative journalist, Mr. Christopher Masters. Events which had been filmed raised the possibility that the Police Force was lying or incompetent or both.

Masters interviewed former and serving police, two of whom appeared on the "Four Corners" programme. They and Masters suggested that something was badly amiss with the policing of gambling, organized prostitution and drug trafficking in Brisbane, particularly in Fortitude Valley. The "Moonlight State" suggested the Police Force had been ignoring and perhaps condoning significant criminal activity for a long time. This was in stark contrast to the official position of the Queensland Police Department, which denied that significant vice existed or that brothel ownership was concentrated in a few hands.

One of the most telling aspects of both Dickie's and Masters' work was that they had simply and quickly obtained evidence of the ownership of Brisbane's brothels, largely by searching public records. This was evidence which would have been obtainable in the course of routine police work.

The same point had been brought to light by the Director of Prosecutions, Mr. Desmond Gordon Sturgess Q.C., who said in the 1985 report on his Inquiry into Sexual Offences Involving Children and Related Matters:

"It took my clerk only a couple of hours to obtain the addresses of 14 massage parlours carrying on business, in Brisbane, and they were not the only ones, and search at the Titles Office and discover who the registered proprietors were....No owner of any one of those premises who had seen it in recent times could be unaware of the purposes for which it was being used; the business of nearly all of them is prominently announced on the premises themselves."

Sturgess' report came to many of the same conclusions about brothel ownership as were arrived at by Dickie and Masters, and were later corroborated by evidence at this Inquiry. However, like the findings of an earlier Inquiry presided over by the Honourable Mr. Justice Geoffrey Arthur George Lucas (of which Sturgess had been a member), Sturgess' report was largely ignored.

On the day following the “Moonlight State” telecast, the Acting Premier, Gunn, announced that there would be an inquiry.

The general expectation was that the inquiry would be brief and ineffectual, and was primarily a device to ease the political pressure on the Government. The inquiry was not given the status of a Royal Commission but appointed by Order in Council. The initial terms of reference, prepared by the Justice Department and published in the Queensland Government Gazette on 26 May, 1987, were mainly limited to matters arising out of the “Moonlight State”.

The Chairman of this Commission was approached on behalf of Gunn by the Minister for Justice and Attorney-General, the Honourable Paul John Clauson, M.L.A., and asked to conduct the inquiry. During preliminary discussions, Gunn gave assurances to the Chairman that he believed a proper, honest and comprehensive inquiry was both possible and necessary. He made commitments to support such an inquiry.

As soon as the Commission was appointed, moves were made to consolidate those commitments and to establish the public credibility of the Commission.

The Justice Department and the Police Department did not intend to lose control. They seemed to think that the standard responses of secrecy and obstruction would still apply. Reasons were advanced for restricting the Commission’s access to material. Privilege, confidentiality and sensitivity were appealed to and warnings were issued about the dire (but still-awaited) consequences to the public interest of providing unvetted Police Department and other Government material to the Commission.

Of course, if individuals or organizations under investigation are allowed to censor what the investigators see, an inquiry is almost certain to fail. Even where there is no impropriety, human nature makes it inevitable that vague tests of confidentiality and sensitivity will be broadly construed by those people whose conduct is in question.

Supported by the advice of Ian David Francis Callinan Q.C., Senior Counsel for the Government at the Inquiry, Gunn honoured his commitments firmly and with vigour. At his insistence, the Commission was given total access to Police Department and other Government material. Later, the current Premier added his authority to support the Commission’s requisitions, and even Cabinet minutes and associated documentation were made available.

As is further discussed, other members of the Government and the Parliamentary leaders of the Opposition parties also supported and helped the Commission.

During the six or seven weeks between the appointment of the Commission and the beginning of substantive public hearings on 27 July 1987, vital steps were taken which had a critical influence on the rest of the Inquiry.

- The Commission asked for and was eventually given access to all police and Government documents. No exception was made.
- The State Government agreed to fund the Queensland Police Union of Employees and the Queensland Police Officers’ Union on condition that they supported the Inquiry in a search for truth.
- The Commission was given staff, premises and equipment.

After the Commission’s substantive public sittings commenced, it became clear that police corruption was widespread, and part of a bigger problem. There was a need for the Inquiry to examine wider issues. The Commission’s scope and responsibilities began to balloon.

The terms of reference were twice expanded; on the first occasion by an Order in Council gazetted on 24 June 1987 and then by an Order in Council published in the Gazette on 25 August 1988. All three versions of the terms of reference are set out in Appendix 2. Extra resources were granted, and increased powers were given by a number of amendments to the Commissions of Inquiry Act. (Copy of the Act is Appendix 1.) A number of other Acts were passed or amended, and the Government waived Cabinet secrecy to allow Ministers and former Ministers to give evidence.

The Commonwealth Government co-operated by amending, amongst other things, the Income Tax Assessment Act 1936, the Royal Commissions Act 1902 and the Telecommunications (Interception) Act 1979 to help the Inquiry obtain information.

The Commission held public sittings on 238 days. One hundred and thirty-one people and organizations were represented by 108 legal representatives and a further 12 people represented themselves. A total of about 70 written submissions was received. There were 339 witnesses who appeared before the Inquiry. All evidence was heard in public sittings, apart from a brief sitting at which former Assistant Commissioner, Graeme Robert Joseph Parker, first admitted his involvement in corruption. Only a very limited number of exhibits were restricted. The transcript totalled 21504 pages, and there were 2304 exhibits. Many people who were not called as witnesses provided information to the Commission. Its investigations are continuing.

The public sittings were attended by journalists representing most major media organizations in Australia. The Australian Broadcasting Corporation and Queensland Newspapers were given leave to appear. Journalists were given special access to exhibits, and played a vital role in assisting the community to be informed.

During the course of the hearings, the Chairman from time to time made statements of explanation or commented on matters of public controversy related to the Inquiry. The media dubbed these statements “the homilies”; that is, depending on one’s point of view (or for some, the manner in which the previous evening had been spent), either statements for the “spiritual edification” of the audience or “tedious moralizing discourses” (The Australian Concise Oxford Dictionary).

The homilies covered a wide range of matters, including the media’s role in covering the Inquiry, and the reasons behind various decisions and Commission actions. (Appendix 15).

By its very nature, much of the Commission’s work had to be conducted in secret. By its briefings of the appropriate ministers and the parliamentary leaders of the Opposition, its public sittings, and the Chairman’s homilies, the Commission attempted to be accountable.

The homilies were aimed at making it clear to the public that the Inquiry was a genuine search for the truth and that difficult and controversial decisions, such as the publication of evidence or the granting of indemnities, were made in good faith and with the public interest in mind.

Read collectively, the Chairman’s rulings and homilies, explain much of the reasoning behind the actions of the Commission.

Appendix 16 is a chronology of the main events during the course of the Inquiry.

## 1.2 PROGRESSIVE SOCIAL CHANGE

This Commission of Inquiry commenced with very limited terms of reference which expanded greatly. It began by pulling a few threads at the frayed edges of society. To general alarm, sections of the fabric began to unravel.

Such a process is difficult to stop or control, and there are a number of potential consequences which must be carefully watched. Temporary trauma and disorder are inevitable. During this trauma and disorder, institutions can be damaged and individuals harmed. Expectations can be created which cannot be fulfilled, and this can lead to community disappointment and cynicism.

The shock, panic and anger which follow an Inquiry such as this can produce over-reactions which unnecessarily disturb traditional systems and values, including civil rights. Great care needs to be taken to avoid such over-reaction. On the other hand, vested interests can respond with superficial, piecemeal measures which are worse than futile because they achieve nothing but a deceptive appearance of change. They help vested interests to avoid and subvert real reform while creating a new, attractive but hollow facade to hide the continuing misuse of power and misconduct. The facade may indeed be a more effective disguise, because it allays community concerns.

Response to the problems must be measured, and solutions well considered. The approach recommended in this report is sensitive to the need to consider any detriment, generally or to individuals, which the adoption of a particular course may cause. The course recommended involves carefully controlled accountable and relatively small organizations which, properly monitored, should allow development in response to objectively identified need.

Delay, obstruction, and superficially innocent modifications to what is intended in this report can all be used to defeat reform. This can only be prevented if the public insist on real change. Public opinion, and vigilant scrutiny of the pace, methods and form of change must bolster the present political commitment.

One of the important aims of this Commission, which has been partly accomplished, has been to give information to the community about what has occurred. It is hoped that this report will consolidate that process, and the resulting political commitment to reform.

The other daunting task of the Commission is to make practical and affordable recommendations on a range of matters affecting life in this State. These reforms, when implemented, will supplement and improve existing institutions and systems.

The Commission is an appointed body, not an elected one. It is an adjunct to the democratic process, not a replacement for it. It is not infallible or omniscient and has had limited time to consider topics on which views may sincerely differ. The Commission has no mandate to impose opinions on the community.

The recommendations in this report are aimed at allowing permanent institutions and systems to work properly. Solutions can then be arrived at, improved and reviewed through the democratic process. Most of the recommendations therefore concern broad changes, although some detailed proposals are also made.

It is impossible and unnecessary to attempt to record and analyse in this report all the evidence, research observations and experience which this Commission has amassed in its two years of existence. The recommendations in this report draw on all of that.

The Commission's experience and information has embraced a wide variety of matters, not all of which have been discussed in the report.

Many issues concerning the conduct and activities of individuals arose. Allegations of criminal conduct and other impropriety were made during the Inquiry's hearings, and publicized by the media. Problems with and deficiencies in vital institutions and processes were evident from indisputable evidence in the hearings. Those in turn led to other issues. Most of the issues are extremely complex and difficult even taken in isolation, but the issues do not stand in isolation and cannot be addressed, adequately, individually.

This report endeavours to identify the major problems. It refers to issues which show the need for the introduction of new structures and systems, and revision of the old ones, as foundations for reform. The focus and the tenor of the report is to ventilate the problems and recommend approaches and mechanisms, rather than make unsound attempts to prescribe solutions to complex problems which have not been fully explored.

Wherever possible, competing considerations are identified and sometimes preferences are expressed. The need for more deliberation is identified, accepted and emphasized.

Some important themes recur in the various sections of this report. They reflect broad propositions which apply to society as a whole, and social change in particular.

There are inevitable conflicts between different, legitimate considerations, including different public interests. This means that there must be compromise.

The individual rights which are part of a free society are also available to criminals, and open to abuse by them. The activities of these criminals invade and diminish the rights of other citizens. Honest citizens can



be protected from criminals only by the State. Such protection may itself entail the exercise of powers which themselves involve some intrusion upon individual rights.

The essential and difficult task is to strike a balance between competing considerations which is suited to the particular time and circumstances.

The question of balancing civil liberties considerations with the need for effective law enforcement is discussed in more detail elsewhere in this report.

Another recurring theme is the need for a free flow of accurate information within a society. Such a flow of information is needed if public opinion is to be informed. Public opinion is the only means by which the powerful can be controlled.

However, there is a conflicting right of individuals to privacy. In some circumstances, such privacy results in the secrecy which allows corruption to breed and official misconduct to escape detection.

Self-assessment and self-regulation are aspects of such secrecy. Where there is no opportunity for external appraisal and criticism, either because of a lack of suitable mechanisms or an absence of information, the possession of authority can result in a self-fulfilling cynicism. This cynicism both causes and, in turn, is magnified by misconduct. Institutions become corrupt or inefficient because of the attitudes of those who work within them, and the corruption and inefficiency are factors which cause such attitudes to persist.

Innovations will be sterile and impotent if attitudes do not change. If the community is complacent, future leaders will revert to former practices.

Although laws and institutions are the foundations, society is made up of people. It will be people who decide the outcome of legislative amendments and institutional improvements.

The selfish and corrupt are infinitely flexible in their ability to adapt and work around new regulatory structures. They will seek to manipulate and exploit laws and institutions, whatever changes are made. It is a common feature of public administration that laws and structures are used and referred to merely to excuse inertia and neutralize criticism.

If reform is to work, people will be needed who will honestly implement change and work within altered institutions. Such people must come from the general community, and the community must support them in their endeavours.

It must be remembered that not all the people who make up the institutions or groups which have been investigated are guilty or responsible for what has occurred. For example, this report is not meant to convey that all police are untrustworthy. The considerable assistance given to this Commission by dedicated police officers is proof of that.

Nor should all or even most bureaucrats, ministers, journalists and other individuals be distrusted because of the faults of the organizations in which they work. The conscientious members of these organizations and of the community in general constitute the hope for the future. Although this point is made again in this report, the whole of the document should be read with this in mind. At no point is it intended to imply that all members of an organization are responsible for its collective faults.

The relevance of the culture of the Queensland Police Force to misconduct is later discussed. That discussion is necessary because of the particular problems in that Force and the unique position of the Force at the threshold of criminal justice.

It should be plainly understood that the influence of institutional culture is not unique to the Police Force. It is capable of affecting any group of people or institution. In bodies other than the Police Force, such cultural influence manifests itself in more diffuse ways, but affects attitudes to change, and can lead to or be associated with official misconduct.

Not all members of a group or institution, including the Police Force, subscribe to their body's culture but that does not lessen its significance if it can be used to aid or conceal official misconduct. Left unrecognized and unchanged, any such culture can easily be exploited to obstruct or prevent reform.

The treatment of the culture of the Police Force, and its effect and significance, are, therefore, of relevance and importance to official misconduct of all sorts, in all institutions.

Individuals who work in institutions in need of reform must recognize that checks and balances and changes in attitudes are necessary if the activities of their less scrupulous colleagues are to be detected and controlled.

Some people will, for a variety of selfish and genuine reasons, oppose this report's recommendations for reform.

Such opposition will be quite easy. This report proposes a package of reform, comprising a number of elements. Each element has advantages and disadvantages, but the whole is aimed at achieving the best balance between competing considerations.

Each component is vulnerable to selective criticism by those whom it does not suit. Acceptance of any such selective criticism could lead to an altered and reduced package, perhaps worse than useless.

The outcome of the Inquiry and report must be determined by the political process, as should be the case in a democracy.

The way in which that process has worked in this State in the recent past has been one subject which this Commission has had to consider. As is discussed later in this report, the public interest can easily be subordinated to other considerations, and the consequences hidden or disguised in a defective political process.

There are many ways in which the agenda for reform could be delayed or subverted by political or bureaucratic opponents. This has happened previously. If such people are allowed to form committees of review, to draft or introduce superficially innocuous changes to the necessary legislation, or to select those who must carry out the subsequent stages of what is recommended, then the process of reform will undoubtedly falter, especially once the hubbub dies down.

The real test of the commitment which has been made to a new era will arise when decisions are made as to who will be responsible for carrying forward the recommendations which are adopted. The need for independent people, drawn from outside the existing bureaucracy, is plain.

### **1.3 GUILT AND INNOCENCE**

The information which has emerged from this Inquiry is the basis for the recommendations made in this report. The fact that that information is now available to the community is the main guarantee of a political will to implement reform.

However, it ought not to be thought that the Inquiry has exposed all or even most of the misconduct which has occurred. It most certainly has not. Other material held by the Commission makes it clear that only a small number of the guilty have been exposed.

Inevitably, the evidence not only described events but also identified participants, many of whom were referred to in media reports of the Commission's proceedings. Some issues were raised but not fully investigated. Others were investigated, but not publically raised. The evidence on many points was incomplete and many disputes between witnesses were unable to be resolved. For example, there were well over 100 statutory declarations, mostly by police officers who denied improper conduct and who could not be cross-examined because of the time that would have been required.

Not all denials were true, and almost certainly a number of police continued to tell lies. False or mistaken allegations were made in a minority of instances, and on occasions the evidence, even if correct, did not justify some of the media reports which followed. Other evidence was accurate, admissible and correctly

reported, and was vitally important not only for this Commission but for the general community and its leaders. Such evidence enabled the community to comprehend the need for urgent change.

Although the Commission was given considerable resources, it was tiny compared with the size and difficulty of its task, which concerned incidents stretching back over more than two decades, and still continuing. This Commission was incapable of doing more, or doing it better, in the time available.

Where misconduct is institutionalized, guilt and innocence are not a matter of black and white. There are infinite shades of grey. Some people have been merely incompetent, or the victims of inertia (whether through disinterest or self-interest). People have been involved in misconduct to varying degrees. The shadows fall differently depending on one's point of view, and in some cases, the memories of those who wish to settle scores or recontest old battles.

In a later section of this report there is a broad outline of the general effect of the public evidence. *So* far as possible, the outline refrains from making adverse conclusions about individuals.

There are some exceptions to this principle, but they are limited. Some witnesses have confessed to misconduct. Conclusions have been drawn in some cases where charges are unlikely, where adverse consequences are unlikely for other reasons, or where reference to detail is essential to an understanding of the overall pattern.

However, the most important thing about the evidence, and the purpose of the summary of it contained in this report, is not the truth or falsity of particular allegations, but the pattern, nature and scope of the misconduct which has occurred.

The main object of this report and its recommendations is to bring about improved structures and systems. The past misdeeds of individuals are of less concern, except as a basis for learning for the future. The public hearings produced that basis. It is now generally accepted that openness and accountability have been missing from the political process, and that there is widespread corruption within the Police Force, which also has other major problems.

Many of those who have been involved, and whose misconduct is continuing, will never be detected or punished even by a permanent body, but they are less important than the pattern of which they form part, and which must now be changed.

It is less than perfect justice that only some offenders will be punished, including some not as culpable as those who will escape and perhaps prosper. However, the community reasonably expects that, where practical, charges will be pursued. That process has already been commenced, initially by the Prosecution Task Force which was later replaced by the Special Prosecutor.

Courts are not the only bodies which make findings, including findings concerning the propriety of individual conduct, but a variety of circumstances may make such findings undesirable, as they are for this report.

Innocent persons incorrectly subjected to inaccurate media reporting justifiably expect their names to be cleared and doubtless at least some of the guilty hope for a similar result. In any case, the guilty will be delighted no conclusions have been reached; some will adopt the role of the innocent and protest that they have not been exonerated. Both are entitled to have it clearly stated that this report makes no adverse finding against or finding in favour of any person except in those few instances where findings which must be made are unavoidably inculpatory or critical of individuals. 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.

Even where it is necessary to make an adverse finding in this report against a particular person, the question of his or her criminal guilt must remain for the appropriate court to determine. To the extent that findings of fact are necessary for the purposes of the report, it goes no further than to record matters and draws short of any conclusion as to the commission (or otherwise) of any criminal offence by any person.

The deliberate course which has been adopted of not making adverse findings where that could be avoided should not be allowed to become the basis of an alternative process of making conclusions of guilt by innuendo or association and what is stated in the report ought not provide a foundation for any conclusions which the report itself does not draw.

Quite apart from the above considerations, it would have been difficult if not impossible to make findings against individuals. Such a course would not only have revived past allegations and placed them on

permanent record in this report, but would also have created an intermediate class of people against whom neither an adverse nor a favourable finding could be made. That would have left open the unjust implication in some cases that they were at least under suspicion.

Unnecessary findings against individuals are undesirable for a variety of other reasons. Findings made on evidence related to statements in Parliament and reported in Hansard which were referred to in the course of the Inquiry may have involved a breach of Parliamentary privilege. (Indeed, on one view of the law there may have been inadvertent breaches in the course of the public sittings of the Inquiry. If so, such breaches are regretted). Further, the Commission holds a large volume of material which was not publicly ventilated, including some obtained under obligations of confidentiality arising from legislation (including special Commonwealth legislation) and other arrangements with, for example, the National Crime Authority and the Australian Bureau of Criminal Intelligence.

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. Nor could findings be published which breached the obligations of confidentiality.

The Office of Special Prosecutor, which evolved out of this Commission but is independent of it, has already laid a number of charges and more are likely to be laid. Some people have already been convicted and others will almost certainly be tried in the future and, in some instances, may be acquitted. All are entitled to fair trials.

It is for the Special Prosecutor to determine who should be charged. While this Commission should not be deflected from its duty by any unavoidable obstruction of the effective performance of the Special Prosecutor's functions, it should not unnecessarily impede his task. This Commission should do what it can to avoid complicating the trial process.

The Special Prosecutor, who has seen part of this report in draft and whose comments have been considered, is alert to the need to consider whether a fair trial is possible before a prosecution is launched, and the courts have ample powers to stay proceedings which are brought should that be necessary to ensure fairness to an accused.

The chance that some persons might not be able to be tried because of the proceedings of this Inquiry should not be unnecessarily created or increased by non-essential findings against individuals. The consequences of needed findings, like the consequences of open hearings and other steps such as the use of immunities from prosecution, must be accepted as a part of the unavoidable cost which the community must bear in order to expose and correct what has occurred. If the avoidance of unfair trials involves the possibility that a person who should be called to account may not be able to be prosecuted, then that must be part of the cost of exposure and correction.

Such a price is much less than it might appear, since if there had been no Inquiry, many of the guilty would in any case have not been detected, investigated and prosecuted. Whatever convictions of guilty people occur or have already occurred are a bonus to the community from the work of this Inquiry.

Consistently with the approach which has otherwise been adopted, the Commission makes no recommendations as a basis for the suspension (or continued suspension), dismissal or other punitive treatment of any individual. Subject to one qualification, outlined below, all such decisions should be left to the orthodox processes of the law.

This report includes extensive recommendations with respect to the reform of the Police Force, including the need for a transitional phase during which various processes and procedures can be introduced and set in motion.

The community and honest police officers are entitled to expect that those who are granted and allowed to retain the authority and discretions of police officers are free from any possible basis of suspicion. Much of the impetus for reform which has been generated within the Police Force would be lost if honest police were sent the message that widespread misconduct could not be eradicated or prevented, and that the guilty would continue to progress and prosper in their careers.

The question of what course should be adopted in the meantime is one of great difficulty. It is unsatisfactory to permit any police who are innocent of allegations to be further delayed in their careers. It is also unsatisfactory for the Force to be further disrupted by the uncertainty of temporary or “acting” appointments. Conversely, it is unacceptable that the influence of the guilty should be consolidated by promotions or appointments to sensitive positions.

Elsewhere in this report, there is discussion of a recommended course for dealing with police officers who come under suspicion pending determination of the matters of concern. There is no practical alternative but to follow that course in relation to those serving police officers who were adversely mentioned in evidence at this Inquiry.

In the meantime, where promotions or transfers are made, retirements are permitted or resignations are accepted, it should be clearly understood that such a course carries no implication that any otherwise unresolved allegation has been decided in any particular way.

## **1.4 THE CONDUCT OF THE INQUIRY**

### **1.4.1 Openness**

There is a public interest in justice for individual members of the community. It needs no great sensitivity to be sympathetic to innocent people who become caught up in an inquiry’s proceedings.

The justification for the appointment of a Commission of Inquiry is that certain allegations have been made which are not, or cannot be dealt with by ordinary processes and institutions, and which have caused great public concern. Such allegations have to be investigated so that the community can be satisfied that the suspected problem either does not exist or has been exposed and eradicated. Therefore, when a Commission of Inquiry is set up, the restoration of public confidence in the integrity of a vital element of public life is the paramount public interest to which other public interests must be accommodated.

This Inquiry began as a journey into the unknown, along a path filled with obstructions, on a search for the truth about matters which could only be described in vague terms and which had for years been the subject of rumour, suspicion and innuendo.

Previous inquiries on law enforcement in Queensland in the last quarter of a century had failed despite skill and endeavour. Their terms of reference were limited and their recommendations largely ignored or lost in political posturing and bureaucratic obfuscation. Honest police and others with important information were afraid to come forward for fear that nothing would be done. Their fears became self-fulfilling.

The matters brought to the attention of this Inquiry were bound to be politically controversial, if only because they bore upon the administration of a political party which had been in government for decades. Once the personal conduct of individual politicians and political parties came under scrutiny, political controversy became certain. Yet governments, politicians and their parties should not be placed beyond scrutiny and so beyond the law. Therefore, inquiries such as this, which the disaffected can impugn as “political”, must remain one of the options which the community reserves to itself in order to supervise and control public administration and the exercise of power.

This Inquiry could not have proceeded without public confidence, co-operation and support. The power of some of the individuals involved, and the type of issues raised were such that it would have been impossible for the Inquiry to have succeeded without public confidence, co-operation and support.

That meant the Inquiry had to be as open as possible, so that the public, including people with information, could see that it was a genuine search for the truth. Such a course was also necessary so that the Inquiry could generate enough momentum to overcome any attempt which might have been made to interfere.

Apart from one brief sitting already mentioned, all the evidence of this Inquiry was heard in public. With a few exceptions, exhibits were made available to the media. Restrictions on publication were generally made only in cases where safety or continuing law enforcement operations would have been jeopardized by openness, or in some instances of “pure” hearsay which had, in itself, no probative value.

One of the most difficult and controversial issues facing the Inquiry was whether to admit and allow the publication of evidence with a dual character, including both an hearsay element and an element that was direct and probative. After taking submissions, the Commission decided to admit and allow publication of such evidence which could not be practically excluded or restricted from publication without producing gross distortions in what was publicly disclosed. The solution arrived at was not perfect, but it was the best workable compromise between competing legitimate interests.

One of the most effective pieces of false propaganda used against the Inquiry, perpetrated by the media, the accused and some lawyers who should have known better, was that “most” or “much” of its evidence was “hearsay”. In fact, the vast majority of evidence before this Commission is not hearsay and would be admissible in conventional legal proceedings.

There is no doubt whatsoever that this Commission could not have got as far as it did without openness. But openness also had disadvantages, which varied according to the innocence or guilt of those about whom evidence was given.

Criminals abused the information they gained, as they did other privileges such as the leave to appear and access to transcripts and exhibits. Public hearings also greatly increased the likelihood that criminals would abscond, hide their illicit wealth and destroy evidence. All of those things almost certainly did occur.

Meanwhile, individuals had to endure the ignominy of adverse publicity. But openness also helped the innocent. The publication of evidence and allegations brought forward more information and witnesses which, in some cases, helped to rebut allegations. More generally, openness helped to avoid uncertainties which would have bred suspicions and rumours, extending the range of innocent people affected. Of course, innocent people also had the same interest as others in the community in the overall success of the Inquiry, which was dependent on openness.

So far as possible, steps were taken to lessen the disadvantages of openness. People implicated in evidence were given the right to appear before the Inquiry to make short, unsworn statements refuting allegations and giving their versions of events. The media was also able to seek comments from people named, and publish any statements of denial made outside the Commission.

Permanent bodies will have to address similar considerations, but the balance which they strike might well be different. If the recommendations in this report are implemented, the permanent body which will continue this Commission’s work will be primarily accountable to Parliament. It will still need public support and confidence, and there will be at least some occasions when open hearings will be appropriate.

## 1.4.2 Use of Powers

The Commission has a number of statutory powers under the Commissions of Inquiry Act, which were expanded by amendments during the course of the Inquiry.

The extensive powers held and exercised by this Commission included:

- the power to summons persons to appear before the Commission;
- the power to compel witnesses to answer questions on oath and produce documents, even though the evidence was self-incriminating;
- the power to issue search warrants and seize property;
- the power to use listening devices, subject to judicial authorization; and
- the power to punish for contempt.

As a matter of policy, search warrants were not ordinarily issued by the Chairman, but were obtained from independent justices of the peace. The Chairman’s power to use warrants was used when the information on which the application was based could not be disclosed to a justice because of some restriction (for example, confidential information provided to the Commission under a Commonwealth law), or where the risks from disclosure were intolerably high.

It would have been impractical to seek authorization from a judicial officer before exercising the powers to compel attendance and to insist on answers to questions, but an attempt was made to avoid using those powers unnecessarily in cases where the evidence would or might have been incriminating or embarrassing to the potential witness.

In this and other matters, the Commission regularly had to make decisions between courses of action which all involved disadvantages. The Commission had to face the certainty that decisions would be criticized. It was imperative not to become paralyzed by concern at the disadvantages and to keep in mind that the overall justification for the Commission's existence was the public interest. Conflicting considerations, including possible detriment to the witness and the potential importance of evidence which might be given, were weighed in an attempt to see how that interest could best be served.

Minimal use was made of the power to use listening devices with judicial authorization and the Commission's power to punish for contempt was not used at all, although on four occasions proceedings were taken by the Attorney-General on a certificate from the Commission to have contempt of the Commission dealt with by the Supreme Court.

Unlawful s.p. bookmaking is widespread and organized and of great significance to police corruption. Evidence in relation to this aspect of the Inquiry was riddled with perjury and two s.p. bookmakers wilfully refused to answer questions. Their contempt of the Commission was an affront to the community and was punished by the Court.

There were numerous other contempts of the Commission, including defamatory attacks on the Chairman and Counsel Assisting, which were merely countered by public statements where that was essential.

### **1.4.3 Use of Indemnities**

The grant of immunity from prosecution is a serious step, and the responsibility for recommending that an "indemnity" be given is a heavy burden. A community which has been misused feels justifiable anger and expects the punishment of those responsible. It is unhealthy if frustrations are increased by criminals' escape from what they deserve.

There is a subliminal message of despair transmitted when crime cannot be solved without the release of some of the criminals in exchange for information. This is especially the case when major participants must be exonerated because it is they who possess the important information. Yet when the problems are large and intractable, that will often be part of the price which has to be paid.

It was less important to punish all who had been involved in the past than to identify them, remove them from their positions of influence, punish as many as possible, and, most importantly, gain knowledge needed to arrive at improvements for the future.

Corruption is a clandestine crime, and none but those centrally involved could have unravelled the web of misconduct in Queensland. The participants were the only ones who had the necessary information. They were able to use that information as a bargaining tool.

Before Jack Reginald Herbert was granted an indemnity, the support of the Director of Prosecutions was obtained, and thereafter he was asked for his views before any further immunity from prosecution was recommended.

The evidence of Herbert contained many allegations against individuals which may or may not be true. However, his evidence set beyond doubt the existence of a well-organized network of corruption which had existed and flourished for decades. His evidence provided a glimpse of the mechanisms behind this corruption, and the reasons why it had been so successful. In the long term, his testimony was of vital importance.

Indemnities to present and former police officers were a vital step in cracking the facade which had previously defeated every attempt at penetration. Some indemnified witnesses acted as catalysts, pushing the Inquiry into areas of crime and misconduct which would not otherwise have been explored, while others provided a fresh insight or corroborated important matters which were already known or suspected.

The conditions attached to immunities, and the restrictions on them, were improved as the Inquiry proceeded. Copies of the current forms are contained in Appendices 7 and 8.

There were no settled tests concerning when an indemnity was recommended. A decision had to be made on the basis of information known at the time. The advantages which might be gained had to be balanced against other factors including the seriousness of the offences of the applicant for indemnity and whether it would be possible with the time and resources available to prove various matters without the applicant's co-operation.

The Attorney-General scrutinized the statement of each applicant for immunity, but obviously he could not know the detail of the Commission's other information. He accepted the recommendations of the Commission, thus ensuring that the process of granting immunity was free from any taint of political involvement.

Many of the offences for which indemnity was granted would otherwise never have been discovered, let alone prosecuted. It is fanciful to pretend that those indemnified would otherwise have all been sentenced to lengthy prison terms. Parker, for example, would probably still be an Assistant Commissioner, quite possibly in line for appointment as Queensland's next Commissioner of Police.

## **1.5 THE JOB AHEAD**

### **1.5.1 Why the Inquiry's Hearings Ended When They Did**

The work started by this Commission of Inquiry has not been completed. The problems are so complex as to be difficult to articulate, let alone solve, and yet recommendations for improvements are urgently needed. The problems with which this Inquiry is concerned are not merely associated with individuals, but are institutionalized and related to attitudes which have become entrenched.

The public sittings of this Inquiry could have gone on indefinitely. Had the sittings continued, more people would have been named, more organizations brought into question and more areas of misconduct exposed. However, continued public sittings would have led ultimately to an hopeless situation. As time passed without solutions being presented and implemented, those under scrutiny would merely have adapted to the new environment and developed new methods of misconduct. The Inquiry would have been beating against a fast-running tide, trying to catch up with and expose practices which would already have adapted to scrutiny.

As long as public sittings continued, Commission resources were tied up. Investigations were inhibited, and the constant workload and controversy meant that the final report of the Commission could not be written.

Meanwhile, matters were not static. There were proposals for change, not all free of self-interest. There was increasing pressure on the Government to act, and numerous suggestions which over-simplified the problems and overlooked the need for considered, comprehensive reform. There was a real risk that irreversible political positions would be taken, leading to hasty, narrowly focussed responses.

The need to begin the process of considered comprehensive reform was plain.

It was decided to draw the hearings to a close. Once this decision had been made and a time limit set, evidence was called which exposed a cross-section of the misconduct which had occurred and its causes, rather than an exhaustive appraisal of the role of individuals.

For example, the lengthy segment of evidence on s.p. bookmakers was important because it demonstrated their elaborate links, their financial dealings, their use of false names, their defiance of the Commission, the willingness of some to lie in the witness box and their loyalty to each other. This demonstrated the strength and structure of criminality at its roots, even if s.p. bookmakers are no more than a comparatively innocuous group. Of course, there is the other possibility that s.p. bookmaking contributes the financial base for a larger network of organized crime and corruption.

The later segment of evidence involving political figures demonstrated that misconduct in the Police Force was not isolated, but part of a wider malaise to do with attitudes to public office and public duty.



It is obvious that the Commission has not fulfilled its task in that it has not inquired into all the matters which fall within its terms of reference. By now it should be clear that it could never have hoped to do so.

Those who for one reason or another persist in finding faults will continue to complain that some matters have not been dealt with, or some individuals not brought under scrutiny or exposed as wrong-doers. All these criticisms are true.

Those who are disappointed may be comforted by the thought that the Inquiry staff are continuing their investigations, and that this report recommends means by which further misconduct will be brought to light.

But since the problems were so overwhelming, and the solutions so urgently needed, it was decided that the most pressing task for this Commission was to formulate recommendations to found the process of reform.

Since the codification of the criminal law at the turn of the century, the criminal justice system has never been comprehensively reviewed. Systems and structures designed for and better suited to earlier times and vastly different circumstances have remained largely unaltered. Attempts at reform, including the internal reorganization of the Police Department, have been ad hoc and often directed to window dressing. Innovations such as the Police Complaints Tribunal lack proper foundation for their tasks.

There is no purpose in piecemeal solutions, which only serve to conceal rather than cure the defects in the existing system. Sooner or later there must be a major overhaul and the longer it is postponed the more drastic and expensive it will be, both in terms of money and in terms of social disruption and loss of community standards and freedoms.

## **15.2 Limits on Recommendations**

Many of the recommendations made in this report are aimed at changing structures and putting new structures in place. This Inquiry has allowed problems to be identified. It has exposed flaws in present structures and procedures, deficiencies in resources and inefficient administration.

It is impossible for this report to prescribe all that is needed for the future. At best it can recommend the changes which fundamentally ought be made and the activity which should follow in what will necessarily be an on-going process of reform.

Many of the problems which the Inquiry has identified are the products of long term deficiencies in public administration. Two of the chief deficiencies are a lack of planning and a lack of inquiry into and analysis of individual problems. Much of the basis of information needed confidently to make recommendations is simply not available, either to this Commission, or to the Government, or to anyone else.

Making recommendations now without comprehensive research would be as counterproductive as ignoring the problem altogether. There is a need for on-going objective research, analysis and inquiry. This report has therefore addressed itself to setting up the means by which a proper base of knowledge can be built, and reforms decided upon.

This report recommends the setting up of two new potentially important agencies, the Electoral and Administrative Review Commission and the Criminal Justice Commission. The establishment of each of those bodies will provide a firm foundation for reform. It is those permanent bodies which will have the opportunity and the resources to continue the work of this Commission with respect to electoral, administrative and criminal justice reforms. Those bodies, and not this Inquiry, will provide the appropriate forum for debate and determination of what specific reforms should be made.

The making of appropriate reforms will involve the need for mature, objective, dispassionate analysis, the balancing of competing interests and the identification of realistic and necessary social objectives having regard to available resources. More is said about this process later.

## **1.6 BEHIND THE SCENES**

Although public sittings ended last year, the Commission's activities have continued. This has meant that the momentum and structures of the Inquiry have been used to best advantage, and the choice for the future maximized.

The structure of the Commission is set out in the following figure. (Figure 1.1)

The structure evolved as the Commission carried out its widening task. The Commission was organized as inquiries were initiated and carried out, techniques developed, public sittings held and prosecution and police task forces set up.

Last year, a Special Prosecutor was appointed to assume the prosecution responsibilities for matters associated with the Commission's activities.

One police task force successfully pursued a highly organized gang of motor vehicle thieves (and associated corrupt police officers, some in the Auto Theft Squad) which was associated with the theft of at least 400 to 500 vehicles. Another which was formed to investigate crime including official misconduct in relation to prisons has since been converted into the External Investigations Unit attached to the Corrective Services Commission.

As at the end of June 1989, the total personnel of the Commission was a Commissioner, two Deputies to the Commission, one Senior Counsel, four other members of the private Bar, six lawyers engaged on contract (formerly public servants or prosecutors within the office of the Director of Prosecutions), one lawyer from the public service, four accountants, five research consultants and assistants, a Clerk to the Commission, the Secretary to the Commission and five administrative support staff, three investigative support officers, five information retrieval officers, two computer systems officers, a receptionist, twenty-two secretarial/keyboard staff, and seventy-five police officers.

### **1.6.1 Political Neutrality**

The present Premier, the Honourable Michael John Ahern M.L.A., came to office during the course of the Inquiry and gave personal commitments to the Chairman which were fully honoured. Neither he, Gunn, nor the Honourable Theo Russell Cooper M.L.A. after he replaced Gunn as Minister for Police in January 1989, could have provided greater co-operation or done more to enable the Inquiry to search for the truth.

The leaders of the Labor and Liberal Parties, Wayne Keith Goss M.L.A. and John Angus MacKenzie Innes M.L.A., received briefings from time to time. They observed all confidences and assisted wherever possible. The multi-partisan support which they provided was essential to a serious attempt to expose the deterioration which had occurred in critical aspects of public life in this state.

No preference or advantage was intentionally given to any political party and information was only provided on the understanding that it would not be disclosed or used for political purposes. On the other hand, the briefings which were provided to the Opposition parties were not intended to inhibit legitimate political debate on matters concerning the Inquiry.

Obviously, there was scope for opinions to differ. Since politics were involved, aggressive and abusive disputes were inevitable.

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# ORGANIZATION CHART — PRESENT COMMISSION

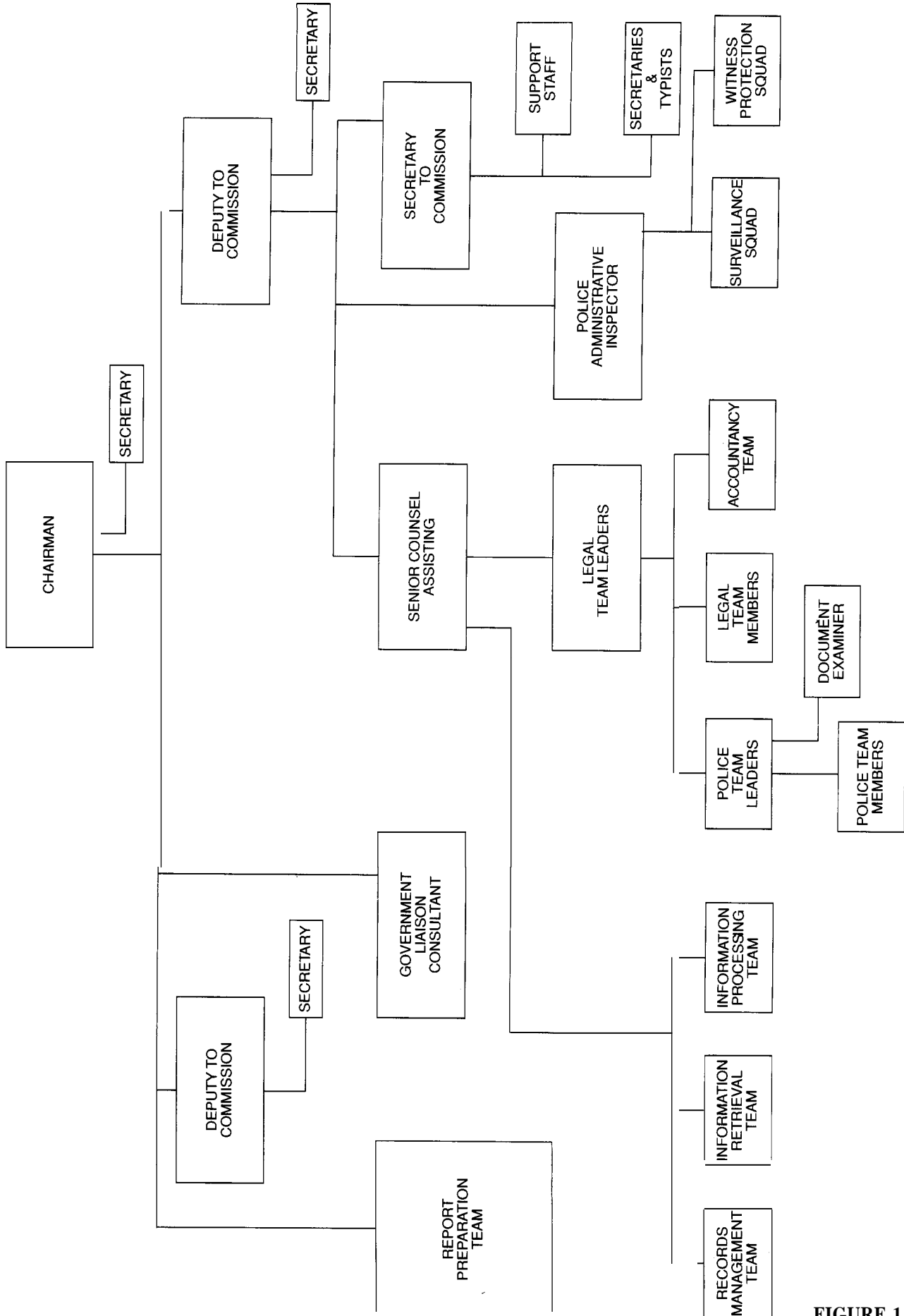


FIGURE 1.1

As is presumably apparent from what has already been said, liaison with the Government has occurred throughout the Inquiry. The maintenance of that contact, without any loss of political neutrality or diminution of public confidence in the independence and impartiality of the Commission, has been a daunting but essential task. Vital support for this Inquiry was achieved by working with supportive elements within the Government, whenever that could be done without loss of integrity or serious risk that such integrity might appear to have been lost. Encouraging the provision of information to the leaders of the Opposition parties was part of the vital maintenance of independence and integrity.

In the face of propaganda, the Commission strove for an environment of public and, where possible, general police support. In this environment, support for the Commission could not have been withdrawn without considerable political damage.

There was no indication at any time from the Government or the other political parties of any diminution of support, nor was there any attempt to interfere.

Nonetheless, candour demands that it be acknowledged that a desire to avoid unnecessary destabilization of institutions or of individuals whose support was important played a part in the decision-making process, as one of the multitude of factors which constantly had to be weighed. One result was that a few matters which others thought should have been publicly pursued were not. But there were no deals; what was done or not done was motivated solely by a perception of what was in the public interest. The onerous responsibility of making such decisions may have been differently and better discharged by others, but, correctly or incorrectly, decisions which had to be made, were made.

Major examples of issues which continue to smoulder or may be reignited by some future rake-over include the following:

- (a) Ahern's disputed assertion that the activities of Bjelke-Petersen which led to his removal from office were influenced by an intention to terminate or attempt to interfere with this Commission. Any inquiry into this matter would have concerned states of mind. Bjelke-Petersen denied publically that he ever had the intention attributed to him. Whatever Bjelke-Petersen did or did not intend, the issue, so far as Ahern is concerned, is what he believed Bjelke-Petersen intended.

The investigation of that issue would have necessitated a close scrutiny of all that occurred and all that Ahern was told in the overheated environment of the dramatic events in November 1987. Even the matters which were publicly reported could easily have led a member of a group of inexplicably sacked ministers to conclude that there must have been an ulterior motive for the sackings.

Accordingly it was considered that the time taken, and the complications (including questions of legal professional privilege) involved in the pursuit of that matter, and the false political controversies which might have been enlivened, did not warrant its ventilation in preference to other major issues in the closing stages of the Inquiry. This was particularly so since it was almost certain that no significant finding would eventuate.

- (b) Ministerial Expenses. Former Minister for Transport Mr. Donald Frederick Lane's explanation for his wealth was that he had not received corrupt payments but dishonestly abused his Ministerial privileges to gain personal financial benefit. His defence of this admitted misconduct was that he had not believed his behaviour improper because his activities accorded with the custom of his Ministerial colleagues. True or false and intentionally or otherwise, this position has many advantages for him: a denial of corruption, acknowledgement of conduct which, even if illegal, apparently was considered not to put his huge superannuation at risk, revenge upon those who had been actively or passively involved in his downfall, and the setting of a monumental and hugely politically sensitive task of investigating the activities of a number of other Ministers over many years. Such a task would require wide-ranging audits and many interviews.

All of those Lane named as participants in activities similar to those which he says he undertook have denied his assertions by statutory declarations. The further investigation of

Lane's allegations remains a matter for continued liaison between the Special Prosecutor and this Commission or whatever body replaces it.

This report concentrates upon the future, not the past. Objective, constructive argument about its contents is healthy and necessary. Recrimination and vilification about the past, when the future is the main priority, is neither helpful nor necessary. It is hoped that this report provides a focus and catalyst for reform in a dispassionate and moderate tone.

The criticisms which the past might justify are not necessarily the best way to create an atmosphere of reform for the future. Some criticism is necessary, but moderation in that criticism and an objective, constructive approach will better produce the foundation for the future.

## 1.6.2 Political Donations

Item 2 of the terms of reference for this Inquiry reflected the allegation by a person in the programme the "Moonlight State" that he had delivered money to two separate political parties. That was investigated by the Commission. It transpired that at the time at which the man claimed to have made those payments he had been in prison.

That question turned the Commission's investigations to donations to or payments received by the major political parties in Queensland prior to each of the 1981, 1983 and 1986 State elections.

In the more advanced stage of the Commission's hearings, it became necessary to investigate the possibility that persons or organizations had advanced monies to a political party in return for favours granted by the Government or Government instrumentalities.

The Commission was obliged to develop a strategy for the investigation of the matters concerning political parties. It adopted the standpoint that all political parties had to be treated equally and that there ought be no unnecessary exposure of matters which were considered to be private.

On 10 July, 1987 the Commission wrote to six political parties in Queensland then registered under the Register of Political Parties maintained under the Commonwealth Electoral Act 1918. All were invited to make submissions as to the procedures to be adopted by the Commission. Two of the major parties made submissions at that stage.

After considering the submissions the Commission determined to confine its investigations in relation to paragraph two of the terms of reference to the National Party of Australia (Queensland), the Australian Labor Party (State of Queensland), the Liberal Party of Australia (Queensland Division) and to the Australian Democrats (Queensland Division).

In correspondence with those parties the Commission indicated that its attitude would be initially to call for statutory declarations from a responsible senior officer of each party dealing with matters of concern to the Commission (enumerated in a letter to each Party). The parties were invited to make submissions as to the acceptability of that course and as to the extent to which the identity of donors to political parties should be kept secret. The Commission made it clear in the course of correspondence that it did not wish at that stage to peruse details of the donors to the political parties.

Each of those four parties named made submissions to the effect that each regarded confidentiality of the identity of donors as extremely important, both to the donors and to the party. It was the practice of each party to assure donors of confidentiality and each party was concerned that open disclosure of the identity of donors and, possibly, the amounts of their donations would have serious repercussions, including discouraging future donations.

The Commission, in principle, was prepared to accede to those submissions and conducted investigations accordingly. Each party was prepared to make available its full financial records, including records of all donors and donations to the Commission on a confidential basis. The course of the Commission's investigations were such that it was not necessary to make any detailed examination of the financial records of Labor or Liberal or Democrats, having regard to the contents of statutory declarations that were supplied.

The National Party, in the course of providing a statutory declaration, of necessity had to disclose details of certain donors. Financial and other records were made available to the Commission and senior Commission legal officers inspected certain financial records of that party.

Sir Robert Lyndley Sparkes of the National Party and Mr. Peter Douglas Beattie and Mr. Gary Neat for the Australian Labor Party (State of Queensland) and the Liberal Party of Australia (Queensland Division) respectively all gave statutory declarations dealing with the manner in which donations were received and dealt. They all declared that to their knowledge and according to their records, no donations had been received by any of the five persons named in paragraph two of the terms of reference. Neat and Beattie's declarations affirmed that the respective parties' state branches had not received any donations in the order of \$50,000 in the six month period prior to each of the 1980, 1983 and 1986 State elections.

Sparkes' declaration gave details of donations received by the National Party of Australia (Queensland). His statutory declaration was supported by the further declaration of the former state secretary of the National Party of Australia (Queensland) Mr. James Alexander Dalglish.

The Commission investigated the matters there disclosed as it did Kaldeal Pty. Ltd., a company controlled by Sir Edward Houghton Lyons which administered a private fund associated with the National Party.

Sparkes' declaration detailed the identities and amounts of donations by donors in areas relevant to inquiries being conducted by the Commission.

In all the circumstances it was not felt necessary or appropriate to allow publication of the details of donors to political parties or of the amounts of their respective donations.

### **1.6.3 Government Liaison**

At a quite early stage, it became apparent that the Commission's task was mammoth and would require substantially more personnel and other resources than were initially provided. It followed that a considerable amount of public money would need to be spent.

The Deputy Premier was approached to appoint an experienced public servant who was familiar with financial aspects of public administration to advise the Commission and to keep the Deputy Premier, as the Minister at the time responsible to Parliament for the cost of the Commission, properly informed.

By great good fortune, the then Director of the now defunct Internal Operational Audit Service, Peter Hill Forster, was appointed to fulfill that role.

Forster, who has since become a management consultant in private practice, has performed innumerable invaluable services for the Commission with outstanding skill and diligence. He has, among other things, provided help and advice in relation to the organizational structures, finances, and administration of the Commission, made major contributions in relation to the compilation of this report (but not this section), and is the Commission's liaison officer with the Government, up to and including the Premier. His calm and unflappable guidance and support have aided immeasurably in dealing with politicians and bureaucrats, and his familiarity with the traps and ruses employed in such circles has been important in combatting intransigence, secrecy and obstruction.

If he can be persuaded, Forster should be appointed to co-ordinate the initial moves toward the implementation of this report, and provided for that purpose with direct access to the Premier and the Minister for Police.

### **1.6.4 Police Officers Seconded to the Commission**

One of the early tasks of the Commission was to obtain a group of trustworthy police officers. Not surprisingly, some who were offered by the Police Department were rejected. Eventually, after a risky process of informal inquiries, a small party of seven police officers, headed by Detective Inspector James Patrick O'Sullivan, was selected, and joined the Commission with considerable trepidation.

Six of the original seven, who undoubtedly risked their future careers and perhaps more, are still with the Commission, and have from the beginning formed the nucleus of its police staff.

There has been a considerable increase in the police personnel attached to the Commission since that time, selected substantially on the recommendations of O'Sullivan based on his personal knowledge and inquiries. Unavoidably, the demands made by the Commission have further restricted already inadequate police resources. Most police seconded to the Commission have stayed, but some have returned to the Police Force for personal reasons or because they were surplus to Commission requirements. There have been few disappointments. The integration of lawyers and police officers into investigative teams worked extremely well and the Commission's policies reduced the risk of problems, but of course such an approach is impractical for routine police work.

The police officers seconded to the Commission made a major contribution. They faced unpleasantness and threats from their Department and colleagues, more so in the early period but even as the Inquiry progressed. Regrettably some of this was from senior officers, as well as from other branches of the Police Force and misguided individual police officers.

### **1.6.5 Police Department Co-operation**

The Commission not only needed police officers to investigate police, amongst others, but it also needed access to Police Department material.

Acting Commissioner Ronald Joseph Redmond has done all that was asked of him in almost all instances, without overt objection or obstruction. The group appointed by the Police Department to liaise with and provide departmental material to the Commission, headed by Superintendent Errol Gregory Walker, performed its duties conscientiously.

As the Commission's activities expanded, so too did the need for liaison with the Police Force in order to avoid the inefficiency and possible danger of overlapping or conflicting operations. The need for the Commission to have overall supervision and, where appropriate, control in such matters was accepted at an early stage by Redmond, and there was co-operation and mutual support which reflected considerable credit on many of the personnel involved.

### **1.6.6 Reporting of this Commission**

The Inquiry received intense day-to-day media coverage. The constant controversy made the responsibility of controlling the Inquiry extremely burdensome, but it is undoubtedly the openness of the proceedings and the media coverage which encouraged a flow of information from the community and developed public support.

The media has, on balance, been helpful to this Inquiry. The efforts of journalists employed by the Australian Broadcasting Corporation and Queensland Newspapers Pty. Ltd. were the immediate causes of the Commission being appointed, and these organizations were given leave to appear. Although neither was continuously represented, assistance was provided, especially in the initial stages, in the process of eliciting a comprehensive and accurate account from witnesses.

More generally, all media organizations with journalists attending the Inquiry were able to represent the public to ensure that it was kept informed and that support and co-operation were maintained.

The media not only heard the evidence, but was allowed to inspect almost every exhibit. Journalists were given a special section of the hearing room, and so far as was within the Commission's powers, their requests for facilities were met.

Media releases were issued, and as far as possible the media was provided with information in response to requests. Two members of the Commission staff played particularly important roles in the Commission's dealings with the media. One, the Clerk to the Commission, Russell James Kenzler, played a central part in ensuring that the public sittings of the Inquiry ran smoothly. He willingly aided the numerous journalists

who attended the public sittings in their many requests for access to exhibits and so on. Later, he helped with research for the compilation of this report.

The Secretary, Gary Leslie Lynch, is one of the many whose efforts will never be fully acknowledged. He inherited an unenviable job which undoubtedly placed great strains upon him. He had little, if any experience in dealing with the media. His diligence and the rapidity with which he developed both these and other skills fit him for significant advancement within the public service.

Determined attempts were made to enable the media to provide an effective link between the Inquiry and the public so as to achieve, as nearly as possible, the situation which would have existed if the community generally had been able to attend the public sittings of the Commission.

No proceedings were brought in respect of the many defamatory statements which were published, or the contempts which were committed. Journalists' ethical claims to confidentiality of sources were allowed, even in circumstances of considerable doubt about their validity.

There was for the most part a determined effort to be fair in reporting the proceedings, although there were some lapses in standards which caused concern. "Scoops" were reported which unintentionally but unnecessarily hindered the Commission's work.

Sometimes admissible evidence with a "hearsay" component was reported as though the hearsay was probative. The names of prominent persons mesmerized some journalists and their employers.

After Commission appeals for careful reporting, many reporters constantly described all evidence as "hearsay", even when it was clearly direct testimony.

As well, sections of the media constantly claimed that "most of the evidence was hearsay" when in fact the vast majority of evidence accepted by the Commission was not hearsay and had no hearsay element. Almost all would have been admissible under the normal rules of evidence provided that there was a proper understanding of the issue to which the evidence was material, and of its probative effect. Journalists were unfortunately encouraged in this aspect of misreporting by some of those who were the subject of allegations and by some lawyers.

Other allegations aimed at undermining the Commission were published on the basis of rumour or misinformation from sources who had reason to fear the Commission's work. As a result, the public was misinformed.

With some notable exceptions, there was insufficient careful or reasoned media analysis of the Commission's work. Most criticism was ill-considered or based on misconceptions, while the real issues, on which competing views could legitimately be held, were neglected.

Some damaging reports were blatant propaganda and others were unsubstantiated and recklessly, if not deliberately, damaging. Some created unrealistic community expectations, while others eroded essential public support. At the very least, controversies raised by such reports distracted Commission resources and energies from other pressing tasks.

Nevertheless, there is no doubt that the Commission could not have achieved its task in secret. The openness of the hearings and the work of responsible journalists have, it is to be hoped, laid the basis in the public mind for the process of reform to begin.

### **1.6.7 Liaison with Law Enforcement Agencies and other Major Institutions**

One of the multitude of tasks undertaken and performed with great skill and dedication by Gary William Crooke Q.C., initially Senior Counsel Assisting and now a Deputy to the Commission was the development and administration of the relationships between the Commission and other law enforcement agencies and official bodies.



Elsewhere in this report, there is discussion of some of the complexities of criminal law enforcement in a federal system in a highly organized and regulated society. For the Commission to attempt to investigate matters of concern, it was necessary to establish and implement arrangements with a number of existing organizations. Gratifyingly, there has been exceptional co-operation and support.

Relationships exist with the Police Forces of each of the other States and the Northern Territory, the New South Wales Drug Crimes Commission, and the New South Wales Independent Commission Against Corruption. Information and practical assistance, sometimes involving considerable effort, have been provided by each of those bodies when requested. New South Wales Police Commissioner John Avery, is one of a number of senior police officers and other officials who have been conspicuous supporters of the work of the Commission.

The jurisdictional overlap between Queensland and the Commonwealth has meant that most external requirements of the Commission have been directed to Commonwealth agencies.

Late in 1987, legislation was speedily enacted by the Commonwealth Parliament to provide the Commission with access to generally confidential information held by the Australian Taxation Office and Telecom: Crimes Legislation Amendment Act 1987 (Commonwealth).

Considerable assistance was derived by the Commission from information which it received from both sources, which were used regularly. The constraints placed upon the Commission with respect to the use or further dissemination of the information will need to be noted in later decisions concerning the future storage or disposal of the Commission's material.

Although the Commission established and used direct lines of communication with a number of Commonwealth departments and agencies, the Commonwealth Attorney-General appointed a senior officer to aid the Commission in its dealings with the Commonwealth, and the Commonwealth Attorney-General also provided great assistance, under circumstances of considerable stress and difficulty, in relation to the activities which culminated in the voluntary repatriation of Jack Reginald and Margaret Agnes Herbert from England.

The Australian Federal Police also played a vital role in that important episode. More generally, the senior officers of that Force, including Commissioner Peter McAulay and Assistant Commissioner Peter Lamb, have co-operated with and helped the Commission on many occasions, providing advice, training for Commission personnel, equipment and information.

The National Crime Authority has also provided information (to the extent permitted by its Act) and assistance to the Commission, including some valuable guidance from the Chairman of the Authority concerning the constitution and operations of a body such as this.

The Australian Bureau of Criminal Intelligence is another Commonwealth body which provided information to the Commission once it was satisfied that it could properly do so. Elsewhere in this report there are references to the difficulties associated with the collection, use and dissemination of information relating to actual or suspected criminal activities.

Prompt, courteous and efficient help was also regularly provided to the Commission by various Commonwealth departments, especially Customs and Immigration and, to a lesser but nonetheless significant extent, Australia Post.

Queensland departments and agencies from which the Commission received co-operation included the Police Complaints Tribunal and the offices of the Commissioner for Corporate Affairs, the Registrar of Titles, and the Valuer-General.

Financial institutions were another source of extensive information, especially the Queensland Police Credit Union Ltd. and the major banks, each of which appointed an officer to process the Commission's numerous requests. The institutions were legally compelled to make disclosures which might otherwise have constituted breaches of duties of confidentiality to their customers. Reference is later made to a submission made by one of the banks that compensation should be paid from public revenue for the cost of the time and resources expended on similar future exercises.

## 1.6.8 Information Systems

Information is at the one time a prerequisite and a fetter to an effective inquiry. The need for comprehensive, accurate information is obvious. However, particularly once public confidence was obtained, a flood of information of variable degrees of reliability threatened this Commission with inundation.

Almost every matter leads on to other matters, further inquiries and more people. Assertions have, so far as possible, to be sifted and checked. Attempts have to be made to assess the veracity of informants and potential witnesses, sometimes even to the extent of psychiatric and psychological examinations and advice. Even so, there are no guarantees that the malicious or the deluded will not provide false information, sometimes quite remarkably consistent with what is known. Conversely, information which initially seems far-fetched cannot always simply be ignored, for the netherworld in which criminality is the established way of life produces events and attitudes which, to the more orthodox, seem incredible but to those involved may not be particularly unusual.

As more and more information is received, connections appear and more and more complex patterns begin to emerge. Information management, and the supervision and direction of staff to produce satisfactory evidence for consideration by the Commission and to disprove significant allegations to the point where they can be discarded as undeserving of further attention, are monumental tasks in an Inquiry with necessarily broad terms of reference which attracts public support.

This Commission rapidly progressed from manual systems for information storage, records management and information retrieval to computer facilities which have since been progressively enlarged and improved. Policies and guidelines were developed and altered to ensure that all information was systematically recorded and efficiently accessible to appropriate sections within the Commission. The temporary nature of the Commission, the volume of its information, and the size of its workload have placed great strains on the implementation and supervision of its systems. However, it is certain that the time taken to create and operate systems is more than compensated for by the increased productivity and efficiency which results.

With that in mind, it would be appropriate for existing systems to be reviewed and improved if the Commission's activities come to form the basis of a permanent body.

One possibly unsatisfactory aspect of existing systems is the adequacy of controls upon access to information by Commission legal personnel. Steps have been taken to restrict access to information according to its degree of confidentiality, and particular care exists to ensure that legislative provisions with respect to confidentiality are observed. Conversely, only selected Commission staff have direct access to some of the Police Department's records and other police data bases, such as drivers' license and criminal history records. These have been directly available only to police officers attached to the Commission. That quite unnecessary restriction is a relic of the difficult early phase of the Commission's activities during which secrecy and obstruction were more overt.

A considerable number of data bases have been established within the Commission and computer programmes have been modified or developed to enable suitable information to be retrieved. Various influences have existed at different stages of the Commission's progress which are no longer or less relevant; for example, because no sittings are taking place there is now less use for searches of the transcript of evidence.

It is inappropriate to embark upon a detailed description of the categories of information and the types of programmes which exist. Later, decisions will need to be made with respect to the disposal of the Commission's information if the Commission is not replaced by a permanent body. If such a body is constituted, there should be a general review aimed at improving, where possible, and eliminating any unneeded information from holdings or programmes.

Elsewhere in this report there is considerable discussion of pertinent factors, including the need for a balance between privacy considerations and comprehensive criminal intelligence, particularly with respect to organized crime.

Three matters only merit further specific mention.

One of the Commission's programmes, which was developed under its guidance by the Police Department's Computer Branch, enables the careers, activities and associates of individual police officers to be ascertained.

Despite the skill and dedication of those responsible for the programme, especially Assistant Commissioner Allan John Hilker and Mr. Frank Archer, there is considerable scope for the expansion and improvement of the programme as a major investigative tool in connection with future police misconduct. The necessary steps will need to be developed and implemented over a period, but early attention should be given to establishing and securing appropriate primary records within the Police Department to provide the basic data.

Secondly, one of the Commission's initiatives was to establish, (with the assistance of two police officers trained as Information Analysts by the Australian Bureau of Criminal Intelligence, Mr. Lytton John Wellings and Mr. Tony Wright) a computerized charting facility to depict links between various persons and activities. Sophisticated equipment was acquired and used, but not as satisfactorily as anticipated. The major fault is not that of the equipment or the analysts, but a surfeit of information which resulted in charts of excessive complexity which, despite the equipment's speed and accuracy, took too long to prepare.

It will be necessary to re-organize the approach adopted to link-charting if a permanent body is to succeed the Commission, and to adopt a more selective approach to the information which is included within each of a larger number of more specialized charts.

Thirdly, the Commission quickly established and rapidly expanded an "intelligence" network, without unqualified promises of confidentiality which can be both difficult to keep and otherwise impractical.

There is plainly no need—as police often claim—for the identity of an informant or details of all contacts to be confined solely to each individual police officer. What are required are structures, procedures and controls which are calculated to satisfy persons with information, who often have legitimate cause for anxiety, that they can trust the organization to which they provide information and the members of the organization with whom they are required to deal or who will or may become aware of what has transpired. These issues are discussed in more detail later in this report.

## **1.6.9 Planning and Priorities**

The information overload to which reference has been made produced extremely difficult problems besides assimilation and management.

Stated broadly, what was revealed was a huge number of actual or possible offences. Some offences initially seemed potentially more significant than others, and considered in isolation that may well have been the case. But other matters were important because of possible connections with particular individuals or groups, the numbers of people involved or patterns of illegal activity, perhaps involving organized crime.

In allotting priorities in the future, consideration will have to be given to the desirability of preventing offences, the desirability of pursuing individual offenders or offences and the need to establishing the degree of proof called for in prosecutions as well as the need to expose as much as possible, including any organizational or system deficiencies.

The time elapsed and the seriousness of misconduct are also relevant. As a matter of practicality, this Commission had to consider the actual and potential operations of other law enforcement bodies and the time and resources of the Commission having regard to particular investigations.

All these and other factors had to be taken into account in a constant determination and re-assessment of priorities, the allocation of staff and other resources, and other planning. In effect, although not in intent, the establishment of priorities often meant that matters given lower priority were not investigated.

As each investigation proceeds and expands, personnel and other resources are increasingly dispersed to more and more tasks and the attention given to each is correspondingly diluted.

As more investigations are undertaken (and some involving the financial affairs of the wealthy are amazingly intricate) resource demands threaten to preclude the completion of any single investigation to a stage where it can be made the subject of evidence. Investigative activities are extremely labour intensive.

As more staff and resources were obtained, delegation increased and new systems and more controls were needed for increased management and supervision.

Even so, there was always the need for important, urgent decisions on particular aspects of individual matters or new, emergency situations.

Policies and guidelines had to constantly be devised, altered, implemented and supervised in relation to the control and direction of investigations and the presentation of evidence.

Increasing numbers of staff and resources meant more and more complex management and administrative systems were needed. Increased emphasis was given to Commission reporting mechanisms and written internal communications as the Inquiry progressed. As risks increased, more precise limits were needed in relation to individual authorities and discretions, and greater care was called for to ensure that excessive zeal and enthusiasm did not lead to impropriety or error.

### **1.6.10 Commission Staff**

This report cannot adequately acknowledge the dedication and devotion to duty of Commission staff. The demands made on them were immense. The pressures of the job made great inroads into family life and leisure time, and the sacrifice of both staff and their families is recognized and appreciated.

The enormous contribution made by each of the small group of ordinary men and women can only be symbolically acknowledged by the inclusion of a list of their names as an appendix to this report. The community and the future will have to judge the results of their endeavours, but their unstinting devotion to duty and hard work should not be doubted. (Appendix 3)

However, more practically, these people have earned the right to consideration in the selection of suitable appointees to the new organization which is later recommended, and to conditions of engagement which genuinely reflect the special efforts and stresses associated with the work which will be called for if that body is to succeed. The nature, functions and powers of a suitable organization are discussed later in this report.

It would be unrealistic to hope that a permanent body's staff could or would be prepared to maintain a similar pace, and future planning must be based on a practical assessment of what can be achieved.

### **1.6.11 The Special Prosecutor**

In December, 1988, Douglas Paton Drummond, Q.C., who earlier that year had joined the Commission as an additional Senior Counsel Assisting, was appointed Special Prosecutor under the legislation which created that office and which provided it with independence.

The Special Prosecutor drew staff from the Prosecution Task Force which had earlier been developed as a section within the Office of the Director of Prosecutions. His office has since been expanded by means of external recruitment. Additionally, a number of police officers previously attached to the Commission have now been assigned to the Special Prosecutor to assist him to compile evidence for trials.

While the function of the Commission and the Special Prosecutor are complementary, they do not always coincide. Broadly, the Special Prosecutor is concerned with the prosecution of individuals for specific offences, while the Commission has the wider and less precise task of investigation for the purpose of informing by way of report.

In practice there is extensive contact and co-operation between the Special Prosecutor and the investigative arm of the Commission which is under the control of Crooke as Deputy to the Commission. Information and documentation are exchanged in accordance with the Special Prosecutor Act. The Commission and the Special Prosecutor each have regard to considerations which affect the other in arriving at and implementing decisions.

Commission staff carry out investigations for the purpose of referring matters which are suitable for prosecution to the Special Prosecutor for his decision and appropriate action, and the protection of prosecution witnesses is undertaken on behalf of the Special Prosecutor as needed by the Witness Protection Unit attached to the Commission.

### **1.6.12 Continuing Commission Activities**

For a variety of reasons, some quite obvious, it is not practical to discuss the detail of the current activities of the Commission, which have continued throughout the preparation of this report.

Vice activities are still flaunted, especially in Fortitude Valley, and media advertising of such activities persists. Associated criminality continues. Many of the same persons who were previously involved, including some who were exposed (and even some who gave evidence) at this Inquiry, are still openly involved. Policing methods and theories in relation to vice are largely unchanged and still ineffectual. Although the Licensing Branch is no longer riddled with dishonesty, deficiencies continue to be blamed on defects in the law, although it is doubtful whether that is the entire explanation.

The Commission is supervising the Special Drug Task Force as part of an on-going effort to counter illegal drug supply and associated misconduct and violent crime.

Additionally, the Commission has information of one kind or another, not all detailed or necessarily meriting full investigation, with respect to misconduct by politicians, bureaucrats, police and officials of local and statutory authorities. Some of the allegations are extremely serious, and include reference to major corruption in some sections and geographic areas of the Police Force.

In short, there is undoubtedly much which remains to be done, and the task is far beyond the existing criminal justice system based on the present Police Force.

## II. THE EVIDENCE

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# CHAPTER II

## THE EVIDENCE

### 2.1 INTRODUCTION

For many years, Queensland has had a corruption problem. The public perception of the problem, in earlier days, centred upon the Police Force. Police corruption was common knowledge, particularly among police, and there was a general acceptance that nothing could be done because police, police union officials and politicians were either involved or would resent the adverse publicity which would result if the problem were brought into the open. As the community grew more affluent, a suspicion grew among those in business that dealings with the government were not always as open and straight forward as they should have been.

Successive governments and their departments, including the Police Force, have either failed to eradicate corruption or ignored or even condoned it. Meanwhile, the community's confidence in public institutions has been undermined.

Corruption needs to be set into its local historical context. Its organic nature then becomes readily apparent. In Queensland, it was initially stunted by an absence of widespread affluence throughout the community, but it flourished as wealth became available in conjunction with a number of other significant factors, such as overt political support for police.

What follows in this chapter is a summary of the evidence as it was presented to this Commission. Findings have not been made, and the summary is far from exhaustive.

What has been attempted is to give a broad idea of the pattern of events, rather than an exhaustive description of the activities of individuals. Names have been left out wherever this is possible without affecting the sense of the narrative, although some events have been described to illustrate the pattern.

Similarly, there are some areas of corruption, for example that in areas outside Brisbane, which have not been tackled exhaustively. The summary in this chapter seeks merely to describe the historical context for the Commission's work, and lay a basis for the discussion and recommendations in the rest of this report.

To set the scene, it is necessary to briefly recap on aspects of Queensland's history in the post-war period.

Apart from a relatively brief period during the Great Depression, the Australian Labor Party was in power in Queensland from 1915 to 1957.

Many of the attitudes which prevailed following the end of the Second World War in 1945 were undoubtedly influenced by the length of time for which a single party had been in office and by the conditions and pressures of the war years.

Corruption existed, but its spread and effect were restricted by the limited spoils available, and it was of relatively minor consequence to the community as a whole.

Patronage, rather than money, was the primary currency exchanged, although graft formed part of the picture.

From this distance it would be of merely historical interest to seek to determine who were the principal participants in corruption in those years but it may be that many came from the "Green Mafia", which was drawn from Catholics and those of Irish descent. During Labor's rule, the "Green Mafia" seems to have prospered and to have enjoyed success at the expense of the other main group at the time, the Masons.

Society was less educated and less cultured, and sectarian bigotry, like racial prejudice and class barriers, were more intense than today.

In the late 1940's and early 1950's, those who were later to become senior Queensland police officers and senior office bearers in the Queensland Police Unions, joined the Force. It was then a much smaller body. Those impressionable young men became exposed to the practices which then prevailed, including the corruption which some of them joined. All were undoubtedly influenced by the environment and the attitudes which they encountered.

The options available to a police officer who wished to continue in the Police Force were limited to accepting that politicians and selected police were not only engaged in corruption but beyond the law. He could either join in if invited, or ignore what was occurring and perform his duty as well as possible in the circumstances.

At this time ordinary police officers believed that graft was paid to senior police and politicians for the protection of prostitution, s.p. bookmaking and illegal liquor sales and because of those involved there was no chance that it could be stopped, let alone prosecuted. Brothels carried on openly in the inner city in Edward, Albert and Margaret Streets. It was accepted in the Police Force that the bribes were a form of semi-official tribute shared between the party in Government and perhaps some of its members, and police officers who acted as collectors. It was thought by some that officers who were in positions from which they could participate in graft had purchased their postings by paying a percentage of what they received to higher authorities.

Whatever choice was made, the officer came in time to have a deep distrust and wholesale disrespect for the law and democratic institutions. Constant exposure to criminals and their misbehaviour reinforced the jaundiced view.

Some of the men who entered the Force in that period rose to prominence and power, and set the pattern for the Force which the community is left to deal with today. Attitudes and practices became accepted and have been passed down through the Force from senior more experienced officers to their subordinates and, in some cases, within families from one generation to another.

The National Party has been in power in Queensland since 1957, initially as the Country Party in a coalition with the Liberal Party and, since August 1983, in its own right.

On 30 January 1958, the new conservative Government appointed a Mason, Francis Erich Bischof, as Commissioner of Police.

Bischof had been in the Criminal Investigation Branch in Brisbane since 1933, and had been its Inspector in Charge since 6 January 1955. His appointment was seen by many to reflect an upturn in the fortunes of the Masonic cabal to the disadvantage of the "Green Mafia", particularly since he was appointed over the head of the more senior James Edward Donovan, a Catholic.

A number of changes took place under the new Government, including the closure of the brothels and, later, the creation of the Totalisator Administration Board of Queensland and various amendments to the liquor licensing laws.

Vice continued. Prostitutes moved to hotels, and s.p. betting flourished. In the mid 1960's Sydney underworld figures sought to operate illegal baccarat games in Brisbane. No real attempt was made by this Inquiry to ascertain the extent of the illegality or of its geographical spread, but there was evidence of such diverse illegal activities as unlawful gaming in Tully and unlawful liquor sales in Toowoomba. The corruption extended throughout the State as it had previously, but the units in the Police Force which were patently susceptible to corruption were the Licensing Branch and the Consorting Squad (which formed part of the Criminal Investigation Branch).

Inside the Licensing Branch, the atmosphere was one of intrigue, secrecy between colleagues and leakage of information. It was actually necessary to deceive at least one senior officer within the Branch to prevent him from warning those about to be raided.

Indeed, in some respects police corruption had acquired a quaint quasi-legitimacy by the Bischof era. Numerous appointments to commissioned rank with suitable posting were made as retirements loomed, and it became traditional for a retirement to be accompanied by a send-off testimonial, which provided an opportunity for those with special reason for gratitude, such as hoteliers who had not been unduly harassed by strict enforcing of the licensing laws, to demonstrate their appreciation in a tangible way.

Bischof himself was said to be deeply involved. One specific incident related in evidence concerned an occasion when he prevented a proposed undercover operation to apprehend the principal responsible for illegal baccarat games. He was also deduced by honest Licensing Branch police to have been the person who warned a country s.p. bookmaker of an impending raid.

Certain police were said to enjoy Bischofs favour, and to be his “bag-men”. These police consorted both with civilian criminals and with corrupt police from other states. They were undoubtedly also talented, intelligent men, which, with their ruthlessness, made them stand out in the Force as an elite faction to be feared and respected.

So it was that, by the time Jack Reginald Herbert and Graeme Robert Joseph Parker entered the Licensing Branch as junior officers, corruption was taken for granted. They became merely additional, if committed, practitioners of deep seated and long-standing misconduct.

## 2.2 1959—1979

### 2.2.1 The First Joke 1959-1974

A year after Bischof's appointment as Commissioner, Jack Reginald Herbert was transferred, on 21 May 1959, to the Licensing Branch, as a plain clothes constable. Herbert had served for 6 months in the London Police Force and 14 months in the Victorian Police Force before he joined the Queensland Police Force in 1949. Herbert was to remain in the Licensing Branch from 1959 until July 1974. He retired from the Police Force in October 1974. On 13 December 1974 he was arrested and charged with corruption. He was acquitted on 5 November 1976 after a lengthy trial. For four years, until late 1981, he worked in the “in-line” industry. After that, Herbert was not lawfully employed, but earned income from his activities as a “bagman” for s.p. bookmakers and others involved in prostitution, gaming and in-line operations, paying senior and junior officers in the Queensland Police Force for protection.

In June, 1987, Herbert fled to England. On 9 February, 1988, he was arrested by Scotland Yard detectives. Eventually, after making approaches through his solicitor to this Commission, he returned voluntarily to Australia in March, 1988. There is no reason to doubt the general accuracy of what he did disclose although possibly he settled the odd score and probably he omitted much.

When Herbert joined the Licensing Branch in 1959, he was not a naive man and he had an eye for the main chance. Until then, he had no inkling or perception of systematic corruption in the Police Force.

Almost as soon as he joined the Licensing Branch, Herbert was warned to “steer clear” of certain of his fellows and their activities. He did not ask any questions. He could see what was going on. Some members of the Licensing Branch were living beyond their means. By drinking with various officers, he came to know that “there was something doing” relating to the protection of s.p. bookmakers.

He had not been in the Licensing Branch long when some colleagues told him he had been accepted into a group of men who were protecting s.p. bookmakers, and that he could expect 20 pounds a month. Herbert's salary was then about 90 pounds gross per month. Those involved in the corrupt scheme were identified and Herbert was told who could be trusted.

Although officers came and went, Herbert estimates that on average about half of those in the Licensing Branch at any one time would have been involved in corruption. It became “second nature” to know those involved.

The members of the protection system referred to it as “the joke”. Members of the joke dealt personally with their “own” s.p. bookmakers, and a list of all those paying for protection was held by the organizer. Initially, each bookmaker paid about 20 pounds per month. Raids were carried out on s.p. bookmakers who were not protected, providing opportunities for extending the corruption.

There was then no central bank of corrupt money. Those members of “the joke” who did not have personal contact with an s.p. bookmaker were paid by the organizer out of funds collected from those who were

receiving “more than their share”. Members were not paid equally, but according to their importance in the system.

S.p. bookmakers were warned of impending raids by a cumbersome process involving lists of telephone numbers of s.p. bookmakers. The lists were held by whichever members of the joke happened to be on duty. Later a different, more efficient system was organized.

Herbert became the organizer of the joke in 1964, and took charge of recruiting new members. Every single officer whom Herbert approached to join in the joke agreed to do so quite willingly.

The joke was fairly self-contained, although Herbert was aware of police outside the Licensing Branch who were also corrupt. In 1966, he was warned not to “let a day go by” without offering money to a certain officer who had just joined the Branch. Herbert immediately included him. A few weeks later, this officer approached him and suggested that another officer should also be paid. Although the officer concerned did not work in the Branch and could not help with the joke, Herbert paid him because “the word” was that he was friendly with the then Police Commissioner.

Gradually, as various members left the Licensing Branch, Herbert took over their s.p. bookmakers and gathered his own “stable”. By the early 1970s, he was dealing with most of the protected s.p. bookmakers himself, and was taking up to \$800 a month in corrupt payments—more than twice his gross salary. During the 1960’s and 1970’s Licensing Branch members in the joke protected 40 to 50 s.p. bookmakers.

### **2.2.2. The National Hotel Inquiry 1963 and Aftermath**

A Royal Commission was held in 1963-1964 into alleged police activities at the National Hotel.

The Commission was instituted after allegations made in Parliament on 29 October 1963, that the Commissioner, Bischof, and other police frequented the National Hotel and encouraged and condoned a call girl service operating there. A few days later, an employee of the hotel, David Young, informed the then Leader of the Opposition that he had served Bischof with free food and liquor after hours. Young claimed he had regularly served free liquor to members of the Police Force, including Sergeant Anthony Murphy; that the hotel had been warned of impending raids from the Licensing Branch; that Bischof and another senior officer, Nonvin William Bauer (who was to succeed Bischof as Commissioner in 1969), had interfered when he was charged with selling liquor outside trading hours, and that there was a call girl racket operating from the hotel.

On 12 November 1963, the Hon. Mr. Justice Gibbs, then of the Supreme Court of Queensland, was appointed Royal Commissioner. The Commission’s terms of reference were limited to investigating allegations of police misconduct relating to the National Hotel since 9 October 1958, and in particular allegations of after-hours trading and the operation of call girl services. The Royal Commission was not asked to investigate generally the policing of prostitution or corruption within the Licensing Branch and the Consorting Squad.

At that time, the “joke” in the Licensing Branch was in full swing, and allegations of corruption elsewhere in the Police Force were rife. In a pattern that has been repeated many times since, police closed ranks behind those being investigated. Evidence was collected to demonstrate that the National Hotel had been the subject of conscientious police attention, and to discredit those who made serious allegations against police and their interests.

After representations from officers involved, the Queensland Police Union of Employees briefed senior counsel to appear for 88 non-commissioned officers attached to the Consorting Squad and Licensing Branch between 9 October 1958 and 12 November 1963 as well as an officer from the Motor Squad.

The officers represented included many who were again the subject of allegations in 1987 and 1988, including four (John William Boulton, Graeme Robert Joseph Parker, Alan James Pembroke and Herbert) who have now admitted corruption, although Parker and Boulton deny, unconvincingly, that they were corrupt at the time of the National Hotel Inquiry. The list of police represented before the National Hotel Royal Commission appears in Appendix 21.

The parliamentarians whose allegations had led to the Royal Commission claimed privilege and did not give evidence. Few members of the public came forward with information. All police officers who gave evidence denied the allegations. Only two witnesses claimed there was a call girl service condoned by police. They were Young and another hotel employee, John Komlosy. Neither was an impressive witness.

Herbert was called to give evidence that he had breached Komlosy for selling liquor after hours. Later, he was recalled to give further evidence because he “remembered” something he had not previously told the Royal Commission. On the second occasion, he gave false evidence to discredit Komlosy; in effect, he “verballed” Komlosy by untruthfully alleging a threat by Komlosy to “get even” with the owners of the hotel. Herbert admitted to this Commission that that evidence was “entirely fictitious”.

The Royal Commission decided it would not act on the evidence of Young and Komlosy where it was uncorroborated, and did not find that a call girl service was in operation, or that it was condoned by police.

Although the Royal Commission found the law relating to the sale and consumption of liquor on licensed premises after lawful trading hours had been broken on many occasions at the National Hotel and “most of those breaches remained undetected by the police”, it concluded:

“ . . . there is no acceptable evidence that any member of the Police Force was guilty of misconduct, or neglect or violation of duty in relation to the policing of the hotel, the conduct of the business or the operations or the use of the hotel, or the enforcement of the law in respect to any breaches alleged or reported to have been committed in relation thereto”.

It is easy to understand those findings. Nothing in the terms of reference or structures of the Royal Commission, including the range of parties represented before it, the assistance and facilities available to it, and the evidence which it received, or in the social and political environment of the time, would have alerted it to the possibility that it confronted an orchestrated “cover-up” based on, and supported by, institutionalized police attitudes and practices.

In June 1971 one of the women whom Komlosy had named as a prostitute, Shirley Margaret Brifman, appeared on the Sydney Australian Broadcasting Commission programme, “This Day Tonight”. By that time, both Bischof and Bauer had retired and Raymond Wells Whitrod was Commissioner of Police. Brifman admitted she was a prostitute and that she had committed perjury before the Royal Commission in 1964.

From July to November 1971, she was interviewed a number of times by Queensland police Norman Sydney Gulbransen and Basil James Hicks, each of whom was later to become prominent in attempts to combat police corruption. She made many serious allegations against New South Wales and Queensland police, including Murphy. She alleged Murphy had asked her to obtain information to discredit Young and had coached her to give false evidence.

By September 1971, Whitrod had transferred Murphy from the Licensing Branch to the Juvenile Aid Bureau, where he joined the then Senior Sergeant Terence Murray Lewis.

As a result of Brifman’s allegations, in February 1972 Murphy was charged with perjury in regard to the evidence he had given to the Royal Commission.

In March 1972, Brifman died. There was insufficient other evidence to proceed against Murphy and, on 7 April 1972, the Crown decided not to continue with the prosecution. There is no evidence to suggest Murphy was involved in any way in Brifman’s death, which was caused by a drug overdose, a fatal occurrence which has since been associated with a number of other informers who have been drug users.

Although he is entitled to the presumption of innocence in respect of any charge on which he was not convicted, Brifman’s untimely death meant not that Murphy was tried and acquitted, but that the allegations against him remained unresolved. Later in this report, reference is made to the special difficulties which arise where police officers are charged. The additional factor in Murphy’s case, namely the lack of a trial, especially taken with rumours about Brifman’s death, served to contribute to a reputation which made many of his subsequent promotions and appointments controversial.

### 2.2.3 Whitrod, The Unions and the C.I.U. 1970

The Hon. Allen Maxwell Hodges became Minister with responsibility for police on 28 May 1969, replacing the Hon. Johannes Bjelke-Petersen, who had held the portfolio since January 1968 and had retained it when he became Premier in August 1968. Nonvin William Bauer had been appointed as a “caretaker” Commissioner to replace Bischof in February 1969.

In April 1970 Hodges sent Bauer overseas, and persuaded Cabinet to appoint Whitrod initially as Deputy Commissioner and from September 1970 as Commissioner.

The year before, Hodges had asked the Commissioner of the South Australian Police Force, John Gilbert McKinna, to undertake a study of the Queensland Force and make recommendations for training and administration. It was the resulting report which Hodges wanted Whitrod to implement.

Hodges sought out Whitrod at McKinna’s recommendation. At the time, Whitrod was serving as head of the Papua New Guinea Police Force. Whitrod, a dignified, intelligent and honest man, brought extensive experience and impressive qualifications to his appointment to head the Police Force in Queensland. Educated in South Australia, he had a Bachelor of Economics degree and a postgraduate diploma in Criminology from Cambridge University. He had served in the South Australian, Papua New Guinea and Commonwealth Police Forces, the latter two as Commissioner, and was a former assistant director of the Australian Security Intelligence Organization.

Apart from three occasions, Whitrod dealt not with the Premier but with the Police Minister. When Hodges was Police Minister, Whitrod used to see him daily, and they apparently respected each other and worked together effectively. Hodges did not seek to intrude beyond administrative policy into operational control. Ultimately, his support for Whitrod cost Hodges the police portfolio.

McKinna’s report, while it accorded with many of Whitrod’s own views, could not have been better calculated to antagonise the conservative, and by that stage corruption-riddled force. McKinna described as “arrant nonsense” the attitude that police were “born and not made”. Faced with persistent assertions that it was “not necessary to tell the higher ranks **how** to run the Police Force”, he confined his report to comments and suggestions. These included raising the standard of examinations for sergeants and commissioned officers, improving in-service training, extending probationary and cadet programmes and encouraging officers to undertake tertiary education. He also suggested restructuring the top ranks of the Force to create three “assistant commissioner” positions, reorganizing the police districts into regions and maintaining minimum educational standards for cadet entry.

Although McKinna’s report did not tackle the question of corruption, Whitrod expected to find corruption in the Queensland Police Force. He considered that not only corruption but other problems ought be addressed initially by a programme aimed at improving educational and ethical standards and by the rotation of officers who had occupied positions for lengthy periods, followed only when possible by a special squad to discover, monitor and report on corruption. He devised a timetable to implement McKinna’s recommendations, and to bring corruption under control over the 10 years which remained until he was due for retirement. However, Whitrod was aware that experience elsewhere showed that merely introducing an honest leader into a corrupt force left the corrupt structure in place, and that in North America most reformist Police Commissioners lasted only a short time before they were removed and the corrupt regained control.

Shortly after his arrival, Whitrod gave a media interview in which he said that he believed promotion in the Force should be based on merit, not seniority. That brought an immediate response from the Queensland Police Union of Employees, but in any case, antagonism between the reformer Whitrod and that Union was inevitable at that time.

The president of that Union throughout most of Whitrod’s time as Commissioner was Ronald Leslie Edington. His views and attitudes could not have been more at odds with those of Whitrod, and the antipathy between the two men was intense. For Edington it was preferable for a police officer to have been “seasoned” in the “university of hard knocks” rather than to have received formal education. A narrow and biased attitude existed which excluded any possibility that problems existed or that change should occur. The intrusion by an outsider, such as Whitrod, was an intense provocation. Allegations of police corruption

were seen to be false and motivated by malice. The allegations of corruption against Bischof were described as a vendetta by the “Irish faction” to prove that the Government had erred in appointing a Mason.

Whitrod was a supporter of police unionism and, not long after his arrival, invited Edington to lunch with him and Hodges, intending to enlist the support of the Police Union of Employees in his plans. He was to be sorely disappointed.

The topic of corruption arose. Whitrod mentioned the names of three whom he had been told were corrupt and had been Bischof’s “bagmen”. Edington suggested that Whitrod should do no more than tell them to stop their alleged misconduct. When Whitrod made it clear that he intended to do more than that, Edington said that the officers concerned were financial members of the union, and that he would warn them and the union would defend them and oppose Whitrod’s course.

Whitrod was also opposed in his desire to introduce a system to record details of all informants and of payments made to them, the regular transfer of police (a practice which had declined under Bischof and Bauer), closer supervision of the regions and districts, and the introduction of a Police Arts and Science Course. He was described as “an academic”, from which it was said to follow that he lacked the ability to communicate with non-academics. Further, despite his outstanding career, it was said that he lacked experience as a “working police officer”.

The union executive grew to be unanimously and vehemently opposed to Whitrod and his reforms. Edington now says, somewhat poignantly:

“All that Ray Whitrod was trying to do was to lift the image of the Queensland Police Force, .... We opposed him because we were old and we weren’t prepared to accept change. I realise my mistake now ...”.

Whitrod had been Commissioner for less than a year when on 29 July, 1971, an extraordinary general meeting of the members of the union was held at the Festival Hall, Albert Street, Brisbane and a motion of no confidence in Whitrod was passed.

The South African Rugby Union team, the “Springboks” had recently played in Brisbane, and their visit had been marked by demonstrations involving violent confrontations with police. A “State of Emergency” had been declared under The State Transport Acts 1938-1943, to the outrage of a wide section of the community.

At the meeting, Edington congratulated the men on their work in containing the demonstrators, remarking that common sense was far more useful to the Force than mere would-be academics. This statement was greeted with applause. Later, and before voting against Whitrod, the meeting passed a unanimous vote of confidence in Bjelke-Petersen’s leadership.

Whitrod and Hodges were opposed by the Police Union of Employees at every step. Members of the union executive had direct access to Bjelke-Petersen, and denigrated Whitrod while simultaneously expressing support for Bjelke-Petersen’s Government. Bjelke-Petersen had ideas about the role and administration of the Police Force. Bjelke-Petersen likely felt more comfortable with the rudimentary “good sense” of the old guard such as Edington, than with Whitrod’s perceived intellectualism. Bjelke-Petersen’s attitude towards diverse opinions or some proposals for reform suggested that Whitrod had really been engaged by the Government to undertake a task that in fact it did not want performed.

By the latter part of 1971, Whitrod was concerned that Police corruption in Queensland was widespread, and was most dissatisfied with the existing system of investigation of complaints of police misbehaviour. He saw the need for a permanent specialized squad with a proactive function and not merely a reactive role. Whitrod was also concerned that the formation of a Brisbane branch of the Federated Ship Painters and Dockers’ Union indicated local organized criminal activity. Further, the prostitute Brifman had provided detailed allegations of large scale criminal activity and associated police corruption in Queensland and New South Wales, including fabrication of evidence during the National Hotel Royal Commission in 1964.

By September, 1971, Whitrod had come to trust a small group of officers, and a decision was made to form the Crime Intelligence Unit (“CIU”) with a responsibility to collect, record and disseminate intelligence on

organized crime and corruption, and to apprehend and prosecute those involved. Whitrod appointed Gulbransen to head the unit and directed Gulbransen to report to him regularly.

The CIU was tiny and lacked basic equipment, adequate powers and the support of the general body of police officers and their unions. Its small complement of personnel were doomed not only to fail but in some cases to suffer personal vilification and even fabricated allegations for the rest of their careers.

By the time the CIU was created, Whitrod was already locked in confrontation with the Police Union, and struggling for the support of the rank and file. The climate in the Police Force could scarcely have been less conducive to an attack upon corruption and misconduct.

The CIU was an obvious target for union contrariness. The Union retained lawyers and was told that the Police Rules did not require self-incriminating answers. Members were advised not to answer questions, and legal assistance was promised to those under investigation.

Rumours and lies used against the CIU were particularly effective. A vast store of information possessed by decent police, which could have helped the CIU to weed out those whose misconduct damaged the Force, was neutralized.

Police opposition and obstruction contributed to failures by the CIU, and in turn those failures were used by its opponents to denigrate it further and to insinuate that it was both incompetent and maliciously engaged in a vendetta of baseless charges. Its record in prosecutions against police was abysmal, a tradition which, for quite different reasons, endures to this day irrespective of the name given to the section of the Police Force from time to time responsible for the investigation of alleged police misconduct.

The final debacle, and the major catastrophe, of the CIU under Whitrod concerned Licensing Branch activities and personnel.

Initially, Whitrod had paid no particular heed to Licensing Branch performance. He was under no instructions from the Government to tolerate and merely control and contain vice, and although he knew it existed he did not consider it of major importance. He generally accepted at face value the regular reports which he received concerning the nature, extent and policing of vice which caused him no particular alarm. But shortly after it was formed, the CIU began to receive information about s.p. bookmakers in Brisbane and on the Gold Coast. At first it lacked the manpower and resources to pursue an investigation, and there was no strong rumour of police corruption.

Gulbransen, who had been in charge of the CIU was appointed Assistant Commissioner (Crime) on 12 November 1973, from where he maintained a close watch on Licensing Branch activities. Perceptions of Licensing Branch corruption thereafter changed.

In about April, 1974, it emerged that s.p. betting convictions mainly concerned minor operations, and that large scale businesses were being conducted with immunity because of collusion with the Licensing Branch. The CIU heard that there were some 40 to 50 s.p. bookmakers operating in Brisbane and many were paying protection moneys to members of the Licensing Branch.

It appeared that s.p. bookmakers, together perhaps with hoteliers involved in after-hours trading, were a major source of corrupt payments to police. There were also other indications that vice policed by the Licensing Branch might have been a greater problem than had been understood. On intelligence received, the CIU estimated that prostitution activities in Brisbane involved about 320 people and an annual turnover of \$1.5 million.

Herbert and others were transferred out of the Licensing Branch. By the time he was transferred, in July 1974, Herbert had been in the Licensing Branch for 15 years. A number of others, including some who were mentioned adversely in evidence before this Inquiry and some who have been the subject of widespread reference for a generation, also had extraordinarily long service in the Licensing Branch or another major area of police misconduct, the Consorting Squad in the 1950's and 1960's through into the Whitrod administration.

In October, 1974, Herbert retired medically unfit. By then, the CIU had information that Herbert was the organizer of Licensing Branch protection for major s.p. operators and was being paid bribes of \$1,200 to



\$1,500 per week on behalf of police. The CIU began to mount an operation against him. Although its suspicions were well founded, the operation was to be a disaster for the CIU.

## 2.2.4 The Southport Betting Case and Herbert's Trial

With the approval of Whitrod, the CIU attempted to collect evidence against police engaged in the protection of s.p. bookmaking. CIU intelligence suggested that s.p. betting in Queensland was conducted on a huge scale, was highly organized and had a turnover between \$50 and \$60 million a year. It became clear that although there were numerous small operators working from hotels, the real riches lay in telephone bets which were difficult to detect.

On 11 July, 1974, Inspector Arthur Victor Pitts took over as officer in charge of the Licensing Branch. The CIU warned him about corruption, and he was told to report any offers of bribes.

Whitrod had been told Pitts was honest, hard working and efficient, and so he proved to be. However, it was later found that his honesty did not extend to his methods of collecting evidence. That shortcoming, part of a widespread attitude of police to their work, was to be his downfall, the cause of catastrophe for Whitrod and the CIU, and the means by which Herbert escaped punishment, in time those events were to become the basis for a new network of graft.

Under Pitts, the Licensing Branch created havoc in the s.p. betting industry. It conducted a series of raids against s.p. bookmakers who operated by telephone and had been used to years of police protection and toleration. Many operators left Queensland and set up over the border in Tweed Heads.

In the space of a few months, Pitts arrested and charged 17 s.p. offenders. Operators were dismayed at the sudden disappearance of police protection. They decided to try and set up a new "joke", but to do so it was considered necessary to corrupt Pitts.

Herbert was seen by s.p. bookmakers as the obvious middle-man who could help with an approach to the new Inspector.

A member of the Criminal Investigation Branch approached Herbert on behalf of an s.p. bookmaker who wanted to bribe Pitts. Herbert agreed to help.

Pitts had been warned by the CIU to expect an approach, and in October, 1974, his home was "wired" so that conversations could be monitored and tape-recorded by CIU members hidden under his house. The s.p. bookmaker and the detective were tape-recorded negotiating to pay bribes to Pitts, and on 11 December, Herbert was tape-recorded recruiting Pitts into the joke (as Herbert believed) for payments of \$1500 a month.

On 13 December 1974, Herbert was arrested at his home. The s.p. bookmaker and detective were also charged. All except Herbert still deny the charges.

Unbeknown to Herbert, another group, which included a police sergeant, had also approached Pitts, and their conversation was tape-recorded. They were charged in May 1975, as was another whose conversation with Pitts was also tape-recorded. All charges were later dropped after Pitts was discredited.

In the latter half of 1974, the Licensing Branch under Pitts had been making sustained efforts to catch two suspected s.p. bookmakers, Brian Leonard George Sieber and Stanley Derwent Saunders, who were operating from the Gold Coast. In November, 1974, both were arrested and charged with possession of instruments of betting.

Unforeseen by any of those involved, the charges against the two were to become highly significant in the history of Queensland corruption. Herbert was later to use their trial to provide himself with a defence in his own trial on corruption charges.

At the same time, the trial of those charges came to provide an excuse for allegations of police corruption to be ignored, and instead for an inquiry to be set up with terms of reference limited to an investigation of allegations of police fabrication of evidence.

The charges against Sieber and Saunders had come on before the Southport Magistrates Court on 21 November 1974, when they had been remanded. Pitts appeared for the prosecution.

Not long after his arrest, Herbert was visited at home by a constable from the Licensing Branch who handed him a blank warrant apparently signed by Pitts. The constable told Herbert that, when Saunders and Sieber had been arrested, the police had not obtained a properly sworn out warrant. Herbert knew the technique. He saw Pitts' role in the arrest of Saunders and Sieber as a golden opportunity to discredit Pitts, the main witness against him in his coming trial on corruption charges.

Herbert obtained a small tape recorder, which he handed to his Licensing Branch contact.

Meanwhile, the Crown Prosecutor who was preparing the case against Herbert and the detective and s.p. bookmaker who allegedly had tried to bribe Pitts apprehended that a campaign would be waged by police to discredit the prosecution witnesses. He warned the Solicitor-General, and asked him to brief the Minister for Justice and Attorney-General on the general aspects of the case, stating:

“In view of the nature of the charges and in the light of the vast amount of money involved, it would not surprise me if desperate measures were adopted in trying to undermine Inspector Pitts and other senior officers who have investigated this matter”.

The Crown Prosecutor's concerns were well-justified. Herbert's associate in the Licensing Branch secretly tape-recorded discussions between Licensing Branch personnel, including Pitts and Sergeant William Daniel Alexander Jeppesen, who had joined the Licensing Branch in December, 1974, in which they had spoken of fabricating evidence concerning the warrant and other matters relating to the arrest of Saunders and Sieber.

The trial of the charges against Saunders and Sieber, which came to be known as the “Southport Betting Case” commenced on 19 June 1975, with Jeppesen prosecuting. The constable who had taped Pitts, Jeppesen and others was called as a police witness, and gave evidence of tape recording police officers involved in the prosecution, including the prosecutor, Jeppesen, but his tapes were not played in court that day.

Hodges and Whitrod were then in the United Kingdom seeking advice from New Scotland Yard on police corruption. The acting Police Minister, the Hon. Ronald Ernest Camm, was reported as saying that he saw no need to recommend their recall from overseas.

That night the Police Union entered the fray. Before the tapes had been called for by the prosecutor and played in Court, they were played to a special Union executive meeting. After the meeting, the Union executive approached Camm and asked him to hold a public inquiry into the allegations, offering Camm the tapes. Camm declined, and advised the tapes should be produced in court. However, the Union did not give up in its attempts for a public inquiry. Its attitude, which on its face involved a totally uncharacteristic attack on some of its members and on established police practice, can only be explained by reference to the personalities involved and the influence of those associated with Herbert, some of whom were at risk if he was convicted, or at least from any CIU success which might have led, in time, to a general exposure of corruption.

In July, 1975, the Magistrate discharged Saunders finding no case to answer. Sieber was later found not guilty. The prosecution appealed unsuccessfully to the Full Court.

In late 1975, the committal proceedings in Herbert's corruption case began, and the defendants were committed for trial which began in the District Court in May 1976.

The prosecution had tape-recordings implicating the accused of criminal behaviour, but the defence also had tape-recordings implicating important prosecution witnesses in serious misconduct. Each group attempted

to explain the tape recorded conversations put in evidence against them. Somewhat unimaginatively, each group sought to exculpate itself by claims that what had been recorded was a pretence as an entrapment device.

In his evidence at this Inquiry, Herbert alleged that his group went further, with fabricated evidence, perjured corroborative evidence by co-operative police officers, the collaboration of a justice of the peace in falsification of evidence, and interference with the jury. His allegations were disputed.

Not surprisingly, all accused were acquitted on 5 November 1976, after a trial lasting 6 months. There was ample scope for reasonable doubt.

The prosecution witnesses who had been tape-recorded by Herbert's associate in the Licensing Branch in connection with the Southport Betting Case was taken as discredited, contrary to the usual perception that a verdict of not guilty does not reflect adversely on police who have given evidence which, if accepted, was only consistent with guilt.

The loss was devastating to the campaign against corruption. The CIU had failed to secure a prosecution in a seemingly iron-clad case—one where money was actually paid over, the vital conversations had been taped and most of the activities had been observed by members of the CIU.

Ten days after Herbert's acquittal, Lewis was promoted to Assistant Commissioner, and Whitrod resigned.

## **2.2.5 The O'Connell Inquiry**

The volleys of allegations and counter-allegations which were exchanged between police officers in the Southport Betting case and in the committal proceedings for the Herbert conspiracy trial attracted widespread publicity and caused considerable disquiet. Even before either proceeding had been terminated, there was pressure for an inquiry into police behaviour, particularly from the media and the legal profession, which had long been frustrated by police attitudes and practices and its own inability to raise the level of concern of politicians and the general community.

The Police Union, which was then engaged in its campaign against Whitrod and the CIU, and various individuals who would benefit, readily perceived the tactical benefit of an inquiry which at worst would probably discredit some of Herbert's accusers and delay Herbert's trial and might even cause it to be abandoned.

A totally unsatisfactory course was decided upon, one which bore the appearance of an inquiry but lacked openness and was most unlikely to be effective. On 6 August, 1975, New Scotland Yard was invited to send two police officers to Queensland to conduct an inquiry. Hodges and Whitrod had sought such an investigation before the Southport Betting case began, but had intended it to address allegations of graft.

It was inevitable that the English police officers would receive only limited assistance and co-operation from most local police, and unlikely that they would be willing to become involved in disputes with, or criticism of the Queensland police administration or unions or, even more so, the host State Government.

The senior English officer appointed to carry out the inquiry was Detective Chief Superintendent Terence John O'Connell, who first came to Brisbane on 22 August, 1975, accompanied by Detective Superintendent Fothergill. On their arrival, they were given a document by Whitrod which stated that the purpose of their assignment was to investigate the allegations of corruption and malpractice referred to in the Southport Betting case.

O'Connell and Fothergill interviewed almost 300 people. Numerous statements were taken, many from police officers who insisted that what they said was to be kept confidential unless there was a formal public inquiry. Others would not sign a statement but would only speak "off-the-record". Those interviewed included all who had served in the Licensing Branch in the previous five years and all named in Herbert's telephone book which was seized when he was arrested in 1974, subject to one qualification: information was not

sought from those who were witnesses in the Southport Betting case and the Herbert conspiracy trial, whose evidence was a matter of public record.

Considerable information concerning the existence of corruption and those involved was provided by Hodges, Whitrod and other senior officers, including Gulbransen and Hicks, who was a member of the CIU.

From what they were told, it appeared to O'Connell and Fothergill that both corruption and s.p. bookmaking were widespread, and it was apparent from what was said by present and former Licensing Branch members that there was corruption in that Branch.

Police officers, lawyers and others in the wider community all told O'Connell that corruption existed, although most lacked admissible evidence. There were numerous references to a "Rat Pack", or perhaps two such "packs", with some overlapping of membership; one was related to Lewis, Murphy and Hallahan, who were reputed to have been favoured by Bischof, and another involved Herbert and his associates.

It was apparent that at least some of those to whom O'Connell and Fothergill spoke were being "briefed" in advance and sometimes later "debriefed" by Herbert and others, but the English officers experienced no overt obstruction.

O'Connell and Fothergill returned to London on 17 October, 1975, taking the statements which they had obtained with them. They had commitments in England, and considered that there was little more which they could do in Queensland until after the Herbert conspiracy trial, which was expected to result in convictions.

It was certainly intended that they should return. O'Connell left Whitrod with a memo dated 30 September 1975 indicating that their final report would probably address a wide range of corruption related matters, the Union's role in the Southport Betting case, the role of the media and the possibility of a judicial inquiry.

As it happened, the Herbert conspiracy trial dragged on much longer than expected, and resulted in an acquittal.

On 15 November, 1976, ten days after Herbert and his co-accused had been found not guilty, O'Connell was invited to Queensland House in London to meet the then Queensland Attorney-General and Minister for Justice, the Hon. William Daniel Lickiss, M.L.A.

Unknown to O'Connell, on that day Lewis had been appointed an Assistant Commissioner and Whitrod had resigned. O'Connell told Lickiss that corruption and sectarianism were rife in the Queensland Police Force and that, unless needed measures were taken, public confidence would continue to erode. He also told Lickiss of his concerns about particular activities and officers, including the so-called "rat pack". Lickiss indicated to O'Connell that he would convey O'Connell's concerns to Bjelke-Petersen, and O'Connell understood from their conversation that his return to Queensland would not be required.

O'Connell was not asked to record his views in writing for the Queensland Government, and did not do so, although he included them in a report dated 7 December, 1976, to his superior in London. That report concerned a request that O'Connell furnish information to the Committee of Inquiry into the Enforcement of Criminal Law in Queensland ("the Lucas Inquiry") which had been appointed on 18 November, 1976.

O'Connell was initially anxious to assist, although the Lucas Inquiry's terms of reference deflected attention from corruption and the investigation which O'Connell had commenced into those who had behaved improperly in pursuing those who were corrupt.

On 15 December, 1976 (by which time he knew that Lewis had replaced Whitrod as Commissioner of Police in Queensland), O'Connell submitted a further report to his superior to be passed on to the Queensland Agent-General for transmission to the Queensland Minister for Justice and Attorney-General. The report concerned itself solely with administrative and procedural reforms, and not with corruption.

O'Connell returned to Queensland on about 15 January, 1977, to give evidence to the Lucas Inquiry. He had notified Lewis that he was coming and they met and discussed O'Connell's earlier investigations and the evidence which he intended to give, which was confined to procedural and administrative matters. He was not asked and did not volunteer what he knew of police corruption.

There had been major changes in Queensland. Not only had Whitrod been replaced by Lewis, but Hodges had been replaced as Minister for Police by the Hon. Thomas Guy Newbery, M.L.A., who told O'Connell there was no need for him to complete his inquiry. Clearly, a report repeating the concerns about individuals and practices which O'Connell had discussed with Lickiss would have been a political embarrassment, and probably futile.

When O'Connell finally reported to the Queensland Government on 14 March, 1977, it was a very different document from that predicted in the earlier memo to Whitrod. Apart from thanking Lewis for his courtesy, it stated that most of the matters which would have been addressed had now been aired in the Southport Betting case and the Herbert conspiracy trial and that there was no point in continuing the investigation.

His phraseology was suitably ambiguous. While it suggested that further investigation was unnecessary, it also literally covered the real situation in which an adverse report would have been unwelcome, and probably left secret and ignored.

O'Connell's acquiescent report was not made public until it became an exhibit before this Inquiry.

## **2.2.6 The Downfall of Whitrod and the Rise of Lewis**

A meeting took place on 18 December, 1975 between Bjelke-Petersen, Hodges, Whitrod and members of the union executive. Complaints were made of Whitrod's policies and their alleged industrial effects; such matters as educational advantage and promotion by merit attracted adverse comment.

In January, 1976, Hodges' submission to Cabinet supporting the implementation of some of Whitrod's policies was opposed by Bjelke-Petersen and rejected by Cabinet.

Bjelke-Petersen's iron will and attitude to the political process had, by then, enabled him to tighten his grip on the leadership. Two by-elections had convinced him that his strong line against unions (other than the Police Union) was popular, as was his campaign against what he saw as "the lawlessness that was rampant in Australia at the time".

For his part, Whitrod became increasingly concerned at Bjelke-Petersen's interference in police operational matters which were contrary to Whitrod's understanding of the proper relationship between the Government and the Police Commissioner.

Hodges consistently backed Whitrod. As the year wore on, relationships between Bjelke-Petersen and Hodges and Whitrod deteriorated.

Meanwhile, the star of Lewis was in the ascendancy. Partly, that may perversely have stemmed from the simple circumstance that Bjelke-Petersen was aware that Lewis was out of favour with Whitrod.

Lewis and Murphy had been banished by Whitrod to Charleville and Longreach respectively as Inspectors, to give them "experience". Their relative proximity assisted them to maintain regular contact.

Lewis entered the Queensland Police Force on 8 November 1948 and became a constable on 17 January 1949, performed beat and general duties at Roma Street Police Station until 21 February 1949, when he had been transferred to the Brisbane Traffic Branch where he remained until 14 November 1950. On 15 November, 1950, he was appointed a plain clothes constable and transferred to the CI Branch, Brisbane where he had remained until 1963, performing duties with the companies squad, consorting squad, South Coast area office, metropolitan field staff, pawn shop squad and the break and enter squad. He was awarded the George Medal for bravery in 1960.

In 1963, Lewis was selected by Bischof to set up the Juvenile Aid Bureau. He commenced duty there on 14 May 1963, and was promoted to detective senior sergeant in 1968. In that year, he was also granted a Churchill Fellowship. He remained at the Juvenile Aid Bureau until his promotion (by Whitrod) to Inspector on 3 September, 1973, when he was moved to the Communications Centre, and then to relieving duties. On 21 November, 1974, he led a group of Queensland police officers who were sent to Darwin to assist

after Cyclone "Tracey". On 6 May 1975, he was upgraded to Inspector Grade 2, following which he was posted to Charleville, where he took up duty on 1 January, 1976.

Lewis used his rustication by Whitrod to good effect. The local police inspector is a person of some standing in rural Queensland, and has opportunities to meet and cultivate both prominent residents and important visitors. The diaries of Lewis suggest that he is an intuitive politician and that he used those opportunities to advance his own cause.

On 17 May, 1976, Cabinet met in nearby Cunnamulla. Lewis met Bjelke-Petersen, and handed him a bundle of documents which Lewis had prepared containing none-too-subtle suggestions that promotions to which he had been entitled had been wrongly denied him by Whitrod, Lewis' curriculum vitae, and anti-Whitrod material, some of it suggesting Whitrod was linked with the Australian Labor Party.

By 9 June, 1976, Bjelke-Petersen received further documents from Lewis, which included a list of people, including six Cabinet ministers, five coalition members, seven judges, a group of barristers and solicitors and a list of senior public servants each of whom, according to the heading on the sheet, would give a character reference for Lewis. One document read:

"I am very acceptable to the Queensland Police Union Executive and to over 95% of the members of the Police Force ... If Mr. Whitrod hears that I have spoken to you he will immediately engage in the character assassination he learnt so well from his A.L.P. friends in Canberra".

In July, 1976, students marched without a permit. There were allegations, supported by film taken by a television news team, that a female demonstrator had been beaten over the head with a baton by an inspector of police. Whitrod ordered an internal police inquiry into the incident. Bjelke-Petersen intervened and stopped it. The Police Union wrote to him expressing its gratitude and pledging its support for his government.

Shortly afterwards, on 13 August, 1976, Bjelke-Petersen replaced Hodges as Police Minister, and gave the Police portfolio to Newbery. At that time, Whitrod lost his only powerful supporter. Almost immediately, Bjelke-Petersen received another letter from the Police Union advising him that all police throughout the western district of Queensland supported him as Premier. Specific reference was made to Inspector Terry Lewis of Charleville and Inspector Tony Murphy of Longreach. Newbery's attitude became clear when, soon after his appointment, Gulbransen was required to parade Hicks before him for a dressing down. Hicks was then the Officer in Charge of the CIU. Newbery told Hicks that Senior Sergeant Ronald Joseph Redmond and Sergeant Colin George Chant, the president and vice-president of the Police Union, had complained that police were being persecuted, and that Bjelke-Petersen had indicated that there were to be no further charges against police. Newbery also suggested that the CIU should permit the Union to inspect its files to satisfy itself with the actions of the CIU in relation to police, but this was ignored.

On 29 August, 1976, police raided a "hippie colony" at Cedar Bay in North Queensland. The hippies alleged that the police had deliberately destroyed their food and water supplies, burned some of their dwellings and cut down fruit trees.

Bjelke-Petersen publicly supported the police, claiming that the allegations being made against them were part of a campaign aimed at legalizing marijuana.

There was public controversy over the incident at Cedar Bay, but debate in Parliament was stopped on 9 September 1976. The Speaker ruled the matter sub judice the day a police officer involved in the raid issued a writ claiming damages for defamation. Within a week, the Police Union conveyed its thanks to Bjelke-Petersen for his "forthright stand" over Cedar Bay, together with news of a motion passed by CI Branch union members calling upon Whitrod to resign.

On 15 September, 1976, Gulbransen retired, and Whitrod lost his most senior trusted colleague within the Police Force.

Although Parliament was unable to debate the Cedar Bay issue, public disquiet continued. Despite Bjelke-Petersen's views, on 6 October, Whitrod directed an internal inquiry into Cedar Bay, which resulted in charges being laid against some of the police involved in the raid.

By that point, a confrontation between Bjelke-Petersen and Whitrod was inevitable.

The circumstances surrounding the losses which had been suffered by the CIU had attracted controversy, including pressure from the Bar Association of Queensland and the Queensland Law Society Incorporated for a public inquiry. The community was divided over demonstrations and actions taken by police to dispel them. The conduct of the police raid at Cedar Bay had again polarized public opinion. Whitrod's reason and moderation conflicted with Bjelke-Petersen's personal prejudices and political instincts, and Bjelke-Petersen's interference in matters which were not only the subject of a portfolio which he did not administer but which concerned operational decisions rather than administrative policy had produced an almost intolerable situation for Whitrod. Then, in the face of Whitrod's unequivocal opposition, Bjelke-Petersen decided to promote Lewis.

Appointments to inspector and above in the Queensland Police Force are determined by Cabinet. While Hodges was Minister, Whitrod had always discussed his proposed nominations in advance, and had even acquiesced in the introduction of a system which permitted the Union a voice in who should be nominated.

On 15 October 1976, after obtaining the Union's views and discussions with his senior officers, Whitrod submitted a list of proposed promotions for Cabinet approval. The name of Lewis was not on the list. For the most senior post open for appointment, that of an Assistant Commissioner, Whitrod recommended Superintendent Grade 2 Vernon Alister MacDonald, with the Queensland Police Officers' Union of Employees' choice, Superintendent Grade 1 John McSporran, as an alternative. Lists put forward by Whitrod had previously been routinely endorsed.

However, on 15 November, Whitrod received a telephone call from Newbery after a Cabinet meeting to say that it had been decided to appoint Lewis to be Assistant Commissioner, a course which involved his elevation over more than 100 more senior officers. Whitrod was flabbergasted.

In the days preceding Cabinet's announcement of his appointment as an Assistant Commissioner, Lewis had been in contact with, or received messages from, Edington, Redmond, Murphy, Bjelke-Petersen's then press secretary, Allen Lindsay Callaghan, and a former police colleague and coalition member of Parliament, Donald Frederick Lane M.L.A. He made notes of the messages received.

Lewis noted his conversation with Edington thus:

"2.55 p.m. . . . Whitrod has got Gulbransen, McSporran, MacDonald to give Bragg, Sunday Mail article in an endeavour to frighten off Cabinet from appointing me A/C and Tony M. a Supt. Bragg has phoned Ron re same."

The notes continue with references to Bjelke-Petersen (No. 1), his Press Secretary Allen Callaghan ("A-C"), Lane ("Don"), Edington ("R.L.E."), Murphy ("Tony M."), Redmond ("Ron. R."), Thomas Sydney Charles Atkinson ("Syd A"), Hodges ("Max"), Desmond Gordon Sturgess ("Des S"), the Hon. William Edward Knox M.L.A. "(Bill K)", Newbery ("Uncle Tom" or "Mr. N."); and Whitrod ("R.W.W." or "W" or "Koko"). It is not difficult to discern the identities of any others referred to, except, perhaps, "007".

"4.15 p.m. Ron R. phoned. Told him of call from R.L.E.

4.40 p.m. 526011 Dickson F. Read me article. Some C.O. upset at proposal to promote an Inspector grade 2 Terry L. of Charleville to A/C and Inspector grade 4 Tony M. to Supt. Recommendations of Whitrod overruled. Senior officers concerned about L. jumping 6 grades or ranks. Premier and Mr. Whitrod would not comment.

8.00 p.m. Ron R. phoned. Spoke to A-C. Uncle Tom and R.W.W. had conference Friday. W. said would not accept me. Would create another position to circumvent me. Asked could he address Cabinet. Told if he had anything put it on paper. If he tries to undo me Mr. N. told he would appoint me Chief Com. Told any leak would come from him."

One page is headed "Tuesday" and appears to contain notes of Lewis' meetings or conversations on the Tuesday following a gathering of National Party ministers in Charleville on 6 November, 1976. Lewis was

told that he was to be appointed an Assistant Commissioner on the following Monday, and that Murphy's promotion would follow thereafter. The notes read, in part:

"007 ... 2.30 p.m. Next Monday. No. 1 has directed so. One at a time, you next time. Taylor's approach.

Don ...3.30 p.m. Tom told him next Monday. Will show him list. Seeing No. 1 later.

Don 9.00 p.m. Saw No. 1. Asked re me, you, Ron R., Syd A.

Both of us canned by Max.

Heard you are A.L.P. supporter.

Trust Ron R's. advice.

Atkinson an opportunist.

What about a Chief Comm.

You should be in charge, C.I.B.

Thinks will have to have some inquiry.

Don suggests Judge, Bar rep. and P.O. to look at questioning of suspects.

A proper police investigation unit.

KoKo double-crossed No. 1 over Cedar Bay.

No. 1 really a bigot—so worried re religion. Des S., Uncle Tom, Bill K. for lunch."

Quite plainly, what was being planned at that time was not only the promotion of Lewis but an acceptable form of inquiry since "some inquiry" was inevitable.

Bjelke-Petersen gave evidence that he was not responsible for the decision to promote Lewis:

"I really had nothing to do with his appointment to Assistant Commissioner other than agreeing with it ... up to that point of time we, all of us, in Cabinet had a very high regard for Lewis, the work that he had done and performed."

Another answer included the following passage:

"I can't even remember how it came up or anything other than I probably would have supported it in Cabinet. It was just one of those things ..."

Bjelke Petersen said he cannot now recall receiving documents from Lewis, but in any case they would "not have cut any ice".

Lewis said he prepared the documents with the idea of representing himself to Bjelke-Petersen as a qualified, well-rounded police officer fit for promotion. However he was not aiming for a very senior post, but simply wished to return to Brisbane, perhaps to a post at the Police Academy. He denied that he was trying to undermine Whitrod, and said that he wanted to show that he had not been promoted with the speed he thought fair. One of his answers in evidence included the following statement:

"No way in the world had it entered my mind that I would be considered for Assistant Commissioner or anything else that year or in the foreseeable future".

As Whitrod correctly saw it, his situation was intolerable. He asked for permission to speak to Cabinet and was refused. Not only might it be thought that he was associated with the appointment of Lewis, but his operational control of the Police Force could be seriously undermined by the direct access which could occur between Lewis and Bjelke-Petersen, who could even countermand Whitrod's instructions. Whitrod conceived of the possibility that he would become a figurehead, with his reputation a shield for any



malpractice which developed. He resigned, on 15 November, 1976, the day Lewis was appointed Assistant Commissioner.

Before Whitrod cleared out his desk he performed one last task. He and Hicks were concerned that the CIU informants might be at risk under the new regime. They decided to cull files to remove details by which informants could be identified. The instruction to destroy files was given by Whitrod to Hicks in writing, and dated the day of Whitrod's resignation.

According to Bjelke-Petersen, Whitrod's resignation came as a surprise:

“Nobody in their wildest dreams would believe that he would squib and run out and go away. We thought he was there for donkeys years.”

At the next Cabinet meeting, on 22 November 1976, Lewis was appointed Commissioner, and he took up that office shortly afterwards.

The only missing Cabinet notes over a period of many years relate to the Cabinet meeting dealing with Lewis' appointment as Commissioner.

### **2.2.7 The Lucas Inquiry**

On 15 November, ten days after Herbert was acquitted, Whitrod resigned (to be replaced soon after by Lewis), O'Connell told Lickiss in London that corruption was rife in the Queensland Police Force, and Bjelke-Petersen announced that a three man tribunal would be appointed to review law enforcement procedures in Queensland and police powers of investigation, interrogation, search and arrest. Bjelke-Petersen also announced that the inquiry would not be concerned with allegations of malpractice and corruption, since those had been looked at in the Herbert trial, which had just concluded.

A Committee of Inquiry into the Enforcement of Criminal Law in Queensland with terms of reference which corresponded with what had been indicated by Bjelke-Petersen was appointed on 18 November 1976 under the chairmanship of the Hon. Mr. Justice Geoffrey Arthur George Lucas of the Supreme Court of Queensland. The other members were Sturgess and Dynes Malcolmson Becker, Chief Superintendent of Police, who was then on pre-retirement leave.

From this distance, it is possible to see how good motives and decent people were manipulated by and combined with others, less honourable, to produce a result which allowed corruption to expand and flourish.

Sturgess who loathed police “verballing” and is a man of great determination and outstanding skill as an advocate in criminal cases, was deeply involved in the events leading up to the Lucas Inquiry.

His professional career to that time had very largely (but not exclusively) involved representing persons accused of criminal offences. In the course of his practice, he had encountered many police officers and had become admired for his professional skill. A number of police officers had become his friends or at least casual acquaintances. He was retained to advise and act for various police officers who were in trouble. He and the solicitor for the Police Union had represented Herbert in his conspiracy trial. Sturgess was also an adviser to the Police Union, at the time of its quarrels with Whitrod, whom he considered was insufficiently concerned with verballing.

As has already been noted, as soon as the tape-recording which implicated Pitts, Jeppesen and others in the fabrication of evidence was produced in the Magistrates Court at Southport in June 1975, the Police Union approached Camm, then acting as Minister for Police, to seek an inquiry. Sturgess and the Union's solicitor were present at the Union meeting at which the tapes were played and the decision was made to ask the Minister for an inquiry.

In mid-1976, after the Southport Betting case and before or during the early stages of the Herbert conspiracy trial, Sturgess attended a meeting with Knox, the then Minister for Justice and Attorney General. The meeting had been organized by Lane, who was known to both Sturgess and Herbert, and again the subject of an inquiry was raised.

According to Lewis' notes in the period leading up to his appointment as Commissioner, Lane was also involved at that time in advising on the type of inquiry which should be held.

By the time of Herbert's acquittal, the Bar Association and Law Society had also joined demands for an inquiry.

Sturgess was the leader of the criminal bar and enormously influential, especially amongst its practitioners, many of whom were relatively young and inexperienced in other areas of the law. For many lawyers, including most of the senior bar and the major firms of solicitors, criminal practice was relatively unremunerative and decidedly unfashionable. Most—not all—barristers who could do so passed through a period of criminal practice on their way to other work which they found more rewarding and congenial. Their concerns with police malpractice were transient, and dissipated with time, prosperity and pressure of work. It was mainly left to those who remained to practice in the criminal law to rail at the perversion of the criminal justice system which they observed, and which they were relatively poorly placed to have corrected due to lack of influence and support and a perception that their concerns were, to an extent, exaggerated by the adversary role which they occupied in relation to the police. The furore surrounding the Southport Betting case and the Herbert conspiracy trial at last provided an opportunity to strike at the "verballing" which was correctly seen as a blight on the criminal justice system but was erroneously permitted to overshadow entirely the significance of corruption, the extent of which was by no means so obvious.

In the result, when Herbert's trial ended with his acquittal despite his guilt, there was an informal coalition between the Government for its political motives, the criminal lawyers who saw their opportunity to attack the practice of "verballing", and influential police and those engaged in misconduct. Those who had sought to stamp out corruption had foolishly rendered themselves and their cause vulnerable by their behaviour in the Southport Betting case.

The Lucas Inquiry held its first public sitting on 26 November 1976 and reported on 29 April, 1977.

Sturgess, the better to understand what led police to practice and tolerate verballing, spoke to his former client, Herbert, about his experiences in the Licensing Branch, how it worked and how it might be improved. Herbert told him how a police officer working in the Licensing Branch could be corrupted, and gave Sturgess advice on how to stop this. Much of that advice is contained in the Lucas Report [para. 2831. The advice on staffing the Licensing Branch, which the police administration later effectively ignored, came from Herbert:

"No return to the practice of recruiting newly sworn-in constables must be allowed. No person ought to be allowed to serve there unless he has reached mature years— We think he should be at least 30 years old. No one ought to be allowed to stay for very long ... Upon serving their time they ought to be posted to some form of service that will counter-balance their experiences in the Licensing Branch. Control of it should be regarded as one of the most prestigious positions in the entire force and should be reserved for officers of outstanding integrity".

The Lucas Inquiry was concerned that nothing had been done by police about "kill—hungry" police verballers, but did not think

"police officers generally would be so base that they would turn a blind eye to any crime committed by a fellow policeman".

In the opinion of the Lucas Inquiry, one of the most potent causes of fabrication was that many police saw the Police Force not as something that was part of the community but as something separate from the community.

Among the many recommendations it made, the Lucas Inquiry placed most importance on the recording of evidence to prevent its fabrication. It said:

"The recommendation which we regard as most important is that which we make as to the mechanical recording of interrogations by the police .... we think that adoption of any of the recommendations which we make increasing the powers of the police or reducing the privileges of subjects or accused persons should be

contingent upon the adoption also of our recommendation that interrogations should be mechanically recorded whenever that is possible.” .

After the Lucas Inquiry Report was published, Bjelke-Petersen publicly said he was opposed to the introduction of tape recorders. He now claims he adopted that stance on the advice received from “the legal people”, whose objections were, according to Bjelke-Petersen, that criminals could misrepresent that they were being assaulted while being tape recorded. However those objections had been addressed in the Lucas Report.

In a cynical exercise of obfuscation and delay, the Government set up a committee comprising Lewis, the then Solicitor-General, and the then Under Secretary, Department of Justice to review the Lucas Report. For practical purposes that was the end of the matter for over a decade. Sturgess was never again contacted by anybody representing the Government about the Report, which was effectively ignored.

When it became clear to him that implementation of the recommendations had been stopped or stalled, Sturgess made attempts to have the matter reconsidered. At a meeting attended by Lewis, who did not dissent from what Sturgess said, Sturgess told Camm, then the Minister for Police, that verballing was widespread and causing great damage to the criminal justice system. However, Sturgess left the meeting correctly convinced that nothing would be done. Later attempts to interest the government parties also failed.

With typical ingenuity, police involved in misconduct thereafter employed the techniques of false allegations and fabricated evidence which were widely used to secure convictions as a weapon to discredit those by whom they were threatened.

## 2.2.8 The First Years with Lewis as Police Commissioner

Lewis' determination to usher in a new era can be discerned from his diary note for 29 November 1976, the date when he assumed office.

“7.30 am. Commenced duty as Commissioner. Saw A/C Taylor who admitted slandering me, but claimed he acted on incorrect information. Informed Sgt. 2/c Hoggett he was to move from personal assistant position immediately. Saw Sgts. Herse and Early re starting as personal assistants. Then saw all top Police Officers in H.Q. Had telephones and locks replaced. Insp. Hicks admitted having burnt six sackfuls of files on Mr. Whitrod's approval, he said they related to Police, Politicians, Solicitors and Informants. Saw Insp. D. McDonald re my administrative policies. Saw A/C Clifford re new country Districts and Housing. Sgt. 1/c Wilson called re name for new Police boat. Mr. Casey called re persons to receive Q.P.M.'s in Birthday Honours. Saw Mr. Newbery, Minister for Police re operational and administrative policies, until 8 pm.”

A heavy price was to be paid by those who had failed to scent the winds of change and switch allegiances when Lewis replaced Whitrod. Some managed the transition, the most notable example being the present Superintendent Gregory Lance Early. Early, who had been one of the first to greet Whitrod on his arrival in Queensland, was appointed by Lewis to be his personal assistant on the day when he took up office as Commissioner. He was still Lewis' right-hand man when he was stood down in late 1987, by which time Early had risen to be the youngest Superintendent in the Police Force.

Before Whitrod resigned, Lewis had obtained lists of a number of police officers, in which names were categorized under the headings, “guests”, “friends”, “capable” and “others”.

The “guests” included Bischof and Bauer; the “friends” included the present Acting Commissioner, Redmond, who was then the president of the Queensland Police Union of Employees, a police officer who was to become Bjelke-Petersen's body guard and remain in that position for some time, another police officer who was later appointed head of the Gaming Squad after it was created, others who in due course would be investigated by the Internal Investigations Section and cleared, and Senior Sergeant Noel Francis Peter Dwyer, who later was appointed to head the Licensing Branch and admitted to corruption in the course of this Inquiry. The longest list, headed “capable”, included a number of police officers who became deputy commissioners under Lewis, Early, the then Sergeant Graeme Robert Joseph Parker (also later appointed to

head the Licensing Branch and another who, in 1987, admitted to corruption), and a sergeant who, according to evidence, later became a collector of graft from s.p. bookmakers in association with Herbert. The lists headed “friends” and “capable” also included the names of others who were to rise under Lewis to positions of power and influence in the Police Force, including some who had been investigated by the CIU. The “others” list included Assistant Commissioner William Trevelyn Taylor, Pitts and members of the CIU, including Hicks.

Soon after Lewis took up his post as Commissioner, he consulted with Murphy, who was still an inspector at Longreach. Murphy wrote to Lewis a number of times, once with his views on a list of transfers and promotions that Lewis proposed to make. The proposed promotions and appointments extended to senior posts including Assistant Commissioner. The matters Murphy brought to Lewis’ attention included the “loyalty” of some; whether others had been allied with Whitrod; membership of the National Party; and Bjelke-Petersen’s approval of others. Murphy himself was confident of promotion and appointment to head the CIU in place of Hicks, and sent Lewis a draft press release for the announcement.

Six weeks after Lewis became Commissioner he made recommendations to his Minister for promotions and transfers throughout the State. Many of Murphy’s recommendations and suggestions were implemented. Four promotions to senior posts to which Murphy had objected on the grounds that they were Whitrod men did not eventuate. The police officer whom Murphy favoured was appointed to the vacant position as Assistant Commissioner.

Among the many appointments and transfers, Murphy was brought back from Longreach to the centre of power to head the re-organized Criminal Intelligence Section, as the CIU came to be called. Hicks was moved from his position as head of the CIU, the focus of so much denigration by the anti-Whitrod forces, and transferred to a new Internal Investigations Section where he was given little work and no facilities. Although the Internal Investigations Section was ostensibly responsible for the investigation of police misconduct, Lewis ordered that no investigations were to be carried out “directly on police”.

The process of reform which Whitrod had sought to introduce was over, reactionary elements within the Police Union had triumphed, and, to ordinary police officers, there were clear signals that the remnants of what had earlier come to be known as the “Rat Pack” were firmly in control.

As Lewis agreed, the purpose of surveillance of a criminal, whether he be policeman or civilian, is to find evidence to ascertain whether or not, in fact, the allegations made are correct. The Internal Investigations Section was given no facilities to gather intelligence on other police and the Bureau of Criminal Intelligence (as the CIS later became), the Forces’ only specialized squad (apart from the Drug Squad) charged with intelligence gathering and equipped with any technology for surveillance work, was forbidden to assist the Internal Investigations Section in its work.

Lewis had determined in 1976 that police were “not going to be involved in that sort of thing. They were tailing criminals, and very, very serious crimes, and they were not involved in surveilling police at that stage”.

This policy was subsequently enshrined in the BCI charter which provides, inter alia:

“No investigation shall be carried out directly on police. In gathering intelligence on criminal matters, should it come to the notice of the Bureau that police are unlawfully involved, report concerning same is to be forwarded by the Chief of Intelligence to the Assistant Commissioner (Crime)”.

Not surprisingly, no police involved in criminal activity during the 10 years of Lewis’ administration were exposed or detected by surveillance.

At the same time as he was consolidating his position in the Police Force and his relationship with the Police Union, Lewis was also developing his association with Bjelke-Petersen, particularly through the support given on the politically important law and order issue.

Bjelke-Petersen had learned with the Springbok demonstrations in 1971 that law and order could be politicized. From 1976, before Whitrod resigned, through until 1979, there were a series of demonstrations and street marches in Brisbane and violent confrontations between police and demonstrators.

Bjelke-Petersen considered that Lewis understood “the seriousness of the situation in which we lived at that time”. Under Lewis’ leadership, the police took a strong stand against demonstrators and Bjelke-Petersen was able to make law and order a major electoral issue. Lewis supported Bjelke-Petersen and they both supported the Police Force. As Bjelke-Petersen said of Lewis:

“He wouldn’t be asking for inquiries and investigations and castigation and demoting and all the rest of it.”

The Government’s decision to place a total ban on protest marches crystallized the law and order issue. Bjelke-Petersen was then reported as saying: “Protest groups need not bother applying for permits to stage marches—because they won’t be granted”.

Two days later, on 6 September, 1977, senior police officers were instructed that permits for processions which were “of a protest nature” were not to be issued. Those instructions were followed on 13 September, 1977, by formal Cabinet approval of amendments to the legislation and by-laws, removing the right of appeal to a Stipendiary Magistrate in cases where police had refused a permit. The Police Commissioner was the final arbiter on questions of public meetings and marches.

There was, naturally, opposition to the Government’s policy and the new laws. The Bar Association and the Law Society were critical of the exclusion of any right of judicial review. The Uniting Church called for mediation between the Government and students and civil liberties groups. Bjelke-Petersen’s response was that:

“If the churches want to consort with atheists and communists dedicated to the elimination of religion, that was their problem”.

State elections were held two months later, on 12 November, 1977, and a Coalition Government headed by Bjelke-Petersen was returned with a strong majority because, according to him, of the Government’s decision to ban street marches. His opinion, given in evidence, was that:

“I believe I understood that voters wanted stability and security. .... my government had solid support from both within the Police Force and also from the population at large for its stance on law and order issues.”

A report from the Superintendent of the Brisbane Region of 30 November, 1977, to Lewis set out the number of police involved in various demonstrations between August and November, 1977.

On 21 August 1977, an anti-uranium demonstration at the Hamilton Wharves attracted 60 police and other CI Branch and Special Branch personnel and 130 demonstrators.

On 7 September 1977, 700 police were deployed when 500 university students marched out of the St. Lucia campus. When confronted by police, they dispersed and walked to the Roma Street Forum where 1,000 unionists gathered. There was no trouble.

On 22 September 1977, 700 police were deployed when 400 university students attempted to march to the city. They dispersed and walked to King George Square where a rally was held. There were 31 arrests.

On 29 September 1977, 350 police were on duty to control another student march from the university, which did not eventuate.

On 12 October 1977, 680 police controlled student demonstrators. There were 8 arrests.

On Saturday, 22 October 1977, 700 police were deployed when 5,000 university students, “civil rights adherents and others” formed in King George Square and marched into Adelaide and Albert Streets. There were 418 arrests.

That day, National Uranium Mobilization Day, 20,000 people marched peacefully through the streets of Sydney and 10,000 did likewise in Melbourne. A minimum number of police supervised those processions and no arrests were made.

On 24 October, 1977, members of a protest organization called “The Right to March” gathered outside the City Watchhouse, but few police were involved and only three people were arrested. However on 11 November, 1977, the eve of the State elections, 690 police were deployed when the same group marched again, and 169 were arrested.

The Right to March group continued to demonstrate: on 12 November, 1977, they gathered with anti-uranium demonstrators at King George Square and there were 7 arrests; on 18 November, 1977, the group picketed police headquarters—there were 50 police deployed and 5 arrests; on 22 November, 1977, picketing of the City police station resulted in 9 arrests, and a rally on 24 November, 1977 resulted in 7 arrests.

There was then an upsurge in the number of violent and large demonstrations. On 3 December 1977, 600 police were deployed and there were 206 arrests; on 2 March, 1978, 400 police were deployed, but no arrests were made; on 4 March, 1978, 720 police were deployed at a Civil Liberties rally, and there were 50 arrests; on 11 March, 1978, there were 420 police deployed and 50 arrests; on 18 March, 1978, 80 police awaited a group of “Concerned Christians” who were expected to gather in King George Square but did not attend; on 17 October, 1978, 43 people were arrested at a demonstration at the wharves; and on 30 October, 1978, 34 people were arrested during demonstrations.

By then, the Government’s support for police had extended to payment of the costs of legal proceedings instituted against a police officer arising out of the demonstrations at the wharves. Bjelke-Petersen’s assurance of his support for police against demonstrators was published in a letter in the October 1978 issue of the Queensland Police Journal, “Vedette”, as was Lewis’ reply to Bjelke-Petersen explaining that his members had been “subject to extreme provocation”.

Bjelke-Petersen again wrote to Lewis with an assurance of the Government’s support for police action in the demonstrations held in December 1978, describing the Police Force as “the thin blue line in the defence of the majority of the community”. Lewis passed the message on to all sections of the Police Force.

By late 1979, street demonstrations ceased to be an issue. Bjelke-Petersen had again succeeded in demonstrating his strength. Thereafter, permits were made more readily available.

By then, the relationship between Bjelke-Petersen and Lewis had been cemented. Lewis had eased Bjelke-Petersen’s political task by providing Bjelke-Petersen with uncompromising support. At the same time Bjelke-Petersen publicly stood behind Lewis as Lewis took the Police Force through a period of internal turmoil, during which the relics of Whitrod’s attempted reforms were destroyed and old enemies finally routed. Lewis was able to recommend promotions and appointments, many of them passing over more senior officers, with little quibbling from Bjelke-Petersen, who also supported Lewis to defeat some of those who had been involved in Whitrod’s attempt to combat corruption.

## 2.2.9 Jeppesen

Jeppesen, the original prosecutor in the Southport Betting case, was promoted to Inspector in Charge of the Licensing Branch on 31 January 1977. At the time, Lewis had been Commissioner of Police for about two months and the Lucas Inquiry, which was to investigate allegations of verballing involving Jeppesen and others, was in progress. Jeppesen’s involvement in the Southport Betting Case and as a discredited witness in the Herbert conspiracy trial did not mark him out as a particularly suitable choice to head an honest and committed Licensing Branch.

Jeppesen had already been at the Licensing Branch for the traumatic years of the Southport Betting case and the Herbert Conspiracy Trial, which had concluded a few months before his promotion. In that period, there had been a general atmosphere of mistrust within the Branch. Whitrod and the CIU were unpopular there as elsewhere and it was difficult to know whom to trust. For example, a police officer who had played a vital role in discrediting Pitts and other members of the Branch had been stationed there. Throughout his period in charge, Jeppesen was concerned at the possibility that he might be “set-up”. His anxiety proved, in time, to be justified. Nonetheless, while he was in charge, Jeppesen ran a relatively honest and active Licensing Branch compared to what had occurred in the past and what was to follow.

There was no specialization, and each member of the Branch, or the crew of which he or she was part, was rostered for duty in whatever area of activity was thought appropriate. Emphasis seems to have been given

to action against s.p. bookmakers. In consequence, there was less attention than was desirable to other areas of illegality such as other illegal gambling and prostitution. Nonetheless, there was no government or Police Department policy of toleration and containment or control of prostitution, nor was that the approach adopted in practice.

However, the procedures adopted to police prostitution, which included the use of police agents to obtain evidence as a basis for warrants, were cumbersome, labour-intensive and inefficient, and ill-suited to the prosecution of a charge of keeping premises for the purpose of prostitution against a brothel-owner or operator, or indeed to more than a lesser charge of using premises against someone no more culpable than a prostitute or perhaps a receptionist, although towards the end of Jeppesen's period in the Licensing Branch some plans were being developed to force the owners of premises used for prostitution to accept responsibility for the activities which occurred there.

Only occasionally was a minor found working as a prostitute, but drugs were prevalent; usually marijuana or hashish, but for a period methaqualone (mandrax) and sometimes heroin. Many prostitutes used drugs. Customers also brought drugs to the brothels (usually described as "massage parlours") and on occasion sold them there. Sometimes the brothels were centres for organized drug distribution activities. Drug charges by the Licensing Branch were relatively frequent until about 1978, when a liaison was established between the Licensing Branch and the Drug Squad to which the Licensing Branch passed on information to enable it to make the arrests.

Apart from that, there was no established liaison between the Licensing Branch and the Criminal Investigation Branch, and prostitutes provided little useful information.

The position in relation to illegal gaming other than s.p. betting was broadly similar, with the additional qualification that it was more difficult for an agent to obtain access to acquire evidence for the purpose of a search warrant. Care was taken to prevent any possibility of a tip-off.

Wherever possible, proceedings were taken under The Gaming Act rather than the Vagrants Gaming and Other Offences Act in order to obtain more significant convictions and prevent those involved from merely forfeiting bail.

From the commencement of his service in the Licensing Branch, Jeppesen had been conscious of the likelihood of associations between s.p. bookmakers and police. It could scarcely have been otherwise. He originally joined the Licensing Branch on 17 December, 1974, just days after a series of arrests for official corruption which involved a number of people including present and former police officers. He had developed a network of informants in relation to s.p. betting, and received a considerable volume of information from his informants and also from the CIU (until Hicks was replaced as its head by Murphy after Lewis became Commissioner).

Jeppesen's information and activities led to numerous successful prosecutions against s.p. operators especially in Brisbane and at the Gold and Sunshine Coasts, both hotel bookmakers but large telephone operators, and some major operators were for a time, driven over the border to Tweed Heads.

When Jeppesen was promoted to head the Licensing Branch, he had reason to believe that the major s.p. bookmakers were known to each other, and that there was an organized system in operation.

Jeppesen handled informants on s.p. bookmaking personally, and took precautions to make sure that no other police officer had an opportunity to alert suspects to impending raids. His methods, although not universally popular, were very effective.

The Gold Coast in particular was a hive of s.p. betting activity, and the Licensing Branch conducted a number of raids there, finally receiving a unique written direction that no further raids were to be carried out in the area without prior notification to the officer in charge of the Region, who was Atkinson.

By some time in 1978, Jeppesen suspected that a group of senior police were involved with Herbert in protecting s.p. bookmakers.

Other rumours and complaints against police officers abounded, and there was distrust and dislike between Jeppesen and the CI Branch.

A member of Jeppesen's staff, a Constable Brian Rodney Marlin, had been trying to persuade him to talk to a National Party M.L.A., Mr. John Philip Goleby M.L.A., about his concerns. Marlin claimed to know Goleby well. Jeppesen had at first refused to be drawn.

In April, 1978, Marlin approached Goleby who in turn discussed the matter with Bjelke-Petersen. His allegations extended to corruption in the CI Branch, and Murphy's name was likely mentioned. By then, Jeppesen suspected a number of his own staff of misconduct.

Lewis was notified of the information which had been given to Bjelke-Petersen. During the following few days, Lewis spoke to Goleby and Murphy. On 7 April, 1978, Lewis saw Bjelke-Petersen and probably then showed him a statement denying Murphy was a member of the ALP, and they spoke about Murphy and allegations about massage parlours. Later that day, Lewis saw Camm.

On 17 April, Jeppesen was directed to meet Lewis and Deputy Commissioner MacDonald, when he was questioned about complaints which had been made against police.

After that meeting Jeppesen continued to receive information of misconduct which worried him, mixed with rumours that he was to be "set up" and "fixed".

In May and June, 1978, Jeppesen had conversations with a number of informants, including prostitutes and people involved in s.p. bookmaking, which he tape recorded. Jeppesen's informants told him, among other things, that the Licensing Branch had been receiving graft from the s.p. industry on a massive scale. There were also specific allegations against police, including senior police officers.

Marlin arranged for Jeppesen to consult a lawyer, and later for him to play the tapes to Goleby, who said he would arrange for the material to be brought to the attention of Bjelke-Petersen and Camm, who was then the Police Minister.

A meeting took place between Bjelke-Petersen, Camm, Jeppesen and Marlin at Lennons Hotel in mid July, 1978. Jeppesen had the tapes with him, but they were not played. Instead he was asked to summarize their contents. When asked who should investigate the allegations, Jeppesen nominated Hicks and another former member of the CIU.

Bjelke-Petersen expressed concern at the situation and Jeppesen thought that some action would be taken.

On 8 September, 1978, Lewis recommended that Jeppesen should be transferred out of the Licensing Branch, stating that he needed to broaden his experience, and referring to the Lucas Inquiry's recommendation that officers should not be permitted to remain in the Branch for lengthy periods. Cabinet refused the recommendation.

An article appeared in the "Sunday Sun" newspaper on the weekend of 24 September 1978, giving its source as an anonymous Licensing Branch "spokesman". The article severely criticized the Branch (and therefore of course its head, Jeppesen) for alleged over-concentration on prostitution and s.p. bookmaking at the expense of proper attention to illegal liquor sales, especially to underage drinkers, and the supply of drugs in hotels to minors as well as others.

Merely by way of passing comment, it might be observed that precisely the same tactic is still routinely employed by corrupt police officers and their journalistic contacts, who regularly abuse the freedom of the press to spread false and malicious rumours and allegations for ulterior purposes.

Lewis demanded a report on the criticisms in the article, and emotional responses were written by Jeppesen and others, suggesting that the article had been promoted by police and ex-police who would benefit if the Licensing Branch diverted attention from vice and s.p. bookmaking.

Goleby saw Jeppesen again and spoke again to Bjelke-Petersen, whose Press Secretary at the time, Allen Callaghan told Lewis on 29 September, 1978. Lewis went again to Bjelke-Petersen and Camm concerning Jeppesen in early October.

On 27 October 1978, Marlin and another Licensing Branch officer were involved in an altercation with a civilian at the Cleveland Sands Hotel. In due course, the civilian was subjected to the orthodox charges of



obscene language, resisting arrest and assaulting police. He was admitted to bail which he forfeited on 30 October, bringing the charges against him to an end.

The man who had forfeited bail, who had had some prior contact with a senior police officer, wrote a letter of complaint about Marlin, which led to an Internal Investigations Section inquiry. In mid-November, after receiving advice from some senior police, Marlin stymied the investigation by causing summonses to be issued and served on his antagonist, who thereafter refused to be interviewed in relation to his complaint against Marlin, which was dropped. Marlin had new relationships with those to whom he was indebted for the assistance which he had been given.

On 24 November, 1978, an officer from the Licensing Branch telephoned to tell Lewis, “. . . that a Licensing Branch man wished to speak to me”. That man was Marlin, who attended at Lewis’ office about 1.15 p.m. that same day.

Lewis’ diary entry of his conversation with Marlin records allegations that Jeppesen and a police sergeant were giving Hodges information which Hodges passed on to Kevin Hooper M.L.A., a member of the Australian Labor Party Opposition, that Jeppesen and Hicks met twice a week, and that Jeppesen and other Licensing Branch officers were taking moiety money for their own use.

On 27 October, Lewis again saw Marlin, who apparently made more allegations against Jeppesen, including that he was “feeding” Goleby with allegations against Herbert and Murphy, among others.

On the following day, Lewis saw his Deputy MacDonald in relation to the additional information which he had received from Marlin, and consulted Herbert “. . . re moieties generally . . .”. Herbert would have been well aware of its practices (and malpractices) with respect to moiety payments within the Licensing Branch.

A basis had been obtained for an investigation of Jeppesen.

The law permitted payment to some informants of a “moiety”, or portion of a fine which had imposed on a person convicted as a result of information provided. The system within the Licensing Branch in 1978 was, perhaps deliberately, lax and susceptible of easy abuse, and known to be so by those who had served there. Conversely, it was obvious that an allegation that the system had been abused would be difficult to disprove unless informants were able (and willing) to confirm that payments had been made. Probably the best protection was the sacrosanct confidentiality traditionally accorded the identity of each individual police officer’s informant.

Because informants were not identified, the practice was for a false name to be used in a report to the Commissioner of Police seeking authorization for a moiety to be paid. Only the police officer who had been given the information was meant to know the true identity of the informant. The cheque provided for the amount of the moiety was able to be cashed by the officer in charge of the Licensing Branch, who supposedly handed the money over to the police officer to pass on to his anonymous informant who could use a false name when signing the receipt. No records were kept beyond the reports and receipts.

Some money presumably reached its lawful destination over the years, but it may be doubted whether all of it did. It seems likely that some police invented fictitious informants, and that real informants were “short-changed” and some of the moneys kept by police. At the very least, the administration and paper work of the moiety system was chaotic and confused.

Less than a week after Marlin told Lewis that some officers were abusing moiety moneys, Lewis sent a memorandum to his Deputy Commissioner, suggesting there be an investigation into the allegations.

On 12 December, the Deputy Commissioner appointed Assistant Commissioner Robert Brian Hayes and Atkinson, who was then a Superintendent, to inquire and report on the moiety allegations which Marlin had made.

On the following day, Marlin provided three statements against his colleagues, which became the basis for the investigations which followed.

Jeppesen was interviewed on the next day, 14 December. The deficiencies in the system and the organizational disorder quickly emerged. Jeppesen’s own current diary and a moiety receipt were unable to be located.

However, Jeppesen produced the informant (the receipt was subsequently found), and money was on hand for payment to other informants where cheques had been cashed and no receipts were available.

Jeppesen was told that he would be interviewed again on 18 December together with another officer. Both were sufficiently concerned by events, including Marlin's statements, to consult solicitors. From then on, they would only consent to be interviewed in their lawyer's presence.

On 20 December, Jeppesen was confronted with a statement dated 15 December ostensibly obtained from one of Jeppesen's informants, claiming that, on several occasions, he had signed blank receipts at Jeppesen's request. The informant (who had also been an informant of Atkinson) said that the amounts of money he had been given were considerably less than those which were later filled in on the receipts, suggesting that Jeppesen had "short changed" him and pocketed the cash.

Jeppesen, accompanied by his solicitor and barrister, refused to comment on most of the allegations on the ground that he could not say anything which might serve to identify an informant, and "with great regret" declined to accept assurances that such information would be kept confidential by Hayes and Atkinson. However, he made a general denial of underpaying informants or requesting them to sign blank receipts.

The report on the investigation was delivered to Lewis on 3 January 1979, together with a separate report which suggested a new system for moiety payments.

The report found the allegations against Jeppesen to be true, but said that, since the identity of informants could not be revealed in court without placing the whole system at risk, charges should not be laid. The report was scathing of Jeppesen, describing him as "lacking integrity and honesty, insubordinate and unco-operative", and recommended that he be reassigned.

By then, most staff attached to the Licensing Branch had also been interviewed and Hayes and Atkinson reported to Lewis that other members of the Licensing Branch had probably also misused moiety monies.

Their report recommended a number of transfers, Apart from Jeppesen, the strongest criticism was given to three police officers who supported him, who were recommended for punishment transfers. Marlin was described in flattering terms, but was also recommended for transfer to a post where his work could be supervised.

Thereafter, there was a change of attitude in Cabinet to Jeppesen's transfer.

A letter from Marlin to Bjelke-Petersen dated 13 January, 1979, gives some idea of the type of information which he was being given. The letter alleged that Jeppesen and his associates in the Licensing Branch were involved in a conspiracy with the former Police Minister and Whitrod's ally, Hodges, to "overthrow the present administration of the Queensland Police Force". It was also stated that Marlin by then believed that the information which he, Jeppesen and Goleby had given to Bjelke Petersen in July the previous year was false, and that allegations which were being made against Hicks, to which reference is later made, were true.

On 13 February, 1979, Cabinet approved Jeppesen's transfer from the Licensing Branch to Brisbane Mobile Patrols.

## **The Final Onslaught**

Jeppesen's removal from the Licensing Branch was not the end of the matter.

Soon afterwards, he was joined as a defendant in a civil action for wrongful arrest which had been commenced by Saunders arising out of his arrest in 1974 in connection with the Southport Betting case.

On 13 March, 1979, an Australian Labor Party Opposition member Mr. Keith Webb Wright M.L.A., read out in Parliament the contents of a document which he had received. The context in which he did so suggested an association between police corruption, s.p. bookmakers and Jeppesen's transfer out of the Licensing Branch. The document named police and others and, although Wright substituted initials for surnames, many could be quite easily identified.

Lewis saw Bjelke-Petersen the next morning "re ... transfer Insp. Jeppesen; Const. Marlin transfer; Cabinet reshuffle; Hooper's informants, ...".

On Monday, 19 March, Lewis telephoned Camm and saw Murphy "... re items listed by Const. Marlin". Marlin, who had been transferred to Beenleigh, had produced approximately 30 further allegations against Jeppesen and others which included using convicted criminals as informants and agents to obtain evidence, protection of criminals, theft, receiving stolen property, falsification of evidence, blackmail, falsification of moiety claims and misappropriation of the proceeds.

On Tuesday, 27 March, Lewis saw Murphy and Atkinson. Jeppesen was to be investigated again, and this time Murphy was to be one of the investigators.

Jeppesen was sent for by the Deputy Commissioner on 30 March, and, although he denied that he was Wright's informant, he stated that he did have information which would support what Wright had said. However, he refused to provide the information until after discovery in the civil litigation in which he was a defendant.

At that time, Jeppesen's alleged misconduct was a matter of his word against that of one informant. A second co-operative individual was then identified by Marlin as another informant of Jeppesen and two other former Licensing Branch members who supported him. That informant was prepared to make allegations that he had not received moiety payments to which he was entitled.

A variation of the technique of "verballing" involves evidence by a criminal that while awaiting trial, a person accused of a crime has "confessed" in the confines of the prison. The public spirited criminal confidant then confides in a trusted police officer and is called as a witness. Coincidentally or otherwise, each of Jeppesen and Hicks was subjected to allegations by criminals in prison which were made while they were under investigation to the other police officers who were conducting the investigations.

In Jeppesen's case, the criminal who was identified by Marlin as an informant in respect of some matters for which moiety payments had been claimed and for which receipts in false names were held in Licensing Branch records, was in prison for non-payment of fines.

A little more than a fortnight after he had agreed to be interviewed, the criminal provided a number of separate statements containing further allegations against Jeppesen and others, and was released. At the same time or shortly afterwards, he received a sum of \$200, ostensibly as a moiety payment to which he remained entitled for assistance provided to the Licensing Branch while Jeppesen was in charge.

The criminal's statements are dated 12 April but say that they were made after his release from prison on 13 April. All but one were witnessed by Murphy. To say the least, various aspects of what was alleged are difficult to believe.

Other interviews were also conducted, some of which led absolutely nowhere and others of which, for example interviews of two prostitutes and the husband and the father of one of them on 27 April, were said to show that prostitutes "were being continually harassed for information on s.p. bookmakers, but were never asked about stolen property or criminals".

Jeppesen's two supporters were interviewed, one on 18 April, 1979, and the other on 3 May, when he read a statement to Murphy and Atkinson asserting that he had received information containing allegations of serious misconduct by Murphy and an Assistant Commissioner. No reference was made to that statement in the report given to Lewis on 9 May, after only a few of Marlin's many complaints had been investigated.

No attempt had been made to speak to Jeppesen (or any of the police officers who were the subject of Marlin's further allegations other than the two to whom reference has been made).

The report given to Lewis made findings against Jeppesen and others and criticized them roundly, especially Jeppesen. In substance, it was accepted that moieties had been misappropriated, "protection" had been given in exchange for information, and promises of payments had been broken.

Shortly afterwards, on 15 May, Justice Department advice was sought as to whether a subordinate was obliged to disclose the identity of his informants to his superior officers when directed to do so. On 1 June, the Solicitor-General advised that a superior officer was entitled to insist a subordinate identify his informants.

Meanwhile the search for evidence against Jeppesen continued, and persisted until he finally retired, on the grounds of ill-health, on 6 September 1979.

On 18 February, 1980, Jeppesen attended a meeting of the Queensland Police Officers' Union at which Murphy was present to seek legal assistance for his defence of the civil proceedings brought against him by Saunders. At the meeting, he was interrogated concerning the information which he possessed and intended to rely upon. Jeppesen refused to disclose his hand, and legal aid was subsequently refused.

On 16 April, 1980, tapes of his conversations with informants were stolen from Jeppesen's home. He reported the theft, but not even a serious pretence of conducting an investigation was made.

Thereafter, it seems to have been accepted that Jeppesen did not intend to agitate further, and he was left alone with the civil claim, and the financial threat which it posed, hanging over his retirement. He made attempts to obtain legal aid from the Government, but his efforts in that respect came to an end when he received a letter dated 8 September 1986 from the then Minister for Justice and Attorney-General who expressed the view that the Government was under no "... legal or moral liability ..," to assist him. The action against him was not compromised until after Jeppesen first gave evidence before this Inquiry. The settlement, the terms of which are not to be published, involved a payment by Jeppesen, for which he is to be reimbursed by the police unions.

## **The Moiety Register**

When Jeppesen left the Licensing Branch, his post had been taken by Inspector Ross Rigney.

The moiety investigation had led to the introduction of a "Moiety Register" into which were to be entered the names of informants, payments and so on. Thereafter if any were silly enough to inform, their identities would be available to the entire staff of the Licensing Branch and other more senior police, including any police involved in corruption. Most preferred to remain silent, which was equally satisfactory for those involved in s.p. bookmaking and the corrupt police by whom they were protected.

During Rigney's time, one s.p. bookmaker who was arrested offered \$1,000 for the name of the person who informed on him. Whether or not a police officer provided the required detail, the informant later had his arms broken. But, in general, the flow of information to the Licensing Branch slowed dramatically, even though Jeppesen had provided Rigney with details of his informants. There were only two entries into the moiety book under Rigney.

Rigney was succeeded in January 1980 by Dwyer, who was corrupt. There were 21 entries in the moiety register while Dwyer was Inspector in charge of the Licensing Branch. All the entries were made by him, and the last entry relates to a payment on 6 June 1981. It did not emerge whether all those payments were genuine or whether Dwyer, and perhaps some of his corrupt associates in the Licensing Branch, had supplemented their earnings from corruption with dishonest exploitation of the moiety system.

There is no entry in the moiety register after Dwyer left the Branch in September 1982, even though it was not until April 1983 that there were legislative amendments to the moiety system which removed the necessity for a moiety register.

## 2.2.10 Hicks

While Jeppesen was fighting his battles in 1978, the former head of Whitrod's CIU, Inspector Basil Hicks, was also struggling.

Hicks, whose reputation was unsullied, was a much more serious threat to the criminals in the Police Force and their associates than Jeppesen. Ironically, he might well have been prepared to give up and let things run their course had his name not been put forward by Jeppesen as the officer most fitted to combat corruption. As a consequence, he came under consideration as a possible replacement for Murphy who was then in charge of the CIB.

Hicks had powerful opponents in the Police Force, with whom he had been enemies for a long time. Before the CIU was formed by Whitrod, Hicks had been languishing as a prosecutor in the Children's Court, from which he was appointed to the CIU by Gulbransen. At about that time, Hicks said in evidence, he was approached by Murphy and asked to become one of the leading members of a corrupt group whom he named. He said that he refused, but that the approach confirmed his already strong suspicions about members of that group.

Hicks took part in building the case against Herbert in 1974, and helped to make the tape recordings of conversations between Herbert, his cohorts and Pitts. In the lead-up to that trial, attempts were made by Herbert's allies to discredit Hicks. While those attempts did not succeed then, they were later resurrected, and eventually to lead to the destruction of his career.

Shortly after his appointment, Lewis appointed Murphy head of the CIU, with access to its remaining files, and transferred Hicks to a new Internal Investigations Section. In June 1977, Hicks was transferred to Brisbane Mobile Patrols, at which point he surrendered in his own mind. He knew that he was beaten, and that Lewis would be Commissioner throughout his police service. He wished merely to serve out his time in the Police Force without further trouble, and he was still there, minding his own business, when others, apparently without reference to him, raised his name as the person to investigate the corruption in the Police Force.

On 29 March 1978, Lewis noted in his diary:

“Premier mentioned information from a few police re Supt. Murphy setting up Ministers. No massage parlours, rat pack back etc.”

On 4 April, 1978, Bjelke-Petersen's then press secretary, Callaghan, telephoned Lewis to inform him of complaints to the Premier.

Shortly before 8 o'clock the following morning, 5 April, a detective called Lewis to inform him of gossip to the effect that Hicks and two other inspectors were “knocking” Lewis. On the same day, Lewis saw Murphy and another officer “... re information given to Premier by unknown Police”.

Lewis was aware by then that Bjelke-Petersen was concerned about whether Murphy was a suitable person to remain in charge of the CIB, and that he had been told that Murphy was a member of the Australian Labor Party, which was not true. It was probably on 7 April that Lewis showed Bjelke-Petersen a statement exonerating Murphy from the potential disadvantages of ALP membership.

Later that day, Lewis saw Camm and learned that Hicks was being considered as head of the CIB in place of Murphy. Once he heard that, he sent Bjelke-Petersen a document relating to the CIU files which Hicks had acknowledged that he had destroyed at Whitrod's direction.

More was to follow.

During the lead up to Herbert's trial in 1976, a detective had approached the prostitute who gave evidence before this Commission under the pseudonym "Katherine James", who had had some contact with Hicks in his position as head of the CIU. "James" was offered money to sign a statement alleging that she had had sexual intercourse with Hicks. She refused, although it is quite possible that she pretended that she had useful information. In any event, she was undoubtedly correctly identified by those who used her to discredit Hicks as an enormously complex person who would act, maliciously if needed, to suit her own ends.

By April 1978, "James" was in prison, where she was visited in prison by police officers and asked again for a statement making allegations of sexual impropriety against Hicks. Initially, at least, she again refused.

Later in the month, after contact between police and senior prison officers, "James" was taken from the prison, and interviewed again at Police Headquarters by the then Deputy Commissioner. A statement was typed by Early. The Deputy Commissioner is shown as having witnessed her signature. He now says that while he cannot recall seeing "James" sign her name, he assumes that she must have done so. Nor can Early recollect actually seeing "James" sign the statement.

The taking of a female prisoner to Police Headquarters in the circumstances which existed was quite unprecedented. According to Lewis' diaries, a few days before the interview at Police Headquarters, he had spoken to the Deputy Comptroller-General of Prisons about the matter, but the person who held that office at the time denied that any such contact occurred.

On 30 May, Lewis told Bjelke-Petersen of the allegations against Hicks by a prostitute, presumably believing that such an allegation would have damned Hicks in Bjelke-Petersen's eyes. It is possible that he gave him a copy of a statement by "James", although it is more likely that no statement then had been signed.

A statement dated 27 April making allegations against Hicks and, on its face, signed by "James" was kept by Lewis in his office safe and a copy was kept among Bjelke-Petersen's personal papers in the Executive Building until it was found by this Inquiry. But there is doubt concerning whether it was signed by "James" on 27 April, or much later, perhaps in September 1978, or whether in fact James signed it at all. There is some evidence suggesting her signature was forged. Most likely, there was no signed statement prior to September, 1978, whether or not it was "James" who then signed the document.

Nevertheless, a rumour that "James" had made a statement against Hicks was abroad by late April. On 28 April, 1978 Hicks was told by a colleague that such a statement existed. Hicks seems to have closed his mind to what he heard, perhaps hoping that, if he ignored what he could not control, it would disappear. But, unknown to him, he was being associated in some minds with Jeppesen's efforts to have politicians act against corruption, and "James" statement was being used to denigrate him.

At least one other attempt was also made to obtain evidence against Hicks, possibly because of intransigence, initially by "James". A former colleague of Hicks, Senior Sergeant Mervyn Gordon Roberts, who has since died, told him that he had been asked for a statement alleging that, when they had served together in Nambour many years earlier, Hicks had accepted graft from s.p. bookmakers and allowed hotels to trade after hours.

Roberts told Hicks that he had refused to make such false allegations, but according to Lewis' diary, on 10 August 1978, Roberts signed such a statement and Lewis witnessed it and later showed it to Bjelke-Petersen. Lewis denies that he instigated the giving of the statement, saying that Roberts had approached him in June, and had at first been reluctant to put anything on paper but had later agreed to do so.

The effect of the evidence given by Lewis appears to be that, spontaneously, inexplicably, but fortuitously, two persons emerged in mid-1978 to make allegations against Hicks of "stale" misconduct in time to stop his appointment to Murphy's position.

On Monday, 4 September, 1978, Hicks was telephoned by Goleby who asked him to attend a meeting with Bjelke-Petersen. An arrangement was made for Hicks to speak with Bjelke-Petersen in a room at the Zebra Motel. According to Hicks, at that meeting Bjelke-Petersen said that as a result of speaking to Goleby and Marlin (whom Hicks does not know), he was concerned that Murphy was about to become involved in graft in connection with prostitution again, that he wanted the Licensing Branch, not the Criminal Investigation Branch, to police prostitution, that he wanted Jeppesen to stay in the Licensing Branch, and that he intended to remove Murphy from the CIB. Bjelke-Petersen asked Hicks' opinion of Jeppesen, and Hicks said that he thought that Jeppesen was honest.

Hicks was also asked whether he was willing to replace Murphy as head of the CIB. Hicks said that he was, but added that once Lewis found out what was proposed, allegations would be fabricated against Hicks and he would not be appointed; "they would finish up bringing up all the statements in the world to show I was the greatest villain in the world".

Camm arrived, and Bjelke-Petersen told Camm what he had decided and asked him to make the necessary arrangements. Camm refused, saying: "You put [Lewis] there, you make the arrangements. ... I didn't want to let Whitrod go in the first place."

It was arranged that Hicks would provide Bjelke-Petersen with written details appropriate for the transfers. Hicks did so on Thursday, 7 September, and Bjelke-Petersen said that it would be attended to in the following week. However, by 7 September, it was already too late.

On 6 September, "James" had been again brought from the prison to Police Headquarters and interviewed. From that point on, at least, there was a signed document containing allegations against Hicks, whether or not "James" signature was forged.

Lewis' diaries contain no mention of Hicks between 24 August and 22 September. However, his diary for 6 September has an entry: "... Saw Hon. Camm re officer promotions/ transfers; ...; having seen Premier; ... .

Hicks was finished. His name was never raised in Cabinet as a possible replacement for Murphy.

On 21 September, having been told by colleagues that "James" had made a statement which had been shown to Bjelke-Petersen, Hicks went to see "James" at the Female Division of the Brisbane Prison. He was accompanied at his request by a female police officer Lorelle Anne Saunders.

Saunders was to pay a very heavy price for becoming involved. She was later to be held in jail on remand on fabricated charges. Her former superior officer was the complainant in relation to the major charge against her which alleged that she had threatened and conspired to murder him. In the course of her trial, it was demonstrated beyond a shadow of a doubt that the principal witness against her, who produced a tape recording which purported to contain evidence against her, had fabricated the tape. The witness was subsequently charged with and convicted of perjury in relation to the evidence which he gave at her trial. Between the time when she was charged and the time she was exonerated, Saunders spent almost 10 months in prison, most of it in solitary confinement in order to ensure her physical safety from fellow prisoners.

"James" refused to speak to Hicks, but told Saunders that she was frightened. She admitted that her allegations against Hicks were false, but said that she had been told to make the allegations by police officers who wished Hicks "stopped" because he was "too honest". She had cooperated because she feared that her release would be delayed and that she would be subjected to further charges.

After he and Saunders visited "James", Hicks was immediately given a summary transfer to Rockhampton where he was greeted by the Regional Superintendent with a statement that Lewis had told him that he was "... sending up a trouble-maker". Hicks had not been given any chance to rebut "James'" statement, and no proper investigation had been carried out into her allegations.

In October 1981, Hicks was transferred to Nambour as the Officer in Charge. He heard from other police that, in Brisbane, "prostitution was rife", and that everything was "very open in Brisbane". He decided to retire. His retirement from the Police Force became effective in June 1982.

When asked in the course of his evidence about his involvement in the events surrounding Hicks and Jeppesen in 1978, Bjelke-Petersen denied that he had ever considered replacing Murphy with Hicks, but agreed that he had been given information by Lewis which caused him concern about Hicks, and also information from Goleby and Jeppesen which concerned him about the administration of the Force. However, he claimed he left all these matters to the Minister, Camm.

## 2.2.11 Herbert and Lewis

Between his arrest and acquittal in November, 1976, Herbert had contact with some of his police friends including Lewis and Murphy who attended a Herbert family wedding. Herbert also received the support and companionship of former police colleagues, with some of whom he had been involved in corruption. After his discharge, contact with former colleagues continued. Within weeks, he and Murphy discussed the preferred posting of one of their associates and Murphy passed the information on to Lewis within the first month of his becoming Commissioner. Later, there were further contacts, including the occasion in 1978 when Lewis consulted Herbert with respect to “moieties generally” before initiating the investigation which led to Jeppesen’s downfall.

By the time he was acquitted, Herbert had been unemployed for two years. During his trial he had claimed poverty and was granted legal aid, but he was not without resources. Following his trial, he collected a cache of corrupt money which an s.p. bookmaker had hidden for him and bought a house, intending to live on his police pension. He said in evidence that he had no intention at that time of returning to corruption, but “as it turned out, the opportunity did arise, and I took it”.

Herbert was approached by Geraldo Bellino, who conducted illegal gaming in Brisbane and desired advice on how he could avoid being “pinched”, and by Arthur Anthony Robinson, then owner of Austral Amusements and an operator of “in-line” and other entertainment machines. Robinson, who had operated a night club near the National Hotel and had given evidence before the National Hotel Royal Commission, knew many police officers, including Lewis and Murphy and some who had been involved in Licensing Branch corruption. Herbert and Robinson had met when Herbert was in the Licensing Branch.

Robinson suggested that Herbert work for one Jack Rooklyn of Sydney, who had been investigated by a Royal Commission into Allegations of Organized Crime in Clubs in New South Wales, which had been appointed in 1974 and was chaired by the Honourable Mr. Justice Moffitt of the New South Wales Supreme Court. The Moffitt Report contained findings adverse to the credibility of Rooklyn, who was the Australasian agent for the Chicago-based Bally Machine Company, which was said to have criminal connections and to be involved in operations in Australia which were likely to lead to corruption.

Robinson introduced Herbert to Rooklyn at Lennons Hotel, and in 1977, Herbert began work in Rooklyn’s Queensland in-line machine business, Queensland Automatics.

Herbert also resumed contact with Lane, a former Special Branch officer who was by then a Liberal backbencher and a member of the Justice Committee which had reviewed the granting of permits to in-line machines. Lane also knew Robinson and had been lobbied by him in the period leading up to the decision to allow in-line machines in clubs which was made in 1974 by the Coalition Government.

The permits under which in-line machines were allowed in clubs prohibited the payment of cash prizes, but it was common knowledge that the law was flouted virtually from the moment when the machines were first allowed.

Clubs around Queensland from 1974 to 1988 paid cash to players in breach of the law, but action was never taken by police (apart from one occasion in 1975 when police seized five machines), by the Justice Department (which granted the permits), or the Licensing Commission which licenced the clubs. In-line machines were a source of operating funds for the clubs and considerable profits for the suppliers or operators of the machines.

The machines were adjusted so they would only pay out a certain percentage of the money fed into them, There was fierce competition between the operators, who did their best to “steal” locations and clubs from each other, sometimes by bribing the managers of clubs.

The machines were also a source of revenue for the Government. The Justice Department charged permit fees for in-line machines which were ten times as expensive as those for other entertainment machines. The official explanation for that course was that in-line machines were “adult” machines, which were more complex and required more skill.



Early in 1978 Herbert resigned from Queensland Automatics, and from early 1978 to early 1981, when he returned to work for Queensland Automatics for some months, he worked for Robinson at Austral Amusements which was based in Albert Street.

According to Herbert, Robinson paid Lane money every month in relation to his in-line operations. Herbert gave evidence that, on three occasions, he personally delivered an envelope to Lane on Robinson's behalf, that each envelope felt as though it contained money, and on one occasion Herbert saw Robinson putting money into an envelope which Herbert later delivered to Lane. Lane denied on oath that he was involved in corruption.

By the time when he transferred his employment from Rooklyn to Robinson, there were meetings between Lewis and Herbert which continued and increased. They met at parties held by mutual friends, and Lewis visited Herbert at home.

According to Herbert, he and Lewis spoke about the in-line machines, and Herbert, who was aware that police had seized some in-line machines in 1975, discussed the payment of money for protection with Lewis.

Herbert gave evidence that he arranged a meeting between Lewis and Robinson, and that it was agreed that \$2,000 a month would be paid as a bribe to Lewis. Herbert also said that he and Lewis agreed that Lewis would pay \$500 back to Herbert. Herbert understood from Robinson that he had agreed with Rooklyn that Rooklyn, who had the larger business, would pay \$1,500 of the \$2,000 to be paid each month to Lewis and that Robinson would pay the balance. Thereafter, according to Herbert, he received money each month from Robinson and made payments to Lewis.

Lewis denied Herbert's allegations and so did Robinson. Rooklyn's accountant for Queensland Automatics, John Henry Garde, admitted making payments to Herbert for protection, although he gave no direct evidence that Herbert paid any police officer.

Herbert said that he and Lewis met for the payments at locations arranged by use of a code.

During 1980 and 1981, Lewis kept two pocket books. In each he recorded a code, similar in a number of respects to the one described by Herbert. The code includes references to places, to two senior officers and to Rooklyn and Robinson. The pocket books contained the phone number of Robinson's business, where Herbert then worked.

Lewis' explanation of the code to this Inquiry seemed, overall, to contend that Herbert was his informant, and that the code was intended for use between them.

Herbert also gave evidence that Rooklyn had become concerned by the end of 1979 that the Government might introduce poker machines, that Herbert arranged three meetings between Lewis and Rooklyn in private rooms at the Crest Hotel, which Herbert booked, and that Rooklyn agreed to pay Lewis \$25,000 for an adverse report on poker machines. A waiter who was then employed at the Crest gave evidence to this Inquiry that he served wine to Lewis, Rooklyn and another man in a penthouse suite at the Crest Hotel on an occasion which corresponded with one of the meetings asserted by Herbert, which he said was held in mid-1980.

In May, 1980, Cabinet appointed a committee chaired by a senior police officer to examine whether or not poker machines should be introduced. On 7 June, according to Lewis' diary, Lewis read the Moffitt Report.

On 11 July, 1980 Lewis forwarded, under a covering letter, the report of the inter-departmental committee on poker machines to the Police Minister. The committee gave a number of reasons why poker machines should not be introduced in Queensland, and Lewis supported a proposal to establish research teams in each State to investigate and report on the incidence and effects of gambling.

According to Herbert, Lewis gave him a report which Herbert showed to Rooklyn, that Lewis and Rooklyn subsequently again met at the Crest Hotel, and that in, December that year, Lewis handed \$9,000 to Herbert to be shared among Herbert and two Queensland Automatics employees.

Once again, Lewis denied Herbert's allegations.

He also denied that he had given deliberately false evidence with respect to his relationship with Rooklyn to the Royal Commission of Inquiry into Drugs appointed in 1977 under the chairmanship of the Honourable Mr. Justice Edward Stratten Williams of the Supreme Court of Queensland.

On 4 February 1980 Lewis gave sworn evidence before that Royal Commission in the course of which he stated:

“I have heard the name Jack Rooklyns (sic), who I am told has been said to be the person behind the introduction of poker machines. I think he has been named for many, many years. I think I can remember that from a poker machine inquiry in New South Wales. I have never had anything to do with him in any way.”

Lewis' appointment book for 3 January, 1978 records Rooklyn's address and telephone number, and Lewis' diary notes that, on 20 March 1978, Robinson “introduced” Rooklyn to Lewis at his office, where they discussed prostitution.

On 28 November 1978, according to his diaries, Lewis again spoke to Rooklyn about prostitution. By that time, at least, Lewis knew that Rooklyn had a bad reputation, according to Lewis' own evidence.

Whatever the position otherwise, by the late 1970's Lewis and Herbert were close friends and in regular contact, and their relationship continued up until the commencement of this Inquiry.

Throughout the period, Herbert was deeply enmeshed in the corruption of members of the Police Force of which Lewis was Commissioner, including senior members of the Licensing Branch which was effectively responsible for the policing of vice.

## **2.3 VICE AND OTHER POLICE MATTERS**

### **2.3.1 Police Misconduct in the 1980's**

In the last decade, vice in Brisbane increased and became more organized, organized syndicates plainly became involved, some with members with serious criminal records, and activities were expanded in other areas of criminality, including illegal drugs, violence, extortion and arson. Various ethnic communities became involved through the misconduct of some of their members. Police corruption grew with the additional funds available for bribery.

Much the same pattern developed outside Brisbane, especially in tourist areas such as the Gold Coast, where vice, drugs and police corruption are all grave social problems, with some of the same organized criminal syndicates and their associates involved.

The Licensing Branch has been a major centre of corruption and Herbert has been a major organizer of the police involved. But police misconduct has occurred in conjunction with vice in many localities without any involvement of either the Licensing Branch or Herbert, and serious misconduct has also taken place in relation to numerous other offences including, for example, motor vehicle thefts.

Not all police officers stationed in the sections of the Police Force or locations where there has been widespread misconduct have participated, but most, if not all, have been aware of what was occurring and have acquiesced for one reason or another, some less culpably than others.

### **2.3.2 Dwyer's Licensing Branch**

By late February 1979, Inspector Ross Rigney had replaced Jeppesen as officer in charge of the Licensing Branch. Many of the major s.p. bookmakers then operated from Tweed Heads in New South Wales, using agents in Queensland clubs and hotels to collect and settle bets with smaller punters. The exodus to Tweed Heads was probably due, in large part, to fear of imprisonment which at that time followed a third conviction for an s.p. betting offence.

Many of the s.p. bookmakers operating from Tweed Heads were effectively identified in Parliament in March 1979 by Wright, who tabled a document describing syndicates of s.p. bookmakers and alleging that s.p. bookmakers were returning to Queensland, that one, Saunders (although he was not identified by his full name), was operating in Brisbane and on the Gold Coast, and that the Superintendent of the Gold Coast knew that Saunders was operating there. Wright also alleged that police protection systems were being put in place and that the Licensing Branch would be selectively staffed.

Two Licensing Branch officers prepared a report on Wright's allegations. The report was sent to Lewis on 20 March, 1979 and it identified 14 groups of s.p. bookmakers describing them as the "inner circle".

Those two officers were later transferred out of the Licensing Branch, one in June 1979, the other in September 1979, as a result of the moiety investigation.

By September, 1979, Jeppesen, the Officer in Charge, and almost half of the Licensing Branch had been transferred. Appointments to the Branch in that year included two now notoriously corrupt police officers, Sergeant Harry Reginald Burgess who was followed by Parker. Herbert and Parker had served together in the Licensing Branch in the early days of the "first joke" in the years before the National Hotel Royal Commission.

Herbert had hoped that, with Jeppesen's removal, the s.p. protection system would begin again, but Rigney proved a disappointment. Rigney and one of his officers were called before an assistant commissioner and ordered to inform him in advance of the time and place of raids and the sources of Licensing Branch information, but the instruction was not obeyed. Raids on s.p. bookmakers continued.

In December 1979, Rigney learned he was to be transferred to Longreach without promotion. He went on leave and was replaced for a short period by an acting officer in charge, who took charge until 21 January, 1980, when another now notoriously corrupt police officer, Dwyer, was transferred to the Licensing Branch. Dwyer and Parker had previously served together in Mackay, and Dwyer was one of those included in the list of "friends" which Lewis had in the period leading up to his replacement of Whitrod.

When Dwyer arrived at the Licensing Branch, there was a problem on hand. An s.p. bookmaker with whom Herbert was associated had been arrested on Saturday, 29 December, 1979. The case against him was very strong, and included the evidence of Licensing Branch and Telecom personnel, numerous telephones, notes of bets, and written admissions in a police notebook which had been initialled by the solicitor representing the bookmaker.

Herbert contacted Dwyer, who prepared a report advising that the prosecution of the s.p. bookmaker should not proceed because, he said, there was insufficient evidence. More senior police approved his recommendation.

The charges were dismissed on 28 April, 1980, when the police prosecutor offered no evidence. Subsequently, Herbert made a payment to Dwyer, and Parker, who had assisted him, was also rewarded.

Herbert gave Dwyer the telephone numbers of some s.p. bookmakers and asked to be notified if any of those numbers came to the attention of the Licensing Branch. Others were subsequently added, including some s.p. bookmakers who moved back from Tweed Heads to Queensland.

In 1980, Herbert said that he received less than \$20,000 in bribes from s.p. bookmakers, which he shared with Dwyer and Parker. By 1982, he was receiving protection payments of between \$200 and \$1,000 per month from numerous bookmakers all over Queensland. Some had been associated with the first joke, and some were introduced to Herbert by another former police officer, who also participated in this new wave of corruption.

Meanwhile, from early in 1980 when Dwyer's willingness to co-operate was established, Herbert was able to expand the range of activities for which protection was available.

Initially, he made arrangements for bribes to be paid in relation to illegal gaming operations, which earned him about \$32,000 in 1980.

Next, in mid-1981, the first steps were taken to organize payments in relation to prostitution,

Hector Brandon Hapeta and his defacto wife Ann Marie Tilley owned a number of brothels and at least one escort agency, and Tilley worked both as a prostitute and a receptionist.

As such, she was occasionally breached for lesser offences, leading, in April, 1981, to a short sentence of imprisonment. Hapeta fled from Queensland.

Burgess arranged for Tilley to come and see Dwyer when she was released. Soon afterwards, one of Hapeta's associates, who has since died, arranged an interview with Dwyer through another police officer. Hapeta's safe return to Queensland was negotiated in return for a bribe to Dwyer.

It was not long afterwards that Herbert became involved, and first Hapeta and Tilley and then others began paying large sums regularly for the protection of their brothels and other prostitution activities.

Dwyer, Parker, Burgess and other Licensing Branch police officers were all paid regularly, and the amount received from graft expanded constantly as more persons and premises were extended protection.

Dwyer estimated that he received, in all, about \$30,000.00 during his two to three years in the Licensing Branch. It may confidently be accepted that he received no less. He said that he gradually spent it on everyday expenses, including materials for his boat.

In his evidence to this Inquiry, Dwyer matter-of-factly accepted corruption and asserted a belief that most people are willing to participate, particularly "... if the boss is in it". He exhibited no remorse except at his own predicament, and had no interest in attempting to clear up or in helping to explain what had occurred. He quite plainly withheld information, including details which implicated others. Lies and actions to exclude police involved in misconduct from detection and punishment were an integral part of his life.

When Dwyer retired from the Police Force on 17 September 1982, he was replaced as the Officer in Charge of the Licensing Branch by Parker, who had previously been his second-in-command.

### **2.3.3 The Licensing Branch After Dwyer**

At least from the time when Dwyer assumed control of the Licensing Branch early in 1980, it was riddled with corruption.

Although not all who were posted there engaged in misconduct, members of the Licensing Branch toured Brisbane's night-life, socializing and drinking in the brothels, nightclubs, and gaming establishments which were supposedly so difficult to enter, noting and participating in the various activities which they observed, charging prostitutes and sometimes receptionists (usually with their co-operation) on a rotational basis, occasionally prosecuting prostitutes from escort agencies or their drivers and underlings engaged in unlicensed sales of liquor. Even less frequently they raided illegal gambling premises, when, once again, less important offenders, sometimes nominated and even paid to be the subject of charges, were usually proceeded against. More energetic treatment was reserved for those prostitutes and other offenders who were out of favour with individuals or groups within the Licensing Branch, and those who were not paying protection and whose competition was unwelcome to those who were.

Not surprisingly, even most of those stationed at the Licensing Branch who did not engage in misconduct lacked interest in and commitment to their work. They were enervated not only by the corruption and incompetence with which they were surrounded, but also by the lack of staff and resources and difficulties of enforcement of the current law, both of which factors were exaggerated and exploited whenever any question of Licensing Branch performance was raised.

At the same time, criticism was also able to be deflected by numerous minor prosecutions, many by arrangement, and the curious approach to criminal statistics adopted by the Police Force which provided a misleading appearance of activity and efficiency. To take one example, departmental Annual Reports claimed a 100% "clear-up" rate in respect of prostitution, which might reasonably be taken to reflect credibility on the Licensing Branch and its personnel.

Various other fictions and half-truths have also been routinely used, and were repeated in evidence to this Inquiry; for example, that illegal gaming premises were (or appeared to be) ethnic clubs or coffee-shops, and that drugs were not prevalent in premises which came to Licensing Branch attention.

It was obviously desirable to those who were being paid for protection that their clients were not charged by other police. However unlikely, they probably also did not want to take the chance that they themselves would be detected and prosecuted.

The Criminal Intelligence Section, as the CIU was called in 1977 when Murphy was placed in charge of it, initially attended brothels, giving as its reason that it was engaged in seeking "criminal intelligence". It is commonly claimed that such premises are a fertile source of information, although the claims are considerably over-stated.

In 1978, at the time when Bjelke-Petersen was receiving information adverse to Murphy, who was then in charge of the CIB, Lewis told Jeppesen of a direction that only the Licensing Branch was to police prostitution.

Thereafter, this monopoly was jealously guarded, and was confirmed by Lewis in January, 1985 when other police complained that the overall fight against crime was hampered by a policy which prevented Drug Squad, BCI and CIB officers, particularly the Consorting Squad, from attending brothels.

Lewis discussed the problem with Redmond, then Assistant Commissioner, (Operations). Redmond had been promoted to that post in October 1982, and as such had responsibility for the Licensing Branch. After advice from Parker, then head of the Licensing Branch, Lewis and Redmond decided that policing of "the 14 massage parlours" in the Brisbane metropolitan area should remain the responsibility of the Licensing Branch. Redmond's opinion, with which Lewis agreed, was that:

"Should we allow police from other establishments to enter the parlours in a policing role, I am sure that we are only inviting trouble insofar as allegations of graft, standoff tactics of the girls operating the parlours and other obvious reasons."

The discussion at that time was premised upon the continued existence of brothels rather than any attempt to shut them down, and it is plain that that was Police Department policy. Evidence was given to this Inquiry that it was impossible to eliminate the brothels which existed—although there were successful closures over the years of some which did not pay protection—that brothels were socially desirable (which may be correct), that it was better to leave brothels at known locations than to close them down and have to find where they reopened, and that it was not only the Police Department but the Government which endorsed a policy of "containment and control".

The evidence in favour of the last proposition was extremely weak, particularly since the Government was consistently misled by the information and advice with which it was provided.

On the other hand, by the mid-1980's vice was openly flourishing, well-publicised, and the subject of frequent comment. However, it was politically expedient to support the Police Force, in accordance with custom, and to adopt the police line. This was especially so since any acknowledgment of deficiencies in the Police Force would be seen to reflect on the Government's public administration, the more so because of the controversial circumstances in which Lewis had been appointed and the public perception of his relationship with the Government, especially Bjelke-Petersen.

The Government's unwillingness to listen to criticism of the Police Force and its constant support for police in all circumstances, accompanied by often trenchant attacks on police critics, its disinterest in criminal justice, its ineffective systems for dealing with complex social and legal issues, and its lack of objective advice on such matters all contributed to the situation which developed and led, ultimately, to the setting up of this Inquiry.

By then, the graft being paid to Herbert alone, a considerable part of which he was distributing to police officers, was vast.

He acknowledged that, early in 1987, he was receiving \$23,000 per month from the Hapeta-Tilley group: Tilley put the figure at \$38,000 per month.

While it is easy to see why Herbert might wish to exaggerate what he paid out or to understate his receipts, it is not easy to see why he would inflate them. The other syndicate from which he admitted receiving huge payments for the protection of illegal gaming, prostitution and illegal liquor sales denied his allegations. If Herbert is correct, they were paying him a further \$17,000 per month.

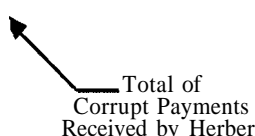
At that time, his total monthly receipts from all sources, including s.p. bookmakers, was between \$55,000 and \$60,000: if Tilley is correct, that figure needs to be increased by \$15,000 per month.

Overall, according to Herbert, he received over \$3,000,000 in bribes up until August, 1987, of which he passed on all but \$1,151,600. If anything, his figures were low. Apart from the difference between his evidence and Tilley's, his estimates were conservative where his recollection was uncertain. Further, sums which were collected from s.p. bookmakers by a former police officer after Herbert's flight from Australia in June 1987 and amounts remitted from the Gold Coast for various protected activities are not included in the amounts stated, as Herbert's understanding or knowledge of those payments was not clear.

Herbert's receipts according to his evidence are summarized in Figure 2.1 below:

### CORRUPT PAYMENTS TO AND FROM HERBERT 1979-87

Year	In-Line \$	A Club \$	S.P. \$	Gaming \$	Pros. \$	Pool \$	Total of Payments Received Per Year \$	Amount Retained Per Year \$	Amount Disbursed Per Year \$
1979	24,000	Nil	Nil	Nil	Nil	Nil	24,000	6,000	18,000
1980	24,000	1,400	18,400	32,000	Nil	Nil	75,800	16,000	59,800
1981	24,000	8,400	28,200	49,250	19,500	Nil	129,350	35,050	94,300
1982	24,000	8,400	1,800 Became Part of Pool	5,250	3,900	246,000	289,350	78,800	210,550
1983	18,750	8,400	Part of Pool	Part of Pool	Part of Pool	319,000	346,150	116,150	230,000
1984	15,000	8,400	Part of Pool	Part of Pool	Part of Pool	520,000	543,400	167,400	376,000
1985	15,000	8,400	Part of Pool	Part of Pool	Part of Pool	627,300	650,700	299,400	351,300
1986	15,000	8,400	Part of Pool	Part of Pool + 4,500	Part of Pool	659,600	687,500	299,400	388,100
1987	8,750	4,900	51,500	Part of Pool + 1,000	10,000	219,700	295,850	133,400	162,450
<b>Total of Payments Received Per Category:</b>	168,500	56,700	99,900	92,000	33,400	2,591,600	<b>3,042,100</b> <del>3,042,100</del>	<b>1,151,600</b> <del>1,151,600</del>	<b>1,890,500</b> <del>1,890,500</del>
Amount Retained Per Category <sup>1</sup>	93,500	56,700	36,150	12,750	10,500	942,000	1,151,600		
Amount Disbursed Per Category	75,000	Nil	63,750	79,250	22,900	1,649,600	1,890,500		


  
 Total of  
 Corrupt Payments  
 Received by Herbert

**FIGURE 2.1**

### 2.3.4 The Sturgess Inquiry

By the end of 1984, police protection of prostitution was well established.

In December, 1984, media allegations of male prostitution into which at least one vice syndicate had expanded led to the Government appointing Sturgess Q.C., Director of Prosecutions to conduct an inquiry. Two police inspectors seconded to assist him were required to report regularly to their superiors.

On 28 November, 1985, Sturgess handed his report to the then Minister for Justice and Attorney-General, the Hon. Neville John Harper M.L.A., who tabled it in Parliament on 18 February, 1986.

In his report, Sturgess referred to five “prominent” organizers of Queensland prostitution, to the immunity from prosecution apparently enjoyed by the main offenders, and to the fact that the Lucas Inquiry’s advice on staffing of the Licensing Branch had not been implemented. Some of the operators of brothels were identified by a code which was explained in an annexure to the Report. Major participants in the web of corruption associated with Herbert and the Licensing Branch which has now been exposed were named.

Lewis said in evidence before this Inquiry that he did not read Sturgess’ report, and he and other senior officers said that they did not request or receive the annexure to it. Responses within the Police Department were prepared by the Licensing Branch and also Parker when he became Assistant Commissioner responsible for its operations.

Sturgess was criticized because his figures on prostitution differed from those of the Licensing Branch. Claims were again advanced that the legislation was inadequate and Sturgess’ comments about Licensing Branch staffing, which reflected the Lucas Report almost a decade earlier, were thought to have partial validity although “... an in depth study of the workload and staffing situation at the Licensing Branch ...” was recommended. Various reports were sent to the then Minister for Police, Gunn, who appears to have been attempting to pursue the matters raised by Sturgess.

In April, 1986, in a media interview, the then inspector of the Licensing Branch (whom Sturgess had scathingly criticized) defended the Branch, which he said was understaffed, and stated that all that they could do was to “contain and control” prostitution. That may have been the first time that phrase was used publicly, although later it became a regular Police Department refrain.

In a report dated 29 May, 1986, to Lewis, the Deputy Commissioner rejected the Licensing Branch’s explanation and highlighted certain criticisms which had been correctly made by Sturgess. Directions were given to the Licensing Branch by Redmond, to whom it was then answerable as the Assistant Commissioner (Operations).

Another report was received from the Licensing Branch, again defending its position and blaming problems outside its control for the situation. By then, responsibility for the Licensing Branch had been shifted from Redmond to Parker, the Assistant Commissioner (Crime and Services).

Parker was also responsible for the Bureau of Criminal Intelligence which was instructed to prepare a report on Hapeta, one of the major brothel operators correctly identified by Sturgess.

In August, 1986, the Police Department set up a task force to conduct the aptly named “Operation Claytons” to close down the more obvious illegal gaming premises, which, by the time the task force arrived, had shifted premises.

When the BCI report was received after a period of months, it described the relationship between Hapeta and Tilley, their pseudonyms, business addresses, criminal records and criminal contacts. It was sent to the Licensing Branch, which again responded by reporting on what had been done in response to the Sturgess Report, and a further discussion of the difficulties involved in the policing of prostitution.

Little progress was being made. Voluminous documentation was being generated and, at the same time, the Police Department was pursuing one of its favourite activities, the preparation and promotion of a Summary Offences Bill which had been on the agenda for a number of years.

### 2.3.5 The Moonlight State

In January 1987, articles in the "Courier Mail" newspaper suggested that policing of gaming and prostitution establishments was not efficient and that there were numerous brothels operated by two syndicates, including the Hapeta-Tilley group.

By then Gunn was the Minister for Police and he called for a report. The report which he received did not incorporate the information contained in the BCI report of December 1986 and rejected allegations that there were two syndicates involved in prostitution in Brisbane. There were the usual denials, claims of difficulties, and protestations that everything possible was being done.

Quite possibly, the matter would have rested there. Previous media exposes and Ministers' inquiries had been adeptly handled over a period of years.

However, personnel from the Australian Broadcasting Corporation were researching material for the "Four Corners" programme, and their presence in Brisbane caused concern within the senior echelons of the Police Force. Surveillance was undertaken, and reports were obtained, including a report on an interview between the journalist, Masters, and a former police officer.

There was no suggestion at the time of any interest in activities such as s.p. bookmaking or in-line machines. Media attention was primarily confined to prostitution and illegal gaming, especially in Fortitude Valley. Some additional caution was exercised by those involved in prostitution and illegal gaming, but there was no panic.

In March 1987, cameramen were observed filming Herbert's residence at 29 Jordan Terrace, Bowen Hills. At that point, concern increased.

There was further concern in April 1987, although matters were proceeding substantially as before.

In that month, a Gaming Squad was set up after widespread publicity had been given to illegal gaming. It achieved nothing and was disbanded after a short period. The lack of success of the Gaming Squad and "Operation Claytons" and the associated expense were argued by the Licensing Branch to demonstrate the wisdom of its approach.

In the same month, Dickie wrote a further article in the "Courier Mail" which was derogatory of Licensing Branch efforts to police prostitution in general and of Parker in particular. Another tactic was employed; a request for the sources of Dickie's information.

By then, the pace was quickening.

In his report, Sturgess had described the inspector who was in charge of the Licensing Branch as lazy, inefficient, and probably corrupt. On 19 April, almost 18 months after Sturgess had reported, the inspector was transferred. The posting selected for him was the Internal Investigations Section, the Branch responsible for investigation of police misconduct.

On 23 April, the "Courier Mail" submitted a series of awkward questions to Parker.

On the same day, Lewis and Parker consulted the solicitor for Lewis, seeking advice in relation to the article which had been published in the "Courier Mail" on 18 April. A few days later, Parker issued a writ for defamation, intending that some of the issues raised by the questions could be avoided on the basis that they were sub judice.

However, Gunn had also received the questions, and, after he had been pressed for answers, he directed that they be answered.

As usual, false and deceptive answers, with one or two barbs aimed at the intelligence and bona fides of the interrogator, were provided. The "Courier Mail" reported early in May that the Police Department rejected claims that organized crime syndicates ran most brothels and illegal casinos in Brisbane.



Early in May, the Australian Federal Police provided to the Queensland Police Force a copy of tape-recordings which one of the A.B.C. journalists had made of discussions with one John Anthony Patrick Stopford. The statement by Stopford contained serious allegations, which neither he nor the journalist intended be passed on to Queensland Police. Parker obtained a copy of the tape-recording and an unsuccessful attempt was made to find Stopford.

On 11 May, 1987, the A.B.C. "Four Corners" programme telecast the "Moonlight State". At the time, Gunn was in charge of the Government while Bjelke-Petersen was engaged on a campaign aimed at his election to the Commonwealth Parliament at the next available opportunity.

There was immediate public pressure for an inquiry, which was met by conventional police responses.

Stopford, who had appeared on the programme and made allegations, had a background which made him vulnerable to pressure. Lewis and Parker told Bjelke-Petersen and Gunn of a suggestion that Stopford had been intimidated into making false allegations against police.

No expense was spared in an attempt to obtain a statement from Stopford to that effect. On the day after the "Moonlight State" was telecast, police went to Stopford's residence on Stradbroke Island by helicopter, but did not find him. His solicitor contacted police and offered to attend with Stopford to tell what he knew. The offer was not accepted.

On the following day, Gunn announced that an inquiry would be held.

Less than a week later, Herbert sold his house to friends for less than its full value.

During that period, there were numerous meetings and contacts between those involved in the corruption, and attempts were made to reorganize the system to operate without Herbert's close involvement. Discussions took place concerning what illegal operations could safely continue, what payments would be made, how assets could be accounted for if explanations were required, who might be called to give evidence, what would be said, and what denials would be advanced. Explanations consistent with innocence were sought in relation to matters which could not be denied. Advice was given to those from whom the graft was being received. For example, although Gunn had ordered that the police close the brothels, the senior sergeant of the Licensing Branch, Noel Thomas Kelly, advised Tilley how her brothels could continue to operate.

Kelly was also appointed as the collector for prostitution graft. There was no threat to the s.p. bookmakers in what had occurred, and it was intended that their operations and protection payments should continue as previously. Herbert introduced a former police officer to some of them to carry out the collections on his behalf.

### **2.3.6 The appointment of this Inquiry and some Subsequent Events**

The Order in Council by which this Commission was constituted was published on 26 May, 1987. At that time, its terms of reference were limited to the period which commenced on 1 June 1982.

While steps were being taken to organize the Commission and consolidate the commitments which had been obtained from Gunn, others were also active.

At Lane's suggestion, Lewis drove to Bjelke-Petersen's home at Kingaroy to speak to him. However, Bjelke-Petersen was committed to his electioneering, and Gunn was in control of the Queensland Government.

On 13 June, 1987, Herbert flew to Hamilton Island where, coincidentally he said, he encountered Rooklyn who advised him to leave Australia.

Herbert cut short his vacation and returned to Brisbane to complete arrangements for the collection and payment of graft in his absence. He left Brisbane on 19 June, 1987, and flew to Sydney. On the following day, he left Australia. Within a week, on 24 June, 1987, the terms of reference of this Inquiry were extended to encompass matters back to the beginning of 1977. Before he left Herbert had seen his solicitor, but denied that had anything to do with the extension to the terms of reference.

On 28 August, 1987, Burgess admitted corruption, and, on 31 August, after he had been granted conditional immunity from prosecution, he gave evidence at the public sittings of this Inquiry.

On 10 September, 1987, Lewis phoned Lyons and that night he spoke to Edington.

On 11 September, 1987, Herbert flew to Singapore and met his son, an airline steward. There he read the transcript of Burgess' evidence. He then returned to England.

On the same day, Friday, 11 September, Parker's personal assistant called to see Parker and learned that he had decided to confess his involvement in corruption and seek an indemnity.

On the following morning, Lewis had several telephone calls with the solicitors from the firm which was then representing him and Parker and other present and former senior police officers of the rank of Assistant Commissioner and above.

By Sunday morning, 13 September, Early had learned that there were serious problems. An officer of the Queensland Police Union of Employees rang Early, told him that Parker had been interviewed by this Commission, and expressed the opinion that, if Parker gave evidence, other senior police and members of the Government political party would be implicated. Early contacted Parker's personal assistant and they both went to see Parker's wife. They then went to see Lewis at home.

Lewis was told that Parker had confessed or was about to confess to corruption.

That evening, the members of Lewis' family met at his home. Later, Lewis went to Lane's home and they discussed the Inquiry.

On 15 September, 1987, Murphy attended at Police Headquarters and, on the direction of Lewis, was given access to the "Brifman Suicide File".

On the following day, Lewis' son instructed a firm of solicitors to prepare documentation for Lewis to transfer his interest in the home to his wife.

Parker resigned on the same day and, on the following day, on 17 September, it was announced publicly that this Commission had taken evidence from Parker in which he had admitted to corruption.

On 20 September, Lewis signed a contract for the sale of his half interest in their home to his wife for the sum of \$175,000. That figure was in accordance with a valuation hastily obtained, which valued the property at \$350,000, an amount significantly less than the cost of building the home which had recently been completed. It seems likely that the value of the property, including the land, was very substantially more.

The transfer of the property was signed at the same time as the contract of sale, and Lewis also contemporaneously signed a document whereby he forgave the indebtedness of \$175,000 to which his wife was subject as a result of the transaction.

Lewis' explanation for what occurred was that he had not been well, and that, at the family gathering on Sunday, 13 September, it had been decided that their home should be transferred to his wife.

On the day after the documentation was signed, it was provided to the solicitors who had been retained by Lewis' son with instructions that the transaction be completed urgently.

On the same day, four days after the announcement of Parker's admission, Gunn directed that Lewis stand down as Commissioner of Police.

On the following day, 22 September, the contract and transfer between Lewis and his wife were stamped and the transfer was produced to the Registrar of Titles for registration.

In November 1987, first Dwyer and then Parker, each of whom had received a conditional indemnity, gave evidence at public sittings of this Inquiry admitting to corruption.

Meanwhile, those involved in the web of crime and corruption continued to meet, discussing the Inquiry and public evidence, comparing the versions of events or associations each proposed to give, sending messages to Herbert, and telephoning him.

While he was in England, Herbert communicated regularly with corrupt police officers, s.p. bookmakers, and others involved in vice, received messages, money, confidential police documents, copies of statements given to this Commission, and transcripts of the evidence at public sittings of this Inquiry.

He was also kept apprised of the campaign of disinformation which was being conducted locally, which was aimed at discrediting the Inquiry and those assisting or co-operating with it and promoting those who had been involved in or suspected of misconduct and their interests. Some were even able to profit out of what was occurring.

That process, which is a standard political and police technique, has continued since, and will doubtless persist after this Report.

Herbert was in hiding, but was subsequently discovered and, on 9 February, 1988, he and his wife were arrested in London.

In a complex operation involving this Commission and the Commonwealth and Queensland Governments he was returned to Australia on 17 March, 1988.

Some months later, he received a conditional indemnity and gave evidence at public sittings of this Inquiry.

Some of his evidence has already been referred to, including allegations he made that Lewis had been involved in corruption.

According to Herbert, he paid Lewis a total of \$611,650 between 1979 and April 1987 by way of bribes in connection with the protection of in-line machines and other illegal activities.

In his evidence, Lewis denied Herbert's allegations, and gave explanations for his financial position which included claims of unusual success as a punter and gifts of cash from his wife's mother, who was very old and infirm at the time when Lewis gave evidence.

Lewis also told this Inquiry that he did not at any time volunteer details of his knowledge of Herbert or his relationship with him because he did not think that he had any information that would be of interest to this Commission.

### **2.3.7 S.P. Bookmaking**

Obviously enough, those who were able to pay graft in huge amounts must have been making very considerable profits, which necessarily means that the services which they were providing must have widespread support. S.p. bookmaking provides a convenient example.

There were undoubtedly a large number of s.p. bookmakers paying protection through Herbert. He named thirty-two. Many had earlier been in the first joke in the 1960's and 1970's. One had operated in a provincial centre for 13 years and had settled with his clients at the same hotel at the same time on the same day each week for 11 years. Many s.p. bookmakers were recorded in Licensing Branch records. Few had been questioned or charged since the beginning of 1980. Where action had been taken against any who had commenced to take protection, it was a result of a mistake or a dispute.

Although it is disadvantaged by the activities of s.p. bookmakers, they are tolerated within the racing industry.

There is widespread knowledge of s.p. operations in that industry and a number of those who engage in s.p. bookmaking are also registered bookmakers or are otherwise involved in the industry. Registered bookmakers lay off bets with s.p. bookmakers, and allow s.p. bookmakers to lay off bets with them. Vast sums of money pass back and forth.

Despite its extent and significance, including the losses which it occasions, s.p. bookmaking has also been passively tolerated by the Government.

As early as 1980, there were proposals to increase the penalties for s.p. bookmaking in the Racing and Betting Act 1954, which at that time included mandatory imprisonment for a third conviction. Amending legislation was passed on 6 June, 1980, but was not proclaimed and did not come into effect.

Initially, at least, further amendments to the Racing and Betting Act were proposed to provide for increased minimum fines with prison as an alternative. However, in the legislation which was enacted on 26 March, 1981, there were provisions for minimum fines but any reference to imprisonment had been removed. The machinery provided to enable the collection of any fines which were ordered to be paid required them to be pursued as civil debts. The deficiencies have not yet been remedied.

The few convictions for s.p. bookmaking which have resulted in recent years have had little impact. Most have been against minor offenders, including some without assets. Generally, fines have not been paid or compulsorily collected. For example, there were five convictions in 1986, but only one fine had been paid by the end of 1988.

The loss of the revenue from fines which are not collected is probably the least significant aspect of s.p. bookmaking. Much greater losses are sustained by both the public revenue and the racing industry.

The Racing and Betting Act 1980-1989 imposes taxes and club levies on registered bookmakers which are collected by the Commissioner of Stamp Duties based on each bookmaker's turnover. The sums collected as club levies are returned to the clubs where the bookmakers field. Obviously, the amounts collected would be considerably increased if bets placed with s.p. bookmakers were placed with registered bookmakers.

Finally, there are enormous losses of revenue to the Totalisator Administration Board. In 1980, the estimate was \$20,000,000, which had increased to \$200 million, according to T.A.B. estimates by early 1989.

Less obvious, but more sinister, is the association between s.p. bookmaking and organized crime.

In the first instance, the illegal activity itself is highly organized: many s.p. bookmakers are associated with syndicates which operate throughout Australia.

Plainly, the huge profits which are generated are available for investment in other illegal activities. Even if they are not used for those purposes, they are used widely to corrupt public officials, including police.

That conduct is a manifestation of the much deeper disrespect which is held by many s.p. bookmakers for law and authority. Before the Inquiry, there was a clear demonstration of orchestrated silence and perjury, and, in two instances, persistent contempt.

### **2.3.8 Professional Assistance**

Those earning huge profits from illegal activities need more than the protection of corrupt police. Their income (much of which is cash), to the extent to which it is not used in operating and expanding illegal enterprises, has to be able to be used and invested. Assets which are not hidden and lifestyles which are enjoyed must be able to be explained.

Although the issue was not pursued comprehensively before this Inquiry, it is plain that a wide variety of persons and organizations engaged in legitimate activities are prepared to assist those who are known or suspected of involvement in illegal activities. Those who were shown to have assisted included solicitors, accountants, officers of banks and financial institutions, and real estate agents. Numerous others were quite willing to take part in unorthodox or suspicious transactions.

False names were knowingly permitted. Documents were backdated for ulterior motives and documents which were known to be wrong were certified as correct. Signatures which had not been observed were witnessed. Untrue statutory declarations were provided. Loans were made for illegal businesses, in at least one instance in partial reliance upon an assurance that the activities were protected by bribery. Financial

records were fabricated, false documents were prepared and lodged in public records or submitted to public officials, including income tax returns which in some instances claimed bribes as business expenses. Incorrect documents were used to defraud the Commissioner of Stamp Duties. Advice and assistance were given in relation to the concealment and transfer of money and other assets, including the removal of money from the jurisdiction and the “laundering” of money.

The “laundering” of money took many forms. Amongst the most popular were sham betting transactions, transactions in which prices stated were inflated or deflated to allow funds to pass unrecorded, and the passage of money through accounts in false names.

## **2.3.9 Police Promotions and Transfers**

### **(a) The Licensing Branch**

Jeppesen and about half of his subordinates were transferred out of the Licensing Branch in 1979. Those who were transferred into the Licensing Branch included Burgess and Parker who, as the Senior Sergeant, was the second-in-charge. Initially, Jeppesen was replaced by Rigney, but he proved unco-operative and was transferred again after only 10 months and replaced by Dwyer.

With perhaps one exception, every inspector and senior sergeant at the Licensing Branch from then until the Inspector was replaced after the publicity which led to this Inquiry was admittedly corrupt. The exception, Allen Stewart Bulger, who was first the senior sergeant and later the inspector at the Licensing Branch, and was still there until shortly before this Inquiry has been the subject of disputed evidence that he engaged in corruption and is presently on perjury charges arising out of other aspects of his evidence to this Inquiry.

There is no purpose to be served by a more detailed and comprehensive analysis of other appointments to the Licensing Branch in the 1980's, particularly to the rank of sergeant. While not all were corrupt, enough were for it to be observed that there are only three possibilities. Either persons were selected for their willingness to engage in corruption, police officers generally are extraordinarily corruptible, or what occurred was an unusual and most unfortunate coincidence.

Burgess provides a convenient example of a corrupt sergeant who exemplifies the bad luck associated with Licensing Branch staffing decisions.

The Lucas Report had recommended limited periods of service in the Licensing Branch, and a Police Department committee which was constituted to consider that Report suggested unspecified special controls, thereby, it was claimed, partially implementing what had been recommended.

Nonetheless, Burgess not only engaged in corruption from shortly after his appointment to the Licensing Branch, he remained there as an important cog in the system for almost 6 years.

A slightly different course was adopted with Parker and Bulger. Each came and went, then returned on a higher rank to head the Branch and, in Parker's case at least, to control and direct the corruption with which he was already familiar.

### **(b) Other promotions and transfers**

The problems arising from unfortunate promotions and transfers were not confined to the Licensing Branch.

It is not intended to attempt to discuss what occurred exhaustively or by reference to a series of instances. A few examples are satisfactory, along with some broad, but not universally applicable, comments.

Although there were consultative arrangements between Lewis and his senior officers in relation to senior positions, it was effectively his decision which determined what recommendations were made in relation to the appointment of commissioned officers. Upgradings within a rank were then a matter for the Minister for Police, and other decisions affecting commissioned ranks were the prerogative of Cabinet. Substantially, what Lewis recommended was adopted, with odd exceptions. Lewis was also responsible for appointments

of non-commissioned officers, with the assistance of a Promotions and Transfer Board and the Assistant Commissioner (Personnel) and sometimes the Deputy Commissioner.

It is reasonable to assume that many decisions were made by reference only to material considerations, including some where bad choices were made of police who were corrupt or corruptible. But the practical effect of the system was to allow personal or political considerations to intrude at both levels, and sometimes they did so.

Brief general reference has already been made to the successful careers enjoyed by many of those whose names appeared on the lists headed "friends" and "capable" which Lewis had in the period leading up to his replacement of Whitrod. More specific reference has been made of some such as Dwyer and Parker. Although Parker's career has not been fully chronicled since his corrupt stint at the Licensing Branch it was merely the beginning of a period of dramatic promotion in the 1980's. Others on the lists who achieved high office and sometimes followed a fast track to arrive there, perhaps justifiably in some instances, included the present Acting Commissioner, Redmond, Atkinson, who retired as a Deputy Commissioner to Lewis, and Early.

What is material for present purposes is not the merits in any single instance but the pattern of what occurred which supports the broad general conclusion that promotions and transfers within the Police Force in the last decade have been less than entirely objective.

More detailed reference to only a few individuals is appropriate.

**(i) Murphy**

**(A) *Police Career***

Some aspects of Murphy's chequered career have already been noted.

At the time of the National Hotel Royal Commission, he had served in the Consorting Squad of the CIB. He gave evidence at that Royal Commission, and later was transferred to the Licensing Branch, where he served until he was charged with perjury. His trial did not proceed because a vital witness died before the hearing.

Additionally, there was undisputed evidence before this Inquiry from a former s.p. bookmaker that Murphy was paid bribes, and Hicks said that Murphy approached him to join in corruption.

Those allegations may not be true: he has been convicted of nothing and must be presumed to be innocent. However, there were also other matters which affected his reputation and career.

He was a friend and associate of Herbert and, with Lewis, named within the Police Force as one of the "Rat Pack". He had been a vociferous agitator against Whitrod and continued to associate with Herbert while he was awaiting trial. At that time, Murphy was stationed in Toowoomba and another with whom he was in contact was a notorious s.p. bookmaker.

To say the least, he had had a controversial career by the time he and his friend Lewis were sent by Whitrod in late 1975 to their respective postings in Longreach and Charleville from which they successfully set out to cultivate Bjelke-Petersen. The initial proposal was that both would be promoted, Lewis to Assistant Commissioner and Murphy to Superintendent. However, Murphy's rise had to wait a little while Lewis quickly took the further step which gave him the overall superintendence of the Police Force.

Once Lewis was appointed Commissioner at the end of November, 1976 Murphy's rise was swift. He replaced Hicks as head of the CIU on 14 January 1977. On 11 August, 1977 he was appointed Inspector in charge of the CI Branch. On 31 October, 1977, he was promoted to Superintendent over 50 more senior officers and was appointed Detective Superintendent of the CI Branch, exercising supervision of criminal investigations throughout the State.

Thereafter, the controversy continued.

In June, 1978, two couriers for the "Mr. Asia" drug syndicate named Wilson were secretly tape-recorded by Queensland Police. At the time, Murphy was on holidays, but he obviously became aware of the tape-recordings, as he was perfectly entitled to have done.

Some months later, in March 1979, Murphy told a journalist that the Queensland Police had secret tape-recordings relating to a massive international drug syndicate and the story was published.

In the following month, the Wilsons were murdered in Victoria.

Allegations were made that the head of the syndicate, one Clark, had purchased copies of the tapes, and suspicion was focussed on a variety of organizations, including the Queensland Police Force.

There is no evidentiary basis for a conclusion that that occurred or that, if it did, that Murphy was party to or had knowledge of it. Indeed, it was later held by the Royal Commission of Inquiry into Drug Trafficking under the chairmanship of the Hon. Mr. Justice Donald Gerard Stewart of the New South Wales Supreme Court, to which Murphy gave evidence, that Murphy's disclosures to the journalist had been honest although foolish because the article "contained sufficient material to confirm to a suspicious and vengeful Clark that the Wilsons had definitely informed on him".

Before that Royal Commission was appointed, Murphy was upgraded on 18 August, 1980, to Superintendent, Grade 1, and, on 8 December that year, he was sent to Cairns as Regional Superintendent of the Far Northern Region. One year later, Lewis recommended that he be promoted to the rank of Assistant Commissioner on the basis that he had been "... assigned some time ago to the duties of Regional Superintendent in order to enhance his administrative experience at that level".

The position to which he was appointed was Assistant Commissioner (Crime and Services).

Still the controversy continued.

In March 1982, two former police officers made allegations of corruption in the Queensland Police Force on an A.B.C. television programme, "Nationwide". The interviewer spoke of a group which allegedly had organized corruption, and described the group as:

"... what became known as the Rat Pack, the existence of which was revealed at the National Hotel Inquiry ... It comprised three detectives, two of whom now hold very senior positions in the Queensland Police".

One former officer said on the programme that:

"it still goes on ... we've got a new rat pack in the Police Force ... a new bunch ... of detectives who are now collecting for this ... group".

Lewis sought legal advice whether charges of criminal defamation could be made against those involved in the programme. Additionally, Lewis and Murphy each instituted actions for damages for defamation.

The amended statements of claim which were delivered pleaded that Murphy and Lewis were close personal friends and that each had been identified as a member of the "Rat Pack" since the 1960's.

Each pleading also identified a number of present and former police officers as persons who had seen the offending programme, presumably implying that at least some of those named would be witnesses at the trial of the actions to speak of the defamatory imputations which had been conveyed to them.

Those named included many who had been represented before the National Hotel Royal Commission, involved in the anti-Whitrod campaign, associated with the Southport Betting case, the Herbert conspiracy trial, the O'Connell investigations and/or the Lucas Inquiry, connected with the downfall of Jeppesen and Hicks, subjected to Internal Investigations Section investigations but exculpated, and/or charged in the past with criminal offences although none were convicted and only some were tried. There were at least 9 against whom there was evidence of serious corruption in this Inquiry including past and then current Licensing Branch members, two others who confessed to corruption during this Inquiry, about four against whom allegations of perjury have been made, and five others against whom other serious allegations of misconduct

have been made. Many of those named in the pleadings, including some who achieved high rank and others who had been appointed to sensitive positions were friends or acquaintances of Herbert. The names and telephone numbers or addresses of seven were found in Herbert's belongings when he was arrested in England in 1988 as was the name, or abbreviation for the name, of Murphy.

Whilst some of the names mentioned in the pleadings (and set out in the appendices next mentioned) were not in any way shown to be associated with any of the matters which came to the attention of this Inquiry, those named in his amended statement of claim by Lewis are set out in alphabetical order in Appendix 22: the same persons were named by Murphy, together with the additional persons named in Appendix 23.

Later that year, Murphy resigned. In his letter of resignation, dated 1 October 1982, and effective on 21 December, 1982, one year after his appointment, Murphy referred to discussions with Lewis about the allegations the subject to their defamation actions. According to Murphy's letter, the two men had discussed the effect of "the slander emanating from that programme" on Murphy's prospects of promotion to Deputy Commissioner (a position to which Atkinson had just been appointed) and had agreed that Murphy would not seek further promotion. Murphy wrote:

"I now find myself somewhat disconcerted by this chain of events, and have consequently decided to opt for early retirement on 21st December 1982.

Please be assured of my continued loyalty and personal friendship."

**(B) *The Dunwich T.A.B.***

A year later, Lewis helped in providing for his friend's retirement. He arranged for another friend, Sir Edward Houghton Lyons, then chairman of the T.A.B., to support Murphy's successful application for the T.A.B. agency on Stradbroke Island.

Applications for the T.A.B. agency at Dunwich were called on 8 August 1983. The advertisement called for applicants in the 25 to 40 years age group. Murphy, then aged 56 years, applied. Lewis had told Lyons that Murphy wanted the Dunwich agency. Lyons had never met Murphy whom Lewis described as "a very decent chap".

The usual method of selection involved an initial choice of some applicants for interview by a committee of T.A.B. executive officers and employees followed by a discussion of their respective merits by Lyons, sometimes the T.A.B. deputy chairman and the T.A.B. general manager. Those discussions usually led to one or two names being put to the Board, with a recommendation from the general manager.

Of the 27 applications received for the Dunwich sub-agency, four applicants, including Murphy, were interviewed. Murphy was not the interview committee's first or second choice. However, after Lyons spoke to the general manager, he and Lyons recommended Murphy to the Board and he was subsequently appointed.

Lyons explained to this Inquiry that his decision to recommend Murphy was made because he believed that the granting of a T.A.B. agency to Murphy would present a good opportunity to increase co-operation between the T.A.B. executive and the police in an effort to deal with the s.p. bookmaking problem.

Between Murphy's appointment and Lyons' resignation from the T.A.B., Lyons never communicated to Murphy his wish that Murphy should assist the T.A.B.'s efforts against s.p. bookmaking.

**(ii) *Farrah***

Callil Herbert Farrah admitted to this Inquiry that he was corrupt.

His evidence was that he took his first bribe at about the time when he was charged with perjury in relation to another matter. As is common where police officers are the subject of prosecution, the proceedings against him were dismissed.

At the time when he was charged he was an inspector, and during the currency of the prosecution he was upgraded.



After the charge was dismissed, he was further promoted.

In 1984, he was appointed Superintendent in charge of the Traffic Branch in Brisbane. While there, he was involved in at least one decision to waive proceedings for a traffic offence involving an influential member of an ethnic community who was a friend of many police officers, including Lewis.

On 11 September, 1986, Farrah was appointed Superintendent in Charge of the Far Northern Region and based at Cairns, a major tourist centre.

While there, by his own admissions, Farrah accepted bribes.

### (iii) **Parker**

Finally, further reference to Parker is appropriate.

After a career of major corruption in the Licensing Branch in the 1980's, first as the senior sergeant and later as the inspector in charge, Parker was transferred and promoted from Inspector to Superintendent Grade 3 on 19 August, 1985. Within six months, he had risen over many more senior officers to the position of Assistant Commissioner. On 6 January 1986, he was appointed Assistant Commissioner, (Crime and Services), a portfolio which did not then include the Licensing Branch.

That responsibility had belonged for some time to Redmond, as Assistant Commissioner (Operations). It reflects no credit on Redmond that, on the most favourable interpretation, he remained ignorant of the problems within the Licensing Branch over that period which included extensive controversy, including criticism by Sturgess. If Redmond did not even suspect that there was a serious problem within the Licensing Branch, he ought to have done so. If he did consider that there was a problem and did nothing, the only obvious explanations are that he at least suspected that the problems were widespread and serious and perhaps involved senior police and was unable or unwilling to deviate from entrenched attitudes which obstruct the enforcement of criminal law against police officers who have committed offences.

In any event, within another six months after Parker became an Assistant Commissioner, responsibility for the Licensing Branch was transferred from Redmond's portfolio to the portfolio of Parker.

As Assistant Commissioner (Crime and Services), Parker also had vitally important functions and access to a vast array of information. He was responsible for the Bureau of Criminal Intelligence and for witness protection in Queensland. He was the Police Force's liaison officer with the Australian Federal Police and the National Crime Authority. He was responsible for arranging with Lewis appointments of Queensland police officers to the National Crime Authority and to the Australian Bureau of Criminal Intelligence. He attended and received minutes of National Crime Authority meetings. He attended briefings by the Australian Bureau of Criminal Intelligence and received its information bulletins. He was aware of the weekly meetings between the Australian Federal Police and the Queensland Police Force's Bureau of Criminal Intelligence and between that Bureau and the Drug Squad. He received minutes of monthly meetings between the Bureau of Criminal Intelligence, the Drug Squad and the Licensing Branch, and daily occurrence sheets and monthly reports from each of those units.

In late 1986, the Australian Bureau of Criminal Intelligence chose not to provide Parker with information with respect to taped telephone conversations which contained information on vice and police corruption, including Herbert's role. Redmond notified Parker immediately he received the material.

Parker denied that he ever compromised himself except in respect of the corruption payments which he received both while he was at the Licensing Branch and subsequently while he was the Assistant Commissioner with responsibility for the Licensing Branch, and then only in relation to vice related matters. He denied that he acted improperly in relation to his positions in relation to the National Crime Authority, the Australian Federal Police or the Australian Bureau of Criminal Intelligence, or that he abused his access to criminal intelligence and operational information concerning other offences including the illegal supply and perhaps importation of drugs, even where the names of persons by whom some of his graft was being paid were involved.

Like Dwyer, Parker told no more than he felt that he needed to tell, and there is every reason to doubt that he told the full story and to disbelieve some of his denials.

## 2.3.10 Police Misconduct

### (a) Suspension from Duty

Under Whitrod, any police officer accused of serious misconduct was suspended from duty. Neither Lewis nor the Unions agreed with that course. A new policy was developed which Lewis explained to this Inquiry in the following terms:

“So we worked out a system that unless it was some horrific crime that they had committed, they were not safe to be let out into the community — say for argument’s sake they were in the C.I. Branch, they could be taken out of there and perhaps put into the Operations Centre where they were working an eight hour shift, having no contact with the public”.

The “bikie bandits” charges provide one example.

In early 1983, six police officers attached to the **C.I.** Branch were charged with perjury. Four of them were also charged with providing heroin to two accused while held in the watchhouse. The charges followed criticism by the Supreme Court judge who had presided at the trial of those to whom the heroin had allegedly been supplied and an investigation by the Police Complaints Tribunal.

None of the police was suspended and two were promoted while awaiting trial. Lewis was opposed to suspensions of the police involved because he did not think that the offences would be repeated and they were not “... a very serious offence like going out and engaging in shooting of some sort”.

After the Crown decided not to proceed with the prosecutions of the police officers, Lewis, another senior police officer, Lyons and others attended a celebratory party.

As is common, the careers of the police in question have been unimpeded by their experience.

### (b) Criticism of other Police

A much more serious view is taken of police who criticize other police or the police administration. Such conduct has attracted the ire of both the Police Union, which has a rule against such unacceptable behaviour, and Lewis and other senior officers, who have acted to discourage behaviour which has attracted such epithets as “disloyal”, “mad” and “mentally unbalanced”. Administrative punishments, such as unfavourable transfers, have reinforced the official view.

Again, one example is sufficient.

Early one Friday morning in December **1981**, Lyons was apprehended while driving his Rolls Royce in a manner which attracted attention, He was taken to Police Headquarters by a sergeant (whom Lewis knew) and a constable from the Traffic Branch. Before he underwent a breath analysis test, Lyons was permitted to telephone Lewis at his home. Lewis spoke to an inspector as well as the sergeant and the constable. When Lyons was taken to the breath analysis room he was tested and a breath certificate issued showing a reading well in excess of the statutory limit.

A copy of the certificate was issued to Lyons and one to the constable. The usual procedure when such a certificate issues is to arrest and charge the driver who must appear in court on the following morning. However, Lyons had an appointment in Sydney which he wished to keep. The constable was told to take Lyons home. Lyons left Police Headquarters with the constable and the sergeant and was allowed to drive himself home.

The constable was uneasy and later reported what had happened to a Police Union representative.

Meanwhile, a senior constable from the Traffic Branch who happened to be in the breath analysis section noticed what appeared to be the original of a breath analysis certificate in a waste paper basket and retrieved it and showed it to a fellow officer. The media was informed and, after publicity, a summons was issued to Lyons.

About two months later when Parliament was sitting, the matter was raised.

The police officer to whom the breath analysis certificate had been shown had resigned and it was he and another former police officer who appeared on an A.B.C. programme making allegations of corruption in the Police Force, leading to the defamation actions by Lewis and Murphy to which reference has been made.

Before that, and within a week of the programme's telecast, Lewis obtained permission from Bjelke-Petersen to retain Sturgess to advise on whether a charge of criminal conspiracy could be brought against those associated with the programme.

There were also internal investigations by two senior officers, directed by Murphy. One was a friend of Herbert.

Statements were obtained from those involved in Lyons' apprehension. Both the sergeant and the constable who had allowed Lyons to drive himself home provided false statements, one of which omitted reference to any conversation with Lewis. The constable said before this Inquiry that he believed that, if he had told the truth, his statement would not have been acceptable and would not have corresponded with what the Police Department had publicly stated.

Inquiries were also made concerning those who had been friendly with the former police officer and the senior constable who had retrieved the breath analysis certificate.

The investigation produced a report that there was insufficient evidence to support a charge against any serving police officer and that departmental charges did not lie against those who had resigned from the Police Force.

Nonetheless, the senior constable who had retrieved the copy of the breath analysis certificate was notified of a transfer to Longreach which Murphy had proposed. As his wife could not leave Brisbane without resigning from her job, he refused to move and sought assistance from the Police Union. He was advised by the Union that, if he pleaded guilty to a departmental charge of "refusing to obey a lawful instruction" and accepted a transfer to Ipswich, which was 50 kilometres from his home, he would not be required to move to Longreach. He accepted the advice.

### **(c) Public Funding for Police**

Reference has been made to the decision in 1977 to provide legal assistance, at the discretion of the Commissioner of Police, for police officers who became the subject of proceedings arising out of demonstrations or, as it was put, "..., assisting in the re-establishment of public order ...". Police officers could choose their own private lawyers subject to the Commissioner's approval.

On another occasion, Bjelke-Petersen authorized the Police Union to submit a claim for costs incurred by police officers who were accused but not convicted. The full amount claimed was approved by Cabinet although the Solicitor-General had advised that the amount was more than double what was fair.

Again, as has been noticed, Lewis was authorized in 1982 to obtain advice as to whether those involved in the Australian Broadcasting Commission programme which alleged corruption could be subjected to charges of criminal defamation.

In mid-1984, when another police officer made allegations of police misconduct, Cabinet authorized that Lewis and other senior police officers be provided with legal assistance to bring proceedings against the person by whom the allegations had been made.

As will be noticed in another context, a parallel course was followed when allegations were made against Ministers.

It is pointless to multiply examples. One more will suffice.

A solicitor, who had been charged with smuggling contraband to a prisoner who was a client, brought an action for damages for malicious prosecution against the two police officers who caused him to be charged

after the charge was dismissed. The solicitor's claim was successful and, on 24 July, 1986, he was awarded damages, including aggravated damages, exemplary damages and special damages, together with interest. The total was almost \$19,000, plus costs. The police officers were roundly criticized. The court said:

“ . . . the conduct complained of was designed to victimize (the solicitor) because of the way in which he went about discharging his duty as a solicitor. . . . To launch criminal proceedings against him for reasons associated with the performance of his duty without proper cause and with malice is very serious misconduct which must be discouraged.”

The Police Union paid the costs and most of the damages were paid by the Government out of public funds.

### **2.3.11 The Internal Affairs Section**

Soon after Lewis became Commissioner, he created the Internal Investigations Section to assume from the CIU the responsibility for policing misconduct by police. It was not given a proactive role, and has limited personnel and resources. It is constantly well-behind in its work, and is denied the use of surveillance. It has been, and is, a disastrous failure, inept, inefficient and grossly biased in favour of police officers. Over the years, some of the police officers by whom it has been staffed have been totally unsuitable for a wide variety of reasons, including personal involvement in corruption and other misconduct, prior involvement in criminal charges, and other unsuitable activities in the course of their career.

Some of the procedures adopted have been amazing; for example, disclosing the material available to suspected police officers prior to interrogation and seeking and acting on reports from sections which are the subject of complaint or allegation. Regularly, no more has been required as a basis for a finding in favour of a police officer than his denial of the case against him, which was seen to put one word against another and therefore make the allegation unsustainable, a proposition so absurd as to be risible. On other occasions, nothing was done because of a claimed perception that the witnesses against the police officer would not be considered sufficiently reliable.

An analysis has been undertaken of the files of the Internal Investigations Section since its inception in 1977 to 1988, excluding trivial matters or matters referred by the Police Complaints Tribunal after it was created.

Even in the minority of other matters where there was a conclusion adverse to a police officer, most were counselled, cautioned, reprimanded, reminded of their responsibilities, etc., or sometimes transferred.

The percentage incidence of criminal and departmental charges laid as a result of Internal Investigations Section investigations was 0.2% in 1977; 1.5% in 1978; 2.0% in 1979; 1.7% in 1980; 1.4% in 1981; 1.1% in 1982; 2.0% in 1983; 4.2% in 1984; 3.6% in 1985; 5.2% in 1986 and 2.2% in 1987.

Departmental charges result in ludicrous penalties; for example, a \$2.00 fine for false statements.

In all its existence, the Internal Investigations Section has been concerned with three allegations of corruption, none of which led to charges.

### **2.3.12 The Police Complaints Tribunal**

As is later noted, the discussion of the Police Complaints Tribunal in this Report is more abbreviated than might have been possible if the appointment of the Parliamentary Judges Commission of Inquiry had not led to a curtailment of this Commission's investigations.

Nonetheless, there is some later discussion of the Tribunal, and an unequivocal recommendation that it be disbanded.

It was created in 1982, and has since adopted a variety of different approaches of varying degrees of efficacy. Recent approaches are unsatisfactory, and are becoming progressively demanding of resources and expensive. The Tribunal is, in concept, structure and systems, misconceived.

It is proposed to say no more at this point than that it has failed to provide an adequate mechanism to counter corruption and other police misconduct.

Predictably, the number of complaints increased in the years between its inception and this Inquiry, but there was a marked decrease in the findings adverse to police: a drop of 17% in 1983/84 to 8.1% in 1986/87.

### 2.3.13 Wider Interests

There was little evidence that conventional restraints inhibited the involvement of Lewis in political matters, the exclusion of political considerations from his superintendence and control of the Police Force, or the involvement of Bjelke-Petersen and other influential members of the Government in police matters with which they had no legitimate concern.

For example, Lewis cultivated contacts in the Government, especially Bjelke-Petersen and Lane. All National Party parliamentarians were invited to communicate with him, and he was sensitive to the interests of local members in relation to such issues as police promotions and transfers which affected their constituencies.

His contact with his former colleague, Lane, was considerably more extensive. He discussed police matters, including promotions and transfers, with Lane, who was never his Minister, and Lane provided him with useful information, a facility which presumably was more useful after Lane became a Minister in 1980.

Lane was a former Special Branch officer and seems to have been able to obtain access to its files himself. On one occasion, he was supplied with information which was used to disadvantage a member of the Australian Labor Party. He denied that he sought intelligence from Lewis on members of the Australian Labor Party.

Lewis provided a similar service on occasions for each of Bjelke-Petersen and Hinze, for whom opponents or critics were investigated.

Undoubtedly, as the years passed, Lewis' closest political contacts were Bjelke-Petersen and Lyons, who was a financial adviser to Bjelke-Petersen and apparently his closest confidant on political and other issues. He denied that he sought intelligence from Lewis on members of the Australian Labor Party.

Lewis regularly discoursed with each, separately for the most part it would seem, on the most extraordinary range of diverse matters many of which were absolutely outside his valid concern. His diaries and agendas for the meetings which he prepared, often substantially similar for successive meetings for Bjelke-Petersen and Lyons, although not necessarily in that order, are startling in the extreme, even without any comprehensive explanation by him, which was usually unavailable because, he said, of his deficient recall.

Police matters were discussed by Lewis with not only the Police Minister for the time being but also with Bjelke-Petersen and Lyons. But their topics of conversation went much further, and even included opinions on the performance of the Police Minister.

Other subjects included electoral boundaries, Cabinet changes, judicial appointments, the number of seats required by the National party to govern in its own right, the opinions of Police Commissioners from other States on their respective governments, and so on.

It would be impossible to attempt even to catalogue the matters in which Lewis concerned himself, but a few examples of some matters touched on in the evidence at the Inquiry can be briefly mentioned.

## (a) Police Ministers

In July 1980, Camm left the ministry. Lewis discussed the question of the new Minister for Police with Lyons. In any event, the portfolio was given to the Hon. Russell James Hinze M.L.A., who was already the Minister for Local Government and Main Roads.

Prior to that time, it does not seem that Lewis had become involved in a foreshadowed application for a casino licence at the Gold Coast by Emil Kornhauser, a friend of Hinze.

Not long after Hinze had become Minister for Police, a bitter attack on Kornhauser was circulated by a former business associate, Alfred Zion. Kornhauser sought the advice of Hinze who suggested that he contact Lewis.

At the time, the proposal by Kornhauser to seek a casino licence was known also to another of his friends, Lyons, and also to Bjelke-Petersen, although it was some months before any decision was made by Cabinet to approve a casino. Bjelke-Petersen and Hinze wanted Kornhauser to be investigated and Hinze instructed Lewis to do so.

In October, 1980, Lewis received documents from the Victorian Police Force relating to some of Kornhauser's business dealings. It appeared that the only matter of known concern was a stale relationship with another person whose reputation was considered questionable.

By December 1980, Kornhauser had provided Bjelke-Petersen with a proposal for a casino licence at Surfers Paradise, which Bjelke-Petersen kept in his personal files. Cabinet had still not decided that a casino should be permitted.

Later in that month, Bjelke-Petersen telephoned Lewis about Kornhauser and, on 31 December, Hinze and Lewis met Kornhauser at Parliament House and discussed his business dealings.

In the following month, Lewis met Lyons and Kornhauser at social gatherings and he inspected Kornhauser's Paradise Centre development at Surfers Paradise with them.

Later the same month, Lewis met Kornhauser's legal representatives at a Gold Coast unit, and discussed with them the allegations which had been made.

On 9 March, 1981, Cabinet approved the introduction of licensed casinos in Queensland, and appointed a ministerial committee to investigate and report back to Cabinet on the implementation of its decision. The ministerial committee consisted of the Deputy Premier and Treasurer, the Hon. Llewelyn Roy Edwards M.L.A., Hinze, and the Minister for Tourism, the Hon. Jannion Anthony Elliott, M.L.A. Four experienced senior public servants were appointed to assist the ministerial committee and to conduct extensive inquiries and report their "first stage assessment" by September 1981.

In late April 1981, there was extensive advertising inviting applications for a casino licence in south-east Queensland and another in North Queensland.

In July 1981, Lewis stayed at a unit in part of Kornhauser's Paradise Centre development which Kornhauser made available for a "token charge".

By 12 October, 1981, there was a short list of potential applicants which included the company with which Kornhauser was associated, which had been added to the list in circumstances which are discussed elsewhere. Further investigations were requested.

By that time, Lewis had become reasonably friendly with Kornhauser and had had discussions with Hinze about his fitness as an applicant for a casino licence, including comments which had been made to Lewis by the Director of the Australian Bureau of Criminal Intelligence.

Other investigations were also being carried out by the Casino Control Division which had been appointed within the Treasury. One of Lewis' former Deputy Commissioners had been appointed consultant and was later to become the Chief Casino Inspector of that Division. Lewis had urged his former colleague to apply

for the post and they stayed in close contact during the period when the casino licence applications were being considered.

On 20 November 1981, the Under Treasurer formally asked Lewis to make exhaustive inquiries into the background of the applicants on the short list of applicants.

During December 1981, Lewis spoke to Bjelke-Petersen about the applicants, and also to his former Deputy Commissioner about "his functions and desired liaison with the Police Department".

On 11 January 1982, Lewis saw Bjelke-Petersen in company with the Director of the Australian Bureau of Criminal Intelligence.

Two days later, Lewis and his wife and son lunched with Kornhauser.

Lewis had requested information from the Australian Federal Police, and, on 15 January, 1982, the Assistant Commissioner (Crime) of that Police Force wrote to Lewis enclosing a confidential report which was a summary of intelligence material held on Kornhauser, which included reference to the stale association between Kornhauser and the other person considered to have a questionable reputation. Lewis was requested to pass the confidential material on to the Treasury, and it was noted that the material "should be viewed as intelligence only which has, in general terms, been neither substantiated nor corroborated and is provided as a basis for additional enquiry of the Queensland Treasury should they so wish".

On 29 January, Lewis sent Hinze copies of the information which he had received from the Australian Bureau of Criminal Intelligence and the Australian Federal Police.

On 7 February, Lewis dined with Hinze. Hinze as Minister for Police was to send a letter to Edwards as Treasurer the following day with the results of the Police Department investigations into the short listed casino applicants.

Lewis amended the draft of that letter to delete reference to a matter contained in the material obtained from the Australian Federal Police which was prejudicial to Kornhauser, and the letter which was sent was in the form which incorporated his amendments. In his evidence, Lewis acknowledged that the information which was deleted was material for the Treasury's purposes.

In the result, it did not matter, for the application with which Kornhauser was associated was withdrawn in March 1982 for other reasons.

By that time, there was antipathy between Hinze and Lyons, and discontent as Hinze disliked Lewis' regular contact with Bjelke-Petersen.

Nonetheless, when the Nationwide programme was telecast on the A.B.C. containing allegations of high level police corruption, leading to the defamation actions by Lewis and Murphy to which reference has already been made, Hinze responded in appropriate fashion. He supported Lewis and the police administration, and vilified those who had made allegations against them.

However Edwards and Hinze both considered that there was need for an independent body to investigate complaints against police and they raised the subject with Lewis.

Lewis went to see Bjelke-Petersen, and in their discussion reference was made to the possibility of a replacement for Hinze as Police Minister.

Suggestions for an independent body to investigate complaints against police gathered momentum and, by the end of April 1982, the Police Complaints Tribunal had been constituted. Lewis, for his part, was quite satisfied with the work of the Internal Investigations Section and considered the Tribunal unnecessary. He and Lane discussed suitable appointees for the Tribunal.

Not long afterwards, the Tribunal decided not only to consider the behaviour of the six police officers who later came to be charged with perjury and with providing heroin to the "bikie bandits" but asked for an independent investigator to look into those allegations.

Lane and Lewis discussed a possible Police Union approach to Bjelke-Petersen.

Hinze agreed to the independent investigation, which was to be carried out under the general auspices of the Tribunal by a barrister attached to the Crown Law office assisted by two senior police officers.

From late August 1982, Lewis' discussion with Bjelke-Petersen included topics such as changing Ministers, Union discord, "outside investigations", and suggestions that Hinze had been chatting to black activists. Hinze and the subject of new ministers were also discussed with Lyons.

On 1 December, 1982, Lewis went to Parliament House where Bjelke-Petersen "... said he would transfer police to the Hon. Glasson if acceptable to me". On 6 December, 1982, Hinze was replaced as the Minister for Police by the Hon. William Hamline Glasson M.L.A.

Not long afterwards, the Police Complaints Tribunal concluded that there was evidence of serious offences by the six police officers and charges were subsequently laid.

Glasson retained the police portfolio for more than three years. However, he ceased to be the Police Minister in the aftermath of the Sturgess Report.

On 6 February, 1986, Gunn, the Deputy Premier and Minister Assisting the Treasurer, was also appointed Minister for Police.

## **(b) Honours**

Lewis' diaries are interspersed with references to titles, honours and awards. As Police Commissioner, he was involved in the nomination of police officers for honours such as the Queen's Police Medal, and he also suggested other persons whom he considered suitable including friends and those to whom he owed loyalty. He also pressed his own case.

In 1979, Lewis was made an Officer of the Order of the British Empire.

Lewis' regard for Bjelke-Petersen and his government was made quite clear to police and the public in August, 1983, when Lewis addressed 56 new constables at the Queensland Police Academy and his speech was reported in the press. Lewis said:

"The people of Queensland and the Police Force owe the Premier a very deep gratitude. The free enterprise policy of the Bjelke-Petersen government has been responsible for Queensland's tremendous growth. Irrespective of whether some people agree with the politics, statements or stands, there is a universal respect, even admiration, for the total loyalty he and his colleagues show for what they believe is in the best interests of Queensland."

That year, Bjelke-Petersen proposed Lewis for a knighthood. The nomination was not then successful as, conventionally, additional Imperial honours are not granted to those who have received an honour within the previous five years.

Lewis later discussed knighthoods with Lyons who had himself been knighted in 1977. Lyons believed that a knighthood for Lewis would benefit Bjelke-Petersen politically, and said that it would also lift the morale of the Police Force.

In 1986 Lewis was the first serving Australian police officer to be knighted. The citation acknowledged his contribution to the development of the Police Force and the enforcement of law and order and to crime prevention in Queensland.

## **2.4 SOME OTHER ASPECTS OF RECENT POLITICS IN QUEENSLAND**

### **2.4.1 Political Donations**

No evidence was found which substantiated allegations that donations were made to one or more political parties by some of the persons named in the terms of reference of this Inquiry or their known associates.



However, although it seems unlikely, the possibility that the National Party of Australia (Queensland) received money from such a source cannot entirely be discounted, nor can the possibility be rejected that there were plans for substantial donations if certain projects proceeded.

Practices which were adopted with respect to donations included a propensity to accept large sums in cash, not infrequently from those who had benefited, or hoped to benefit, from dealings with the Government.

Bjelke-Petersen justified what occurred by his own logic, which seemed to lead to a conclusion that any other course from that adopted would have meant fewer donations or the exclusion of those who donated from consideration in Government transactions. There seemed to be two elements in the reasoning.

On the one hand, those most likely to make donations to National Party funds were those who were, independently of such donations, most likely to be successful in their dealings with the Government; for example, because their tenders would be the lowest and their proposals would be the best. This curious proposition appears to be a specific version of a wider theory that wise, decent and capable people are generally likely to be National Party supporters.

Secondly, public disclosure of what occurred would be unhelpful. It would cause the community to suspect, incorrectly, a connection between donations to the National Party and successful dealings with his Government, and would embarrass donors who wished their generosity to be kept confidential.

Persons or organizations who made donations to the National Party of Australia (Queensland) may have neither sought nor received preferential treatment and no conclusions of impropriety have been drawn. While no finding of misconduct is made, there were other occasions when persons or organizations engaged in business with the Government or seeking business from it, made substantial donations to its political party. There was no disclosure of that and the attitudes and practices adopted allowed such donations to remain hidden.

#### **(a) The Bundaberg Maternity Hospital—Citra**

An election was held in October, 1983. Up until then, the National Party and the Liberal Party had been in government in coalition for more than 25 years, but that year bitter divisions had arisen. Bjelke-Petersen was determined to crush his erstwhile associates and achieve sufficient seats for the National Party to govern alone. Ultimately, he succeeded after two successful Liberal candidates defected to the National Party and continued membership of Cabinet in November after the election. But in the period leading up to the election, there was need for a concentrated and expensive advertising campaign. A large amount of money was required.

That year, the Bundaberg Hospital Board had called tenders for the construction of the Bundaberg Maternity Hospital and had received 20 tenders.

On 8 September, the Board's architects recommended a fixed price tender which had been submitted by Evans Harch Constructions Pty. Ltd.. One of the other tenders had been submitted by a member of the Citra group of companies, and had included rise and fall provisions.

On 13 September, the Board advised the Under Secretary of the Department of Health that it recommended acceptance of the Evans Harch tender.

On 3 October, the Minister for Health, the Hon. Angelo Pietro Dante Bertoni, M.L.A., recommended that the contract be awarded to Evans Harch subject to the approval of the Department of Works, which was urgently reviewing the tenders but was expected to endorse the recommendation of the Board. Cabinet deferred its decision for a week.

On the same day, 3 October, Citra gave Lyons \$150,000 in cash to be paid to the National Party.

Lyons delivered the cash to Sparkes, the President of the National Party since 1970 and a knight since 1979.

At the time, Lyons was a trustee of the National Party as well as Bjelke-Petersen's principal confidant and a fund-raiser for the party.

Sparkes said that he had no knowledge of the identity of the donor, although Lyons said that Sparkes was told the name on this and on other occasions.

Both Bjelke-Petersen and Lyons denied that Bjelke-Petersen was told of this and other donations which Citra made.

However, the representative of Citra, whom Lyons knew well, had been introduced by him to Bjelke-Petersen and, according to Lyons, from time to time he conveyed the “best wishes” of Citra to Bjelke-Petersen, who also received advice from Citra “. . . on certain matters . . .”.

On 7 October, Bertoni publicly announced that the contract had been awarded to Evans Harch.

On 10 October, Cabinet had before it a Works Department appraisal recommending the Evans Harch contract, and there had been a comment by the then Minister for Works and Housing, the Hon. Claude Alfred Wharton, M.L.A., that “fixed price is better”. However, Cabinet again deferred its decision.

On 17 October, Cabinet determined that officers from the Premier’s, Treasury, Works and Health Departments should meet to discuss the evaluation of tenders, and a meeting took place the following day.

The representative of the Premier’s Department questioned whether the Evans Harch tender complied with requirements which had been specified. Others, including the representative of the Department of Works, were then and subsequently consistently of the view that the practice which had been followed was customary and that it was appropriate for the contract to be awarded to Evans Harch.

On 23 October, Citra gave Lyons another \$100,000 in cash, which was again passed on to Sparkes.

On 24 October, on Bjelke-Petersen’s oral submission, Cabinet awarded the contract for the construction of the Bundaberg Maternity Hospital to Citra.

It has been estimated that the cost of the hospital paid to Citra, approximately \$2,562,000, was \$65,000 more than would have been payable had the Evans Harch tender been accepted.

The Bundaberg Hospital Board sought an explanation for the decision to award the contract to Citra without avail.

## **(b) Railway Electrification Project — Citra and E.P.T. Pty. Ltd.**

### **(i) Stage One**

Between November 1983 and January 1984, Citra was either awarded or commenced to carry out three other major Government projects; an upgrading of the Bruce Highway for \$3.045 million, construction work on the Western Arterial Freeway for \$2.376 million, and work at the Callide “B” Power Station for \$7.575 million. Later, there were other projects, including construction work in relation to the Landsborough Highway for \$2.9 million and on the Gateway Arterial Road for \$2.6 million.

Citra was also the successful tenderer for two stages of the Railways Electrification programme, an enormous project which was implemented between 1983 and 1986.

Tenders for Stage One of the project had been called in August 1983, and were received from companies in Australia, Britain, Canada, France and Italy.

Citra made its donations to the National Party to which reference has been made in October 1983.

Between August and December 1983, Bjelke-Petersen had discussed various investment opportunities in Queensland with Citra.

In December, before tenders closed, Lane (then the Minister for Transport), the Commissioner for Railways, other Railways Department personnel, and representatives of Citra including the person who had made the payments to Lyons had a meeting. It was understood at that time that Bjelke-Petersen wished European systems to be taken into account in determining the successful tenderer for Stage One of the project.

Tenders closed on 2 March 1984. Less than a week later the Railways Department commenced a preliminary evaluation the object of which, according to the Railway Department Chief Engineer in a report dated 9 March, was “. . . to determine whether Citra Constructions Limited could be a possible contender for the contract award”.

Citra had submitted the fourth lowest tender, but its tender was a “derived non-conforming tender”. Tenders had been called for the design, construction and supply of all materials necessary for overhead electrification, but Citra had omitted the supply of materials. Accordingly, it was necessary when the evaluation was carried out for a notional amount to be added for that purpose. The chief engineer noted:

“Under normal circumstances this tender would be ruled out of consideration as incomplete and non-conforming”.

Despite the report submitted by the Chief Engineer on 9 March, Citra’s tender continued to be given close consideration.

On 14 June, the chief engineer submitted a further report containing a detailed analysis of the various tenders, including that submitted by Citra.

The favoured tender, which involved a price millions of dollars lower than that quoted by Citra, was submitted by E.P.T. Pty. Ltd., to which the contract for Stage One was eventually awarded.

According to National Party records, some days later, on 9 July 1984, E.P.T. donated \$90,000 in cash to the National Party.

However, external auditors of E.P.T. can find no evidence of such a donation in the company’s books.

## **(ii) Stage Two**

On the same day that it decided to award the contract for Stage One to E.P.T., Cabinet decided to proceed immediately to enter a contract in relation to Stage Two. It was further decided that public tenders would not be called but that the most suitable companies other than E.P.T. which had tendered for Stage One, including Citra, would be invited to tender for Stage Two.

Citra received the Stage Two contract.

It suffered heavy losses, and subsequently negotiated a \$5.8 million settlement of its claim with the Department of Railways.

## **(iii) Stages Three and Four**

Stage Three involved only a small section from Blackwater to Emerald and was awarded to E.P.T. by an extension of its Stage One contract.

Cabinet decided that tenders should not be called for Stage Four, which involved a considerable length of line from Caboolture to Gladstone, but that each of E.P.T. and Citra should be engaged to carry out one-half of the work because they were available with suitable workmen and equipment.

Each was invited to submit a price, and each quoted almost the same amount, approximately \$32 million for its half of the full project.

The quotes were evaluated and it was estimated that they were too high and indeed were approximately twice the standard price per kilometre offered in Stages One and Two. It was recommended that unless they could be renegotiated “... to the region of \$75,000 to \$80,000 per standard kilometre, then the option of calling tenders would have to be considered”.

Negotiations between the Railways Department and E.P.T. and Citra ended with an agreement that each would be paid approximately \$25 million.

Treasury criticized the awarding of the contracts, which occurred without its approval. The opinion was expressed that the amount of \$25 million each was too high, that the Railways Department’s reasons for accepting those prices were unconvincing, and that both companies were being allowed to recover some of the losses which had been suffered in other sections of the work.

### **(c) Kaldeal Pty. Ltd.**

By mid-1985, Lyons was out of favour with the National Party management. Earlier that year he had been forced out of the chairmanship of the T.A.B. because of his conduct, and had also stepped down as chairman of the Mortgage Secondary Market Board to which he had been appointed in late 1984. He was unpopular with Sparkes, and others, like Hinze, had long disliked him intensely. However, he was still extraordinarily close to Bjelke-Petersen. As he stated in evidence to this Inquiry, Bjelke-Petersen considered that Lyons was his most valuable adviser, "... because he had been at the top of business here for many years and he knew so very, very many people, even perhaps more than I did".

Nonetheless, after the National Party State Management Committee meeting on 26 July, 1985, Lyons was no longer a party trustee.

By mid 1986, another election was in the offing. The Government's term was due to expire in November that year. If it was to retain government in its own right, then once again a large amount of money was needed for advertising and other campaign expenses.

By July, 1986, there was also tension between Sparkes and Bjelke-Petersen, who was experiencing not only occasional challenges to his autocracy but even the odd defeat. He and his fund-raiser, Lyons, decided to act on their own.

There were no public indications at that time that Bjelke-Petersen intended to seek election to the Commonwealth Parliament. Both Bjelke-Petersen and Lyons denied that the money that they commenced to raise in the latter part of 1986 was intended for that purpose. If it had been, non-disclosure of the donors might have involved a breach of Commonwealth electoral legislation.

In July 1986, Kaldeal Pty. Ltd. was incorporated. Its directors and shareholders were Lyons and another prominent National Party supporter from Bjelke-Petersen's electorate, William Roberts. Moneys which Kaldeal Pty. Ltd. received were deposited to its' solicitor's trust account.

#### **(i) The Asian Businessman**

In September 1986, Bjelke-Petersen was introduced to an Asian businessman by another prominent member of the National Party. Prior to that time, the businessman was a stranger to Bjelke-Petersen. They discussed investment in Queensland, and spoke for about 10 minutes of the businessman's interests in cocoa plantations and his desire to invest in hotels in Queensland.

At that meeting, the businessman handed Bjelke-Petersen a bag containing \$100,000 in cash and said, according to Bjelke-Petersen, "... we want to help the party. We're interested in the way you operate".

Bjelke-Petersen did not disclose the donation to the National Party, and it was deposited into the account of Kaldeal on 29 September, 1986. That was the first amount paid to Kaldeal.

Bjelke-Petersen later met the businessman again, and directed his secretary to telephone the Land Administration Commission on the subject of North Queensland land which was suitable for cocoa growing.

The effect of his evidence was that he did not otherwise act to assist the businessman, and was not asked to do so.

Prior to meeting Bjelke-Petersen, the businessman had made a donation of \$15,000 to the National Party on 3 March 1986.

At about the same time as he met Bjelke-Petersen, he made another donation of \$100,000 to the National Party on 22 September 1986.

Subsequently on 30 June 1987, he donated a further \$50,000 to the National Party.

## **(ii) The Unknown Donor(s)**

In October 1986, two anonymous cash donations were left at Bjelke-Petersen's office. One was for \$60,000 and the other was for \$50,000. Both were deposited with Kaldeal on 16 October 1986.

Both Bjelke-Petersen and Lyons handled or at least knew of the money but both denied any knowledge of its source or the circumstances surrounding the donations.

No record of the donations was made by Bjelke-Petersen or his staff and no receipt was issued.

The police officer who was Bjelke-Petersen's personal bodyguard took the money to Kaldeal's solicitor's office.

## **(iii) Citra**

On the same day, 16 October, Citra made a donation to Kaldeal of \$100,000 by bank cheque.

## **(iv) Other Donations**

Lyons raised funds for Bjelke-Petersen through Kaldeal. Lyons' fund-raising proclivities were well known, and he was approached with offers of donations. It is unlikely that his role was entirely passive. In any event, when discussions occurred, he would mention Kaldeal and provide a draft letter in the following terms to be forwarded with any donation to it:

"I enclose herewith a cheque for \$            to be used at your discretion in support of the National Party candidate and/or the National Party in the forthcoming State election".

A standard letter enclosing the draft was in the following terms:

"In accordance with our discussion I enclose herewith a draft letter which will cover the forwarding of any cheque.

"Your support and assistance is really appreciated and will go a long way towards helping what we both want to achieve with our dear friend back in the saddle".

Kaldeal received a total of \$824,000 prior to the 1986 State Election. A surplus of approximately \$200,000 remained after payment of incorporation and incidental expenses and payments to the National Party and on account of its election expenses and election expenses of individual National Party candidates.

In November, 1986, the National Party was again elected.

On 31 December 1986, Kaldeal received a further donation of \$40,000.

Early in 1987, slightly in excess of \$12,000 was paid by Kaldeal to support candidates opposing Sparkes for the presidency of the Queensland Branch of the National Party.

By early 1987, Bjelke-Petersen was embarked on his campaign to enter federal politics.

In February or March 1987, an advice was sought from a senior barrister as to whether Kaldeal could make donations or payments in relation to a federal election campaign without disclosing the source of the funds. However, evidence was given before this Inquiry that none of Kaldeal's funds were used to support Bjelke-Petersen's unsuccessful attempt to obtain election to the Commonwealth Parliament.

On the other hand, Queensland Government resources were deployed. For example, Bjelke-Petersen used the Government aircraft to attend a campaign rally in New South Wales. He said that what he did was

justified in the same way as a trip to Turkey for the purpose of "... doing a number of coal deals". As he modestly put it:

"we are doing it in the interests of Australia and not any personal reason. We did it to try and further the interests of the people in this State, in this nation."

On 21 October 1987, Kaldeal received two further donations totalling \$25,000, one of \$22,500 and one of \$2,500.

As at 18 November 1988, Kaldeal had \$262,333 in its bank account and, presumably, it is still there.

According to Lyons, there was never any question but that he and his co-director would act in accordance with Bjelke-Petersen's wishes. He agreed that Kaldeal's funds could be used for any political purpose which Bjelke-Petersen directed.

## 2.4.2 Transactions by some Ministers and Others

### (a) Code of Conduct

According to Bjelke-Petersen, the rules of conduct which he administered as Premier were embodied in an unwritten code and every Minister knew them and observed them.

Bjelke-Petersen's code required a Minister to disclose that he or his wife had an interest in any matter before Cabinet. It also required the Minister to disclose that he or his wife had an interest or an association with any other person who was an applicant before Cabinet. The Minister was required to exclude himself from the decision-making process, and from the discussion leading to the decision-making. According to Bjelke-Petersen, that did happen from time to time.

It was plainly not a universal practice. Nor were Ministers always scrupulous to avoid conflicts of interest. Once again, a sufficient indication of the attitudes of Bjelke-Petersen himself and some of his senior Ministers and his associates can be discerned from a brief reference to some matters which were touched upon in evidence at the public sittings of this Inquiry.

Those with whom dealings took place may have neither sought nor received preferential treatment and no conclusions of impropriety have been drawn. However on the evidence before this Inquiry, including Cabinet records, there were a number of occasions when persons and organizations who were involved in transactions with the Government were also involved in personal dealings with one of its members, who nonetheless participated in and sometimes dominated the official decision-making process.

Frequently there was no disclosure, and the attitudes and practices adopted inside and outside Cabinet effectively obstructed the details from becoming generally known.

Again, while no finding of misconduct is made, there were other occasions when persons or organizations engaged in business with the Government or seeking business from it made substantial donations to its political party, which the processes adopted allowed to remain hidden.

Those with whom dealings took place may have neither sought nor received preferential treatment and no conclusions of impropriety have been drawn. However on the evidence before this Inquiry, including Cabinet records, there were a number of occasions when persons and organizations who were involved in transactions with the Government were also involved in personal dealings with one of its members, who nonetheless participated in and sometimes dominated the official decision-making process.

Frequently there was no disclosure, and the attitudes and practices adopted inside and outside Cabinet effectively obstructed the details from becoming generally known.

### (b) Bjelke-Petersen

#### (i) The Ten Mile

##### (A) *Financial Transactions*

In mid-1982 a Bjelke-Petersen family company, Ciasom Pty. Ltd., borrowed from Bill Acceptance Corporation Limited to complete its \$1.45 million purchase of a grazing property, the "Ten Mile". It also acquired a leasehold interest in an adjoining property, "Crystal Waters".

Bjelke-Petersen himself was not a shareholder or director of Ciasom or another family company, Bjelke-Petersen Enterprises Pty. Ltd., but his wife and children were.

Negotiations to obtain refinance from the European Asian Bank Aktiengesellschaft began by at least December 1982 when a loan in Swiss francs looked advantageous.

Lyons advised Bjelke-Petersen and was involved in the negotiations with the European Asian Bank. *So* was Bjelke-Petersen himself, according to him “to a very, very limited extent”.

Part of his involvement was a discussion in December, 1982, with an Australian representative of the European Asian Bank who reported on that meeting to its Singapore office and its head office on 9 December.

A recommendation was made that the loan be granted notwithstanding that the information available was rather limited. Part of the reason for the recommendation emerges from the following extract from the report:

“.., we think we have to go along as this would open further avenues in Queensland. I am told we will be approached first for Queensland Government and semi-government finance requirements. If this application does not find your consent we believe that it would affect negatively our business in this State ...”.

Bjelke-Petersen denied in his evidence before this Inquiry that he provided any basis for those comments.

The application to the European Asian Bank was successful and, in April 1983, a foreign currency loan in Swiss francs equivalent to A\$3 million was made on the security of a mortgage over the “Ten Mile”. The Bill Acceptance Corporation debt was repaid at that time.

Meanwhile, on 4 February, 1983, Bjelke-Petersen had issued a writ against Queensland Television (Channel 9) claiming damages for defamation arising out of statements made on a current affairs programme which was telecast on 2 February.

Subsequently, a company associated with a well known entrepreneur, Alan Bond, took over Queensland Television Limited. Later, Lyons was appointed to the board of the latter company.

The Australian dollar later depreciated against the Swiss franc and Ciasom converted its borrowings from Swiss francs into the equivalent in **U.S.** dollars. However, the Australian dollar also fell against the **U.S.** dollar. The effect of the currency fluctuation was to increase the amount which Ciasom owed to the European Asian Bank. Ciasom’s financial position was also adversely affected by a lengthy drought at the “Ten Mile”.

By 10 April, 1985, the amount of the principal owing by Ciasom to the European Asian Bank was equivalent to A\$3.8 million. Under the provisions of the loan agreement, Ciasom was obliged to pay the bank a “top-up” amount of \$735,000 on 11 April 1985. However, the bank agreed to forego its entitlement to that payment at that time on the basis of a recommendation to head office which relied upon Bjelke-Petersen’s “political standing” and the bank’s “business opportunities through this borrowing”.

It was not demonstrated that Bjelke-Petersen advanced those considerations to the bank or authorized such an approach.

By the beginning of 1986, Lyons was no longer a director of Queensland Television Limited and he and Bjelke-Petersen personally were involved in negotiations for the settlement of Bjelke-Petersen’s defamation action. Bjelke-Petersen discussed the matter with Bond and corresponded with him.

Early in 1986, Lyons introduced Bjelke-Petersen to Robert Frederick Stowe. The Stowe group of companies included Griffin Holdings Limited, W.R. Carpenter Limited, and the East-West Airlines group of companies. Lyons was then a director of two of the East-West group of companies.

In a transaction which is later discussed in a little more detail, extended landing rights in Queensland were granted by the Government to East-West Airlines (Operations) Ltd. on 30 January, 1986.

Early in 1986, Bjelke-Petersen also met Ryoto “Bob” Yahiro, who, on 5 February, 1986, became a director of Griffin Holdings Limited, the parent company of East-West Airlines (Operations) Ltd.

Yahiro was also associated with a company located in Japan, Kokan Mining Co. Ltd.

At that time, Ciasom Pty. Ltd. and Bjelke-Petersen Enterprises Pty. Ltd. held five leases for the extraction of kaolin. Bjelke-Petersen Enterprises Pty. Ltd. held a further four leases with Raymond Black and Ruth Black, who had been friends of the Bjelke-Petersen family for many years, and there were other kaolin leases held by the Blacks or interests associated with them.

Discussions took place between Bjelke-Petersen and Yahiro with respect to the exploitation of the kaolin leases early in 1986. According to Bjelke-Petersen, he was unaware that Yahiro had any connection with the Stowe group of companies.

On 11 March, 1986, the European Asian Bank demanded that Ciasom pay a "top-up" sum of \$454,396 by 11 April, 1986, together with interest then owing.

On 13 March, 1986, Kokan Mining Co. Ltd. wrote to Bjelke-Petersen Enterprises Pty. Ltd. expressing its "definite interest" in relation to the kaolin, and indicating that it was ready to enter into an option agreement. It was suggested that a payment of \$150,000 would probably be made early in April 1986.

By 24 March, 1986, Bjelke-Petersen's solicitors had drafted five agreements. None provided Kokan Mining Co. Ltd. with any option to acquire or mine the kaolin leases. Four of the draft agreements related to the leases in which Ciasom had no interest and which were owned by Bjelke-Petersen Enterprises Pty. Ltd., the Blacks, and/or interests associated with the Blacks. Each provided for a payment of \$1.00 by Kokan Mining Co. Ltd. to the other party or parties to the agreement.

Further, each was expressed to be subject to completion of a further agreement between Kokan Mining Co. Ltd. of the one part and Ciasom and Bjelke-Petersen Enterprises Pty. Ltd. of the other part.

Those were the parties to the fifth draft agreement, which provided for a payment of \$150,000.00 by Kokan Mining Co. Ltd. to Ciasom not later than 30 April 1986.

Under the respective agreements, Kokan Mining Co. Ltd. was to be given the right, for a period of six months from 5 April 1986, to enter on the kaolin leases to carry out prospecting, drilling, sampling, surveying and testing operations.

On 27 March, 1986, the accountants for the Bjelke-Petersen family companies forwarded the draft agreements to Kokan Mining Co. Ltd. with a request that \$150,000 be remitted to Ciasom's account at the Kingaroy Branch at the Westpac Bank by 6 April 1986.

On 2 April 1986, Bjelke-Petersen's solicitors filed a notice of discontinuance in his defamation action against Queensland Television Limited. By then, he had been paid \$400,000 damages, an amount which he personally negotiated with Bond.

The Australian Broadcasting Tribunal has inquired into that payment and the circumstances leading up to it and has made findings which are a matter of public record. Subsequently, it has been stated that the Tribunal's decision is to be challenged, and those proceedings have not concluded.

The \$400,000 which Bjelke-Petersen received was used to discharge part of the amount which Ciasom was required to pay to the European Asian Bank by 11 April.

In his evidence to this Inquiry, Bjelke-Petersen swore that he told Bond many times during the negotiations that he wished to litigate, and not to settle, the action for defamation which he had commenced. He also said that he repeatedly attempted to prevail upon Bond to allow the terms of the compromise to be made public. Indeed, he claimed that the reason why he insisted upon the huge payment of \$400,000 was to make the media aware that if they made incorrect statements about him which tarnished his political reputation, ". . . when they came out with straight lying . . .", they would be vigorously pursued.

However, that cannot have been the only reason for Bjelke-Petersen's demand for such enormous damages. The terms of settlement to which Bjelke-Petersen agreed required that the amount which he was paid be kept confidential, which on its face made it unlikely that the media generally would receive the intended message.

Bjelke-Petersen's solicitors provided to this Inquiry what was described as the "complete file" of both themselves and the accountants in relation to the transaction with Kokan Mining Co. Pty. Ltd.



The file includes a facsimile message dated 4 April 1986 headed "Carpenter" which refers to an "addendum to an agreement . . . made between 'B.P. Ltd.' and 'K.M.C. Ltd.'" Carpenter is almost certainly a reference to W.R. Carpenter Pty. Ltd., a member of the Stowe group. On Bjelke-Petersen's evidence, he was unaware that any member of that group was involved in the Kokan Mining Co. Pty. Ltd. transaction.

Bjelke-Petersen could not remember whether agreements with Kokan Mining Co. Ltd. were ever executed and there is nothing on the file to indicate that they were.

However, by about 18 April, 1986, Kokan Mining Co. Ltd. had paid \$150,000 to Ciasom's Westpac Bank Account at Kingaroy.

According to the draft agreements, whatever rights were accorded to Kokan Mining Co. Ltd. would have expired about 5 October, 1986.

By then, the European Asian Bank was looking for further payments or additional security, as Bjelke-Petersen had been told in his office on 5 September. Ciasom had failed to pay even all of the amount which had been expected in April.

On 8 October, 1986, the accountant for the Bjelke-Petersen family companies advised Kokan Mining Co. Ltd. that the agreements could be extended to 31 October 1986.

Towards the end of that month, the European Asian Bank was pressing Ciasom for a substantial payment, slightly less than \$260,000. Ciasom was advised that any application for an extension of the loan after March, 1987 . . . . would now be in severe jeopardy".

On 7 November, 1986, Ciasom paid the bank US\$130,000.

On 18 November, the accountant for Bjelke-Petersen and his companies received information that Kokan Mining Co. Ltd. was no longer negotiating on its own behalf but on behalf of the Stowe group. According to Bjelke-Petersen, he was still unaware that companies in that group were ever involved in the kaolin transaction.

Two successive extensions of the period of the exploration rights were granted to Kokan Mining Co. Ltd.. For the first, \$500,000 was paid on 24 December 1986. For the second, a further \$300,000 was paid on 23 April 1987.

On both occasions, payments were made before any written confirmation of the extension was provided. There were no agreements entered into.

In all, the rights were extended for a total of less than nine months to 30 June 1987 at a cost of \$800,000, of which Ciasom Pty. Ltd. paid \$35,715 to the Blacks or interests associated with them.

There was nothing in the "complete file" which indicated that there was any option to purchase granted in respect of the kaolin mining leases. Bjelke-Petersen told this Inquiry that the proposal was that the amounts paid were to be deducted from the purchase price in the event that a sale eventuated.

There were some further desultory negotiations in the second half of 1987, but the matter was at an end before that year was over.

## **(B) Local Improvements**

### **(1) *The Duaringa-Apis Creek Road***

The Mackenzie River runs through or along the "Ten Mile" and "Crystal Waters", and the Duaringa-Apis Creek Road runs northward from near the Capricorn Highway at Duaringa, through "Crystal Waters" and the "Ten Mile" to meet the Sarina Road and the Bruce Highway near the town of Marlborough. The road passes through the Shire of Livingstone and the Shire of Duaringa, in which both properties were initially located.

When Ciasom Pty. Ltd. acquired the properties, the road was only “a track”. It not only required improvement, “it needed to be built”. Further, parts of the “Ten Mile” and “Crystal Waters” through which the road passed were prone to flooding.

Bjelke-Petersen discussed the condition of the road with local residents and, early in April, 1982, he met the Chairman of the Duaringa Shire Council in Brisbane to discuss the funding of road improvements. It was decided to request the Main Roads Minister, Hinze, to take steps to have the road declared a main road, so that the cost of maintaining it would be met by the State Government, not the Shire Councils.

Bjelke-Petersen “probably” passed on to Hinze his “concern on behalf of all the people who live there”, who were not residents of his electorate.

Despite his expressed code of conduct, he considered that there was no need to inform Hinze of his family interest. In his evidence to this Inquiry, he said:

“Everybody from here to Perth to kingdom come knows about the Ten Mile and who owns it. Everybody would know that. He would know that without me telling him .... He would know that through the Main Roads Commissioner with whom I discussed the details of this road ....”.

On 1 July, 1983, a declaration of the Duaringa-Apis Creek Road as a secondary road was gazetted, with the effect that the Commissioner of Main Roads assumed responsibility for the upkeep and construction of the road.

On the previous day, there was a decision by the Governor in Council that \$377,000 should be spent on improvements to the road. That decision was not gazetted until 2 July, by which time the declaration of the road as a secondary road had been gazetted.

Altogether more than \$1.5M was spent on the road.

In August, 1983, Bjelke-Petersen became Treasurer as well as Premier.

On 9 June, 1984, an allocation of \$609,000 for further improvements to the road was gazetted; on 24 April, 1986, further works at an estimated cost of \$209,000 were approved; and, on 21 April, 1988, after Bjelke-Petersen ceased to be Premier and Treasurer, further improvements of \$358,000 were approved.

Whatever the reasons, and there may have been a number in each instance, there were significant improvements and changes in the area after Ciasom Pty Ltd. acquired the properties.

## **(2) Shire Boundaries**

On 21 April, 1984, a change in the boundaries of the Shires of Duaringa, Fitzroy and Livingstone was gazetted.

Both the “Ten Mile” and “Crystal Waters” were excluded from the Livingstone Shire and included wholly within the boundaries of the Duaringa Shire.

One result was that Ciasom Pty. Ltd. became liable for less by way of rates, an initial saving of about \$4,145.22 per annum.

That seems an unlikely reason for the change particularly as the rate position could change in subsequent years.

## **(3) The Tartarus Weir**

When Ciasom Pty. Ltd. acquired the “Ten Mile”, it had “adequate” water supplies, according to Water Resources Commission estimates, but the river flats were undeveloped and covered in brigalow scrub, there were no water pumping or irrigation facilities on the land and there was no regular supply of water from the Mackenzie River.

In 1983 investigations were carried out in relation to a proposed weir on the Mackenzie River.

In November, 1983, discussions took place between the Department of Primary Industries and the Water Resources Commission, in the course of which the Water Resources Commissioner advised an officer of the Department of Primary Industries that there was no need to delineate specific irrigable areas because of representations which Bjelke-Petersen had made.

When Cabinet met on 6 February, 1984, the Minister for Primary Industries, the Hon. Neil John Turner, M.L.A., and the Minister for Water Resources and Maritime Services, the Hon. John Philip Goleby, M.L.A., presented a joint submission recommending that Cabinet give approval in principle for the construction of a weir at Tartrus on the Mackenzie River at an estimated cost of \$4.02M. The Ministers' submission noted that discussions had not been held with landholders who would benefit from the construction of the weir but proposed that, upon completion of the weir, water would be released as required and that landholders wishing to irrigate would be required to hold a current waterworks licence. Cabinet decided to defer a decision. Bjelke-Petersen was present at the meeting.

After the Water Resources Commissioner discussed the Ministers' submission with Bjelke-Petersen, it was decided by Cabinet on 13 February that the project should be discussed with landowners and that a further submission should be prepared. Bjelke-Petersen was again present at the meeting.

In late 1984, on the advice of the Water Resources Commission, Ciasom Pty. Ltd. applied for a number of licences relating to the Mackenzie River and an anabranch. Licences were issued in January 1985, prior to Cabinet giving its approval for the construction of the Tartrus Weir.

On 16 April, 1985, after Bjelke-Petersen left the Cabinet room, Cabinet gave its approval for the construction of the Tartrus Weir on the Mackenzie River, which was completed by late 1986. The "Ten Mile", and other properties in the region, have benefited significantly from the weir's construction.

### **(c) Lyons**

In 1977, Sir Edward Lyons was knighted. In 1978, he was appointed a trustee of the National Party. In 1981, he was made the chairman of the T.A.B. Later, when the Mortgage Secondary Market Board was created, he became its initial chairman.

He was also the first chairman of the recently failed merchant bank Rothwells Limited, a director for a period of Queensland Television Limited, a director of East-West (Operations) Limited and East-West Airlines (Queensland) Pty. Ltd. and then, after those companies had been disposed of by the Stowe group, a director of Griffin Holdings Limited, the former holding company of that group. He may well also have had other outside directorships.

At the same time, Lyons had substantial private interests.

Additionally, he had an exceptional relationship with Bjelke-Petersen and extraordinary influence upon him. Some instances have already been mentioned. **As** has been noted, Bjelke-Petersen regarded Lyons as "his most valuable adviser".

Although Lyons did not always get his way, particularly in more recent years, he received Bjelke-Petersen's support, on occasions to an extraordinary degree even in relation to matters where Lyons had no legitimate interest or where his personal interests were involved and should have been disregarded.

A few of the instances which emerged in the course of the evidence at the public sittings of this Inquiry can be briefly summarised. It is unnecessary to comment on the merits of the respective proposals advanced by Lyons to the Government in order to notice the practical operation of his relationship with Bjelke-Petersen.

### **(i) A Judicial Appointment**

In late 1981, the then Chief Justice, Sir Charles Gray Wanstall, and the Senior Puisne Judge, Mr. Justice Lucas, were due to retire. Politics intervened and the appointment of the new Chief Justice dragged that office into public controversy.

By the time this issue arose for consideration at this Inquiry, the Parliamentary Judges Commission of Inquiry had been appointed. Accordingly, the issue was by no means fully investigated and only brief mention of it is appropriate. It should be emphasised that nothing emerged which cast any shadow over any of the judges involved; for example, there was no evidence that any of them was involved in, or promoted, lobbying on his behalf.

A number of circumstances seem to have coincided.

The then Minister for Justice and Attorney-General, the Hon. Samuel Sydney Doumany, M.L.A., a member of the Liberal Party, recommended that the late Mr. Justice James Archibald Douglas, the next most senior judge after those retiring, be appointed as Chief Justice. Bjelke-Petersen agreed before this Inquiry that Mr. Justice Douglas had the overwhelming support of his fellow judges, the Bar, and the Attorney-General, and that he was a man of unquestionable ability and integrity.

Bjelke-Petersen would not accept Doumany's recommendation of Mr. Justice Douglas, whom it was rumoured had voted for the Australian Labor Party in a previous State election. Instead he advocated a more junior judge, Mr. Justice Dormer George Andrews, a friend of Lyons, who had discussed the appointment with Bjelke-Petersen.

Bjelke-Petersen's refusal to appoint Mr. Justice Douglas and his nomination of Mr. Justice Andrews met with determined opposition from the Liberal members of his Cabinet.

On 12 January, 1982, the matter was resolved when Cabinet unanimously decided that Sir Walter Benjamin Campbell, then a puisne judge of the Supreme Court, be the next Chief Justice. At the same time, Mr. Justice Andrews was appointed Senior Puisne Judge. Liberal Ministers noted their objections to the latter appointment on the Cabinet minute.

Superimposed upon the other factors were the influence of Lyons and Bjelke-Petersen's wish to have his way and not to yield to the junior coalition partner. The respective merits of the prospective appointees and other considerations were subordinated to Bjelke-Petersen's determination to show his support for Lyons and the appointee whom he desired and that he and his party were pre-eminent in the Government of Queensland.

## **(ii) The T.A.B. and Rothwells**

In August 1983 Lyons was chairman of both the T.A.B. and Rothwells Ltd., the merchant bank. The T.A.B. controlled large funds which, pursuant to its legislation, could be invested upon any security or in any investment approved by the Treasurer.

On 19 August 1983, Bjelke-Petersen assumed the Treasury portfolio. Within a month, Lyons, as chairman of the T.A.B., wrote to Bjelke-Petersen as Treasurer, seeking approval for the investment of T.A.B. funds with Rothwells Ltd. as well as other institutions.

Two days after the application was sent, Lyons told Bjelke-Petersen in a letter dated 15 September 1983 that he had omitted to mention that he and the T.A.B. deputy chairman were both board members of Rothwells. The letter was seen by the Under Treasurer, Leo Arthur Hielscher, and he noted on it, for the attention of a Treasury official: "Draft reply please. (It would be unwise for this investment to proceed)".

Rothwells made donations to the National Party, including one of \$25,000 in October 1983. Lyons probably told the Premier of the donation "because of his knowledge of me and knowing I was on both boards ... it would be more likely that I did".

On 7 November, 1983, Lyons again wrote to Bjelke-Petersen in the terms similar to the original application. Hielscher saw that letter, too, and again noted on it an instruction for the Treasury official: "Urgent. See me please."

About 15 November, 1983, a letter responding to Lyons was drafted by a Treasury official. The draft concluded that the overlapping board memberships raised a potential conflict and that Rothwells should not be authorised as a T.A.B. investment.

However, that draft letter has been ruled through by hand and, on 22 November, Hielscher noted upon it:

"Not signed. The Hon. Premier requires Rothwells to be included in the list of approved institutions ...".

Rothwells Ltd was subsequently approved by the Treasurer as a T.A.B. investment and the T.A.B. invested funds with it.

According to Lyons, the approval of Rothwells was sought for “the good of the T.A.B.”.

Bjelke-Petersen could recall little of his involvement in the matter.

### **(iii) Janian—the Southport Private Hospital Proposal**

In 1983, Lyons’ family company, F. & H. (No. 8) Pty. Ltd., held a 50% interest in Janian Pty. Ltd., which owned an area of land near the Southport General Hospital.

In that year, Janian Pty. Ltd. applied to the Health Department for its approval for the construction of an 80 bed private hospital and nursing home. The application contained little information, although the Health Department was advised that Janian Pty. Ltd. had conducted a survey. The Director General of Health requested the results of the study in order to assess the need for the proposed private hospital and nursing home but received no reply.

Later, the Gold Coast City Council approved the rezoning of the land for “Special Purposes”. The likely result was to depreciate its value unless approval was obtained for the proposed private hospital and nursing home, in which case the property would have appreciated very considerably in value.

Janian Pty. Ltd. received expressions of interest from potential buyers, and, in 1987, it again applied to the Department of Health for the approval which was required, this time for a 250 bed private hospital.

The second application was more detailed. It spoke of permanent employment of 350 people, part-time employment for another 150, and expenditure of a total of \$40,000,000. The application stated:

“We have recently completed research into the necessity of such a complex, finding it of great importance, in fact it is imperative, in our opinion, for an area such as the Gold Coast ...”

On 24 February, 1987, the Health Department advised it would undertake an assessment of the proposal and asked for copies of Janian’s “recently completed research”.

Lyons’ partner in Janian Pty. Ltd. responded to the request in a manner which indicated that its research had been limited.

“Regarding our recently completed research, it is based mainly upon both my and my company’s judgment. I have been involved in the building and running of private hospitals, especially in New South Wales, over the last 20 years. Over that period we have not only built and sold numerous private hospitals, but also a large number of nursing homes ... during the past few months we have made numerous visits to the Gold Coast to assess its medical requirements ...”

Lyons kept Bjelke-Petersen informed about the proposal.

On 3 August, 1987, Cabinet considered the application for the first time, together with three other applications for private hospitals in the Gold Coast area. The then Health Minister, the current Premier, had considered the four applications, and his advice was to reject them all.

The Minister justified his opposition to the Janian Pty. Ltd. application on a number of grounds. A Health Department Research and Planning Division analysis showed that none of the hospitals proposed was needed on the Gold Coast; the hospital proposed by Janian Pty. Ltd. would seriously jeopardise the economic viability of two existing private hospitals; and it was believed that Janian Pty. Ltd. only intended to obtain the permit and then sell the land at a profit.

Cabinet rejected all four applications.

Bjelke Petersen informed Lyons of what the Health Minister had told Cabinet, including his concern that all Janian wished to do was obtain the permit and then sell the land at a profit. At Lyons' suggestion, his partner in Janian Pty. Ltd. wrote another letter, which disavowed that intention but stated:

“However, should we receive an offer for the project either during its construction or on or after its construction, we must reserve the right to accept such offer should we consider it to be in the best interests of our company.”

On 26 October, 1987, the matter was again raised in Cabinet, this time at the request of Bjelke-Petersen, who sought, unsuccessfully, to have the previous decision reversed.

#### **(iv) East-West Airlines**

In 1985 East-West Airlines (Operations) Ltd. held a licence issued by the State Commissioner of Transport permitting it to carry passengers and goods by air only between Brisbane and Coolangatta. Stowe was a director of that company and its associates, including the holding company, Griffin Holdings Ltd. in which his family company was a major shareholder.

With the intention of extending its limited operations, East-West had made a number of unsuccessful applications to increase its landing rights in Queensland. Its most recent application had been withdrawn earlier that year because it considered it futile.

In the same period, East-West was seeking to acquire Lindeman Island in order to develop it. Although at that time he had not been formally appointed a director of any company in the group, Lyons requested a map of Lindeman Island from the Department of Lands, Forestry, Mapping and Survey in late November, 1985, and a private firm of mapping consultants was requested to carry out work to produce what was needed at the expense of a company in the Griffin group.

On 27 December, 1985, Lyons was appointed chairman of the board of East-West (Queensland) Pty. Ltd., a company associated with East-West (Operations) Ltd.

Shortly afterwards, Lyons introduced Stowe to Bjelke-Petersen, and they discussed Stowe's hopes for expansion in Queensland.

Bjelke-Petersen said that he would take up the possibility of a further licence with the then Minister for Transport, Lane, although, as he knew, no application was current.

Thereafter, Bjelke-Petersen was kept informed.

On 23 January 1986, Lyons was appointed to the board of East-West Airlines (Operations) Ltd., and, on that day, it applied for the issue of a further licence to provide airline services to a number of additional Queensland ports.

The application was fairly terse. It was unsupported by economic reports, feasibility studies, environmental assessments, or financial analysis of the applicant or the proposed services.

After Bjelke-Petersen had spoken to Lane, an appointment was made for East-West Airline representatives to see the Commissioner for Transport.

On 25 January, two days after the application had been lodged, Bjelke-Petersen and Lane issued a press release foreshadowing the granting of the licence.

Five days later, on 30 January, the extra licence was granted to East-West (Operations) Ltd., allowing it to operate between Brisbane, Cairns, Mackay, Mt. Isa, Proserpine, Rockhampton and Townsville.

Meanwhile, East-West's move to acquire Lindeman Island in order to develop it was also proceeding. The proposal would have necessitated the revocation of a declaration of part of the island as a national park.

On 29 January, 1986, East-West entered into a conditional contract to purchase its leases on the island from the State Government Insurance Office (Queensland), and, on 7 February, an application was made for approval of the transfer of the leases.

On 27 February, the relevant Minister, the Hon. Peter Richard McKechnie, M.L.A., told Parliament that he proposed to seek the approval of the Governor in Council to the revocation of part of the national park on the Island.

There was a public outcry. Bjelke-Petersen supported the proposed development. Lyons said in evidence that he kept Bjelke-Petersen fully informed and that Bjelke-Petersen:

“ . . . could see two and a half thousand, two thousand people being employed there for a period of three years. He also foresaw a very safe seat for the National Party . . . an extra safe seat for the National Party. It was all very good, but our President opposed it bitterly”.

Due in part to Sparkes' opposition, East-West withdraw from its attempt to acquire Lindeman Island, but it had its additional licence for its air service.

In May, 1986, another company in the Stowe group, W.R. Carpenter Australia Ltd., lent \$600,000 to Lyons' family company, F. & H. (No. 8) Pty. Ltd., on an “unsecured, interest free” basis, repayable on demand, according to the scanty documentation at that time.

Lyons used the money to pay off his bank overdraft and buy shares.

He would have had no difficulty in raising such an amount from a bank or other financial institution. Further, the company, F. & H. (No. 8) Pty. Ltd. had substantial assets. The effect of Lyons' evidence to this Inquiry appeared to be that he did not want to grant any security over any assets of the company or use its money to discharge his personal debts. However, on the face of the company's transaction with W.R. Carpenter Australia Ltd., he caused it to borrow and did use its money to discharge his personal liability.

In July that year, East-West began its first service between Cairns and Brisbane, and offered discounts to aged pensioners and young people.

In January, 1987, Lyons, his wife and daughter, Bjelke-Petersen's son, John, who lives on the “Ten Mile”, and Lewis flew to Western Australia in Stowe's private jet to view the America's Cup yacht races.

An English accountant, Mr. John Wosner, a member of the firm Pannell Kerr Forster, the auditor of the companies in the Stowe group, was also there. Lyons knew Wosner very well, he said.

In his evidence to this Inquiry, Lyons said that he asked Wosner whether he could arrange a substitute loan to enable W.R. Carpenter Australia Ltd. to be repaid by July, 1987. He said that he told Wosner that he needed approximately \$720,000.00, and that Wosner did not ask for details of the exact amount required, a statement of Lyons' assets and liabilities, or details of any security which might be provided for the loan.

Later that year, one of the major airlines acquired East-West (Operations) Ltd. The price paid reflected its increased competitive capacity due to its additional licence.

On 9 July, 1987, the secretary to W.R. Carpenter Australia Ltd. requested Lyons to confirm with its auditors, Pannell Kerr Forster, that the terms of the loan from W.R. Carpenter Australia Ltd. to F. & H. (No. 8) Pty. Ltd. required repayment within 12 months from the date of the loan with interest at 14.75% per annum and that the total amount outstanding as at 20 June 1987 was slightly in excess of \$700,000.

Less than a week later, an officer of Lyons' Brisbane bank wrote to its London associate stating that Wosner would be calling to discuss the transfer of approximately A\$750,000 to the Brisbane bank account of F. & H. (No. 8) Pty. Ltd.

A few days later the arrangement changed. Wosner was to deposit the money in the bank in London in the name of F. & H. (No. 8) Pty. Ltd. and the interest payable on the deposit was to be credited to the Brisbane bank account of that company, which would borrow an equivalent amount in Brisbane on the security of the deposit in its name in London and pay interest in Brisbane on the moneys which it borrowed there. The interest differential was less than 1%.

There was never any suggestion that Lyons or F. & H. (No. 8) Pty. Ltd. would pay interest to the person or company which made the deposit in the name of F. & H. (No. 8) Pty. Ltd. in the London bank. Effectively, the transaction appeared to involve a borrowing by F. & H. (No. 8) Pty. Ltd. of over \$700,000 at an interest rate of less than 1%.

The Brisbane end of the transaction had been concluded by 24 July. F. & H. (No. 8) Pty. Ltd. had available approximately A\$750,000 on the security of a lien and charge over the deposit which had been or was to be made in its name in London. Part of the money was used to repay the original loan to W.R. Carpenter Australia Ltd.

At about that time, Lyons and F. & H. (No. 8) Pty. Ltd. had approximately \$575,000 of their own money on deposit with their Brisbane bank.

On 26 July, 1987, Lyons left Australia for London.

Thereafter, the overseas component of the arrangement changed again. The sum of approximately A\$750,000 was not deposited in a London bank in the name of F. & H. (No. 8) Pty. Ltd. but in Guernsey in the Channel Islands in the name of a company with which Lyons had no connection, Drama Lease Ltd., which had to undertake to the bank that it would not deal with the funds deposited without the bank's consent.

On 5 August, 1987, the sum of \$720,000 was deposited in the name of Drama Lease Ltd. in the bank in Guernsey for a fixed term of 12 months, and, on 24 August, the bank received a form of assignment signed by Wosner on behalf of Drama Lease Ltd. which provided that the sum deposited was to be held by the bank to the order of the bank in Brisbane as security for the repayment of all sums advanced by it to F. & H. (No. 8) Pty. Ltd.

The security given to Drama Lease Ltd. was a letter from Lyons to Wosner while Lyons was in London, which was written out in Lyons' hand on his Brisbane letterhead in the following terms:

“Claridges Hotel, London, 1.8.87,

Mr J. Wosner,  
Pannell Kerr Forster,  
Chartered Accountants,  
London.

Dear Mr Wosner,

Re Drama Lease Pty. Ltd. and F. & H. (8) Pty. Ltd.

To secure the supporting of the \$720,000.00 loan by the A.N.Z. Bank, Brisbane, Australia to F. & H. (8) Pty. Ltd. of Brisbane, Australia, I hereby undertake **to** have F. & H. extinguish the loan from the A.N.Z. Bank Brisbane as soon as the 1.5 acre property situate between Nerang and Cougall Street, Southport, Queensland, is sold which should be within two years. It is also agreed F. & H. will pay accrued interest to Drama Lease Pty. Ltd. at the same time as the debt to the A.N.Z. is extinguished. The property to be sold is worth at least \$4 million. ...”

On 22 October, 1987, Lyons became a director of Griffin Holdings Ltd.

Lyons told this Inquiry that Wosner has instructions not to disclose the identity of the ultimate source of the funds deposited in the name of Drama Lease Ltd., and swore that he had no knowledge of that matter himself.

Although he was unable to be compelled to attend to give evidence, Wosner stated on 22 November, 1988, that his firm, Pannell Kerr Forster, acted on behalf of several clients, including Drama Lease Ltd., in the management of investment funds. He also stated:

“I also confirm that the investments of Drama Lease Limited are not pledged as security and that the company's officers are at liberty to reinvest their funds. The company has no legal responsibility for any liabilities of F. & H. (No.8) Pty. Ltd..”



Lyons expressed surprise at what Wosner had said.

Although the deposit in the Guernsey bank was made only for a period of 12 months from August 1987, the situation was unchanged when Lyons gave evidence at a public sittings of this Inquiry late in 1988. F. & H. (No. 8) Pty. Ltd. continued to have the use of over \$700,000 provided by an unknown stranger and involving F. & H. (No. 8) Pty. Ltd. in only a very small liability for interest to its bank.

#### **(d) The Winchester South Coal Concession**

On 15 July 1980, Cabinet decided to invite tenders for an authority to prospect for coal in the Winchester South area. When the announcement was made, it was said that it involved “the most intensive competition ever staged for a State Government mining lease in Australian mining history”.

The Mines portfolio changed hands four times in the period of seven months before the closing date for tenders, which was 2 January, 1981. The Hon. Ivan James Gibbs, M.L.A., took over the portfolio on 23 December, 1980.

There were 32 tenders lodged with the Mines Department by a diverse range of companies, individually or in conjunction with other members of a consortium. Some of the largest companies in Australia and elsewhere were involved. Tenders were said to have cost up to \$200,000 to prepare.

One application was made by a consortium comprising BP Australia Ltd. (50%), Drayton Mining Development Pty. Ltd. (25%) and Westfield Ltd (25%). Drayton Mining Development Pty Ltd was associated with Sir Leslie Thiess, who was then a director of that company.

Thiess was a friend of Bjelke-Petersen who admired him greatly, a friend and business associate of Hinze, and a friend of the Under Secretary of the Department of Mines.

Thiess was not called to give evidence to this Inquiry and there is no evidence upon which any conclusion could be formed with regard to his involvement in or knowledge of particular matters to which reference is made.

The complexity of the applications was such that it was expected that there would be no decision made for at least 6 months after tenders closed.

In the event, the whole process of evaluation and comparison of the merits of each of the 32 applications received was performed expeditiously by one man, the Under Secretary of the Department of Mines. He did not confer with any other officer in his department or any other department. The Under Secretary regarded himself, as he described it, as “pre-eminent” in the coal mining industry.

The process of evaluation involved the Under Secretary’s making notes of his “evolving preferences and impressions” on a rough working sheet, from which he prepared a “comparative summary” of the merits of each of the 32 applicants. When he had reached the conclusion that he preferred the BP-Drayton-Westfield consortium, he discussed his opinion with Gibbs, after which he drafted a four page submission for Gibbs to take to Cabinet containing a recommendation that the authority to prospect be awarded to that consortium.

The Mines Department holds no record of any evaluation of the 32 tenders. The Under Secretary had disposed of his “rough working sheet” as waste paper.

A week before the Cabinet meeting of 9 March, 1981, Bjelke-Petersen discussed the matter with the Mines Department Under Secretary, who told Bjelke-Petersen that the BP-Drayton-Westfield consortium was the “superior applicant” and briefly outlined the basis of that opinion.

On 9 March 1981, Cabinet met and Gibbs presented the four page submission, which contained the general assertion that the 32 applications had been presented in great detail, were generally of a high standard, and had been considered in terms of various criteria such as the technical and financial ability of the applicants to carry out the program. It was also stated that, upon consideration of those factors, the BP-Drayton-Westfield consortium had been found to be “quite substantially superior to any other”, and listed some attributes of the consortium which had apparently appealed to the Under Secretary.

A Cabinet Committee of three was appointed to consider the submission and to decide the successful applicant. They were Bjelke-Petersen, the Deputy Premier and Treasurer, Edwards, and Gibbs.

On 11 March, 1981, Gibbs told Parliament that the consortium with “the Thiess family companies involved” would be offered the authority to prospect, that it was “head and shoulders above the rest” and that he, the Premier, the Treasurer and the rest of Cabinet were “happy” with the recommendation.

At the time the Government had not extracted any major financial commitment from the favoured consortium.

Cabinet met on 12 March, 1981, (with Bjelke-Petersen absent) and Gibbs made an oral submission following which it was decided to approve the offer of the authority to prospect to the BP-Drayton-Westfield consortium.

**(e) Hinze**

Hinze was chairman of the Albert Shire Council from 1957 until 1966 when he was elected to Parliament as the member for the South Coast. He was elevated to Cabinet on 24 October, 1974, as Minister for Local Government and Electricity. On 23 December 1974, he became the Minister for Local Government and Main Roads too, and on 29 July 1980 he also became Minister for Police. On 23 December, 1980, Racing administration in Queensland was added to his responsibilities. He lost the Police portfolio on 6 December, 1982.

He was also a businessman with diverse interests and, with his wife, controlled a number of private companies.

While a Minister of the Crown, Hinze, his wife or one or other of their companies was paid or lent more than \$1.5 million by a number of individuals and companies involved in dealings with the Government, often in matters for which Hinze was ministerially responsible. In some instances, according to his evidence, the sources of the money were total strangers whose very existence has not been able to be verified.

Some of those with whom Hinze dealt, and with whom he was friendly, were people of great commercial expertise and extreme wealth. Yet many of their transactions with Hinze shared the common characteristic that they were utterly non-commercial. Proper documentation was rare and in some cases there were no documents or documents were backdated, and loans were granted without security. Interest was another point of regular disinterest, and few formal arrangements were made for loans to be repaid.

Between 1 July, 1983, and 30 June, 1987, a total of \$815,056 described as “loans forgiven” and “loans written off” was processed through the Hinze Group financial accounts to the credit of individual accounts of Hinze and his wife. The details are as follows:

	Russell Hinze	Fay Hinze	Total
(a) Pabbay Pty Ltd (1983/84)	\$ 33,500	\$ 33,500	\$ 67,000
(b) Pabbay Pty Ltd (1983/84)	—	1,146	1,146
(c) T/T Short Punch & Greatorix (1983/84)	10,000	—	10,000
(d) Pabbay Pty Ltd (1984/85)	100,000	100,000	200,000
(e) Nathan (Colwal Pty Ltd) (1984/85)	125,000	125,000	250,000
(f) Syd Truscott (1984/85)	—	45,000	45,000
(g) C T Simmons (1984/85)	—	30,000	30,000
(h) Nikrairie Pty Ltd (1986/87)	49,400	49,400	98,800
(i) Norm Rix (1984/85)	<u>113,110</u>	<u>—</u>	<u>113,110</u>
	<u>\$431,010</u>	<u>\$384,046</u>	<u>815,056</u>

Additionally, loans totalling a further \$200,904 were forgiven or written off in the financial accounts of various Hinze companies by 30 June, 1987:

(a) Cowrie Corporation Pty Ltd (1983/84)	\$80,000
(b) Leslie Corporation Pty Ltd (1983/84)	100,000
(c) Fine Braid Leslie Partnership (1983/84)	<u>20,904</u>
	<u>\$200,904</u>

As at 30 June, 1987, the financial accounts of various Hinze group companies showed that \$500,000 remained outstanding in respect of the following loans. Some, at least, had either been forgiven or were not intended to be repaid:

(a) Cooper, Korbl (G. Herscu)	\$100,000
(b) Noeur Pty Ltd (J. Bartlett)	100,000
(c) Nikrairie Pty Ltd (Thiess/McMaster)	100,000
(d) Seymour Developments Pty Ltd (K. Seymour)	150,000
(e) HSP Nominees Pty Ltd (E. Kornhauser)	<u>50,000</u>
	<u>\$500,000</u>

Hinze, his wife and family companies also received other benefits, for example, the exclusive use of a Gold Coast penthouse for almost three years, rent free, and later the exclusive use of the same penthouse at a rental of \$1.00 per month with a five year option to purchase the property at a price almost certain to be far less than its value if the option was exercised.

Soon after Hinze lost his place in Cabinet after the current Premier took office in late 1987 during the course of this Inquiry, interests associated with Hinze received a further windfall of \$1.8 million in a transaction which was undocumented until later and related to land in which neither Hinze, his wife, nor any of their companies had had any beneficial interest.

What follows are some details of some transactions, in which Hinze, his wife and family companies had an interest.

#### (i) **Kornhauser; the Paradise Centre Project**

Hinze and Kornhauser had been close friends for some time. In the late 1970's Kornhauser set out to transform the old Surfers Paradise Hotel site in the heart of the Gold Coast into a major hotel, accommodation, car parking, entertainment and commercial complex known as the Paradise Centre. A Kornhauser controlled company, H.S.P. (Nominees) Pty. Limited, owned the Surfers Paradise Hotel land and adjoining land.

By August, 1979, Kornhauser was faced with two problems. There was opposition within the Gold Coast Council, which was re-established after an Administrator (who had carried on the Council's business in the late 1970's) had approved the project. Secondly, there was the concern whether the project was permissible or workable under existing legislation.

Hinze made a forceful telephone call to the Town Clerk while the Council was meeting that month, which effectively ended the Council's opposition.

Between August and November, Hinze, in his capacity as Minister for Local Government and Main Roads, wrote to the Minister responsible for the material legislation, the then Minister for Justice and Attorney-General, Lickiss, urging a review of the legislation and amendments to the legislation to allow the Kornhauser development to proceed.

On 14 April, 1980, Cabinet decided that approval be given to the introduction of the Registration of Plans (H.S.P. (Nominees) Pty Limited) Enabling Bill, which was passed by Parliament three days later and became law on 12 May.

On 16 April, 1980, between the Cabinet decision and before the Bill had passed through Parliament, H.S.P. Nominees Pty. Limited made a payment of \$200,000 through a Kornhauser intermediary to Lowanna Pty. Ltd., a Hinze family company, which passed the money to Waverley Park Stud Pty. Ltd., another Hinze family company, Lowanna Pty. Ltd. gave Kornhauser's intermediary security for the loan, and Hinze and his wife also guaranteed the loan. However, there was no public record of the transaction, and the use of the Kornhauser intermediary meant that even the internal records of the Hinze group omitted any reference to H.S.P. Nominees Pty. Limited, the Kornhauser company associated with the Paradise Centre project.

Hinze denied in evidence any connection between the loan and the surrounding events.

On 23 July, 1980, Hinze assumed the Police portfolio, in addition to his other responsibilities.

As Minister for Police, he became associated with the proposal for a casino licence at the Gold Coast, including the application with which Kornhauser was associated. Reference had already been made to some aspects of that matter, including Hinze's membership of the Ministerial Committee appointed to supervise the implementation of the Cabinet decision to introduce casinos.

Applications for the casino licence proposed for the Gold Coast closed at the end of July, 1981. Twenty-eight applications were received including one from Paradise Corporation of Queensland Pty. Ltd., in which H.S.P. (Nominees) Pty. Limited was a significant shareholder.

The panel of Treasury and Works Department officials assisting the Ministerial Committee evaluated the applications, and eliminated 24 of the 28 entries, including Paradise Corporation of Queensland Pty. Ltd. The remaining four applicants were then recommended by the panel to the Ministerial Committee for its assessment.

The Ministerial Committee was of the opinion that three of the applicants eliminated by the panel should be added to the short list, including Paradise Corporation of Queensland Pty. Ltd. Two other applicants were later added by Cabinet.

On 29 September, 1981, the \$200,000 loan was repaid with interest.

On 7 February, 1982, Hinze and Lewis dined together. Hinze was to send a letter the following day to the then Treasurer, Edwards. Lewis made changes to the draft of the letter which presented a more favourable impression of Kornhauser.

However, early in March, 1982, the Paradise Corporation of Queensland Pty. Ltd. application was withdrawn.

In January, 1983, Kornhauser wrote to Bjelke-Petersen asking for further legislation to enable Stage 2 of the Paradise Centre project to proceed, pointing out that the legislation would assist him greatly in obtaining funding for the project. Kornhauser sent a copy of his letter to Bjelke-Petersen to Hinze, and sought his assistance.

On 24 May 1983, a member of Kornhauser's staff sent a lengthy submission in support of further legislation to the Co-ordinator General at the Premier's Department.

On 28 June, 1983, Cabinet gave approval for the preparation of a Bill to cover the proposed stage 2 of the Paradise Centre.

On 17 November, the then Minister for Justice and Attorney-General, whose department was responsible for the legislation recommended that Cabinet approve a draft Bill, the Registration of Plans (Stage 2) (H.S.P. [Nominees] Pty Limited) Enabling Bill, which was passed by Parliament on 30 November.

On 15 November, 1983, two days before the Cabinet decision, H.S.P. (Nominees) Pty. Limited paid \$50,000 to a Hinze family company. The sum was recorded in the books of that company as a loan. No interest

was paid and no repayments were made until February, 1988, after Hinze had been omitted from Cabinet by the current Premier when he took office in the course of this Inquiry.

## **(ii) Gemini Court**

In mid 1980 Lowanna Pty. Ltd. had obtained options over a number of parcels of land at Burleigh, the zoning of which permitted the construction of home units, and had paid deposits on some contracts to purchase portions of the land. There was some local opposition to a "high-rise" development.

The present Mrs. Hinze, then Fay Jeanette McQuillan, had been involved in the acquisition of the rights over the property, and continued to be interested in the project as it developed. (It is convenient to refer throughout to the present Mrs. Hinze by that description).

Hinze also participated in the project, although public records did not indicate that he had any interest in it.

There were four companies involved.

Colwal Pty. Ltd., which later was to take an assignment of Lowanna's interests and acquire the land, was incorporated in June, 1980. The shareholders were the solicitor for Hinze and his family interests, John David Andrew Punch, and a law clerk employed by the solicitor, and the directors were Hinze's accountant, Robert Eugene Murphy, and Mrs. Hinze.

Documents were prepared for the transfer of the shares in Colwal Pty. Ltd. to Hinze, but the transfer was never recorded.

Kanni Pty. Ltd. is another Hinze family company, which had Murphy and Mrs. Hinze as its directors in the latter part of 1980.

On 30 October, Kanni Pty. Ltd. was appointed the trustee of a discretionary trust, the Abeyance Trust, the potential beneficiaries of which were Hinze, Mrs. Hinze and the Hinze company, Waverley Park Stud Pty. Ltd.

The other two companies involved were Nathan Investments Pty. Ltd., a company associated with Thiess, and Eblana Pty. Ltd., a company associated with a major Gold Coast builder and entrepreneur, Ronald Ewan McMaster.

In November, 1980, Lowanna assigned its rights over the land to Colwal, which later refunded to Lowanna the amount of the deposits which it had paid.

On 20 November, Hinze, Mrs. Hinze, Thiess, McMaster and others travelled to Canberra where a joint venture agreement was entered into between Colwal Pty. Ltd., Kanni Pty. Ltd., Nathan Investments Pty. Ltd., and Eblana Pty. Ltd.

The joint venture agreement provided for profits and losses to be shared equally between Kanni Pty. Ltd., Nathan Investments Pty. Ltd. and Eblana Pty. Ltd., and made provision for a management committee of which Hinze was appointed a member. Colwal's role was to acquire the land, construct the building, and sell the units. In due course, it completed the purchase of the land and repaid to Lowanna the deposits which it had paid, and the project proceeded.

As has already been noted, during the second half of 1980, tenders were invited for an authority to prospect coal in the Winchester South area. Prior to the closing date for tenders, 2 January, 1981, one applicant for the authority to prospect was a consortium which included Drayton Mining Development Pty. Ltd., a company with which Thiess was associated.

In that month, after a journalist had spoken to him, a solicitor advised Hinze to remove the name of Mrs. Hinze from any public record which associated her with Colwal Pty. Ltd.

Documents were prepared and backdated to show that Mrs. Hinze and Murphy had resigned as directors of Colwal months earlier, had been appointed alternative directors only from 18 September, 1980 to 25 November, 1980, and had been neither directors nor alternate directors since that time. The inaccurate documents were lodged with the Commissioner for Corporate Affairs.

On 9 February 1981, the terms of the Abeyance Trust were varied to remove Hinze as a potential beneficiary. Thereafter the beneficiaries were Mrs. Hinze and Waverley Park Stud Pty. Ltd., in which Hinze owned half the shares.

By March 1981, construction of the building was well advanced.

In that month, the Winchester South authority to prospect was awarded to the consortium including the Thiess company Drayton Mining Development Pty. Ltd.

Hinze attended the Cabinet meeting at which that matter was discussed and participated in the discussion and the decision without disclosure of his association with Thiess.

Later, he made statements which, to say the least, did not comprehensively reveal the position in relation to his association with the Gemini Court project.

On 11 March, 1982, a deed of variation of the joint venture agreement was executed, new management arrangements were made, and a management committee was empowered to allocate units in the building to any of the joint venturers.

On 15 March, Hinze attended a meeting of the management committee at which it was agreed that one penthouse would be reserved for Kanni Pty. Ltd. and one for a company associated with Thiess, Drayton Investments Pty. Ltd.

By June, 1982, Nathan Investments Pty. Ltd. had paid \$250,000 to Kanni Pty. Ltd. which was described as a loan. In some documentation, the creditor is shown as Nathan Investments Pty. Ltd., and in other documentation the creditor is shown as Colwal Pty. Ltd. as nominee for the Gemini Court Joint Venture.

In March and April, 1982, questions were raised in Parliament concerning the involvement of Hinze in the Gemini Court project, and reference was made to the topic in the media. According to one report, Hinze told a journalist that neither he nor his family had any connection with Colwal Pty. Ltd.

On 2 April, 1982, the first annual return for Colwal Pty. Ltd., which related to the period ended 3 December 1981, was lodged with the Commissioner for Corporate Affairs. The return showed the only shareholders in Colwal Pty. Ltd. as Nathan Investments Pty. Ltd. and Eblana Pty. Ltd.

The Gemini Court project was completed by the end of 1982, by which time the Gold Coast property market had fallen considerably. The joint venturers were concerned that a loss would be sustained.

Thiess took possession of one of the penthouses and the other was decorated and furnished in accordance with Mrs. Hinze's requirements and passed into the possession of Hinze and his wife.

For almost three years, they retained exclusive possession of that unit and paid the body corporate charges. They paid no rent, although the owner of the unit continued to be shown as Colwal Pty. Ltd.

The balance sheet for Colwal Pty. Ltd. as at 30 April 1983 showed liabilities in excess of assets.

In May 1984, a further transaction was entered into. Another company, Nikrairie Pty. Ltd. was lent \$200,000, at least \$100,000 of which emanated from a company associated with Thiess. The shareholders and directors of Nikrairie Pty. Ltd. were members of Hinze's solicitors' firm. Nikrairie Pty. Ltd. on-lent the \$200,000 to Kanni Pty. Ltd.

There was no public record which could have revealed Hinze's interest in the transaction, although he personally guaranteed repayment of the loan. The security granted by Kanni Pty. Ltd. to Nikrairie Pty. Ltd. was an unregistered mortgage over some land owned by Kanni Pty. Ltd. which was already the subject of a registered mortgage and which, in the following years, was the subject of other and registered dealings.

For example, long term leases in favour of other parties were registered over parts of the land, and the registered mortgage was released and another registered mortgage granted over the land to another party. The mortgage in favour of Nikraine Pty. Ltd. remained unregistered throughout.

Further, as is later mentioned, the indebtedness of Kanni Pty. Ltd. to Nikraine Pty. Ltd. was gradually written off.

Late in 1985, the penthouse occupied by Mr. and Mrs. Hinze was transferred to Camelot Investments Pty. Ltd., another company associated with Thiess, for \$350,000.

Camelot Investments Pty. Ltd. entered into a transaction with Essvee Pty. Ltd., a company controlled by Mrs. Hinze. Essvee Pty. Ltd. was granted both the tenancy of the unit at a rent of \$1.00 per month and an option to be exercised within five years to purchase the unit for \$350,000, the same price as was paid for it by Camelot Investments Pty. Ltd. in 1985. According to internal records of family interests associated with Thiess, the arrangement involved a detriment to Camelot Investments Pty. Ltd., as the trustee of a Thiess family trust, in excess of \$200,000.

Meanwhile, by late 1985, it was apparent that the joint venture had lost a substantial amount. The balance sheet for Colwal Pty. Ltd. as at late September 1985 showed a total deficiency of more than \$6 million.

Arrangements were made for Eblana Pty. Ltd. to withdraw from the joint venture upon terms which do not require discussion.

Effectively, interests associated with Thiess took over the project and the balance of the units, a number of which were still registered in the name of Colwal Pty. Ltd.

It seems that by late 1985 it had been informally decided that Kanni Pty. Ltd. would not be required to contribute to the losses of the joint venture, but the arrangement had not been formalized.

Early in 1986, Hinze's solicitors asked Nathan Pty. Ltd. to confirm that neither it nor Kanni Pty. Ltd. had any claim upon the other arising out of the joint venture.

On 18 February, 1986, a reply was received, which included the following passage:

“Nathan has been more than considerate in its dealings with Kanni to date, and does not wish at this stage to enter into any further paperwork to formally release Kanni from obligations under the joint venture agreement which may not have been discharged by Kanni at the date of dissolution of these arrangements.

As indicated to you, it is extremely unlikely that these provisions would ever be exercised.”

By 30 June, 1986, \$100,000 of the indebtedness of Kanni Pty. Ltd. to Nikraine Pty. Ltd. had been written off in internal Hinze records.

On 22 January, 1988, Hinze's solicitor wrote to the Commissioner of Stamp Duties advising that Nikraine Pty. Ltd. did not appear to have any assets or liabilities.

Despite what had been said in February 1986, the first demand upon Kanni Pty. Ltd. was made during the course of this Inquiry.

On 7 April, 1988, Camelot Investments Pty. Ltd. sold the Gemini Court penthouse over which Essvee Pty. Ltd. had an option to Mrs. Hinze. A deposit of \$1,000 was paid, and later a mortgage to secure the balance of \$300,000 was executed in favour of Camelot Investments Pty. Ltd.

On 9 August, 1988, more than two years after the dissolution of the joint venture, accountants acting on behalf of Thiess' interests wrote to Kanni Pty. Ltd. asserting that the joint venture accounts as at 30 June 1987 indicated that “a contribution of \$2,470,345” was outstanding from Kanni, and asking to be advised of “... a timetable for the settlement of this amount”.

By the conclusion of the material section of the evidence at the public sittings of this Inquiry late in 1988, Kanni Pty. Ltd. had not repaid the \$250,000 received from Nathan Pty. Ltd., the \$200,000 received from Nikraine Pty. Ltd., or contributed the more than \$2 million for which it was said to be responsible in respect of the losses of the joint venture.

In his evidence before this Inquiry, Hinze explained the transactions associated with the Gemini Court project by reference to the friendship between himself and his wife and Thiess.

### **(iii) Noeur Pty. Ltd.**

John Colin Bartlett is a property developer and a close friend of Hinze. The two men met every fortnight for years.

On 11 August, 1983, a Bartlett company, Noeur Pty. Ltd., paid \$70,000 to the Hinze company, Kanni Pty. Ltd. which passed the money on to another Hinze company, Waverley Park Stud Pty. Ltd.

Eight days later, on 19 August, 1983, Colrene Pty. Ltd., another Bartlett company, lodged an amended rezoning application with the Albert Shire Council in relation to its Nerang Village development.

On 15 September, 1983, Kanni Pty. Ltd. wrote a cheque for \$70,000 payable to Noeur Pty. Ltd., which cheque was never presented.

There was no document then in existence (apart from notations in Hinze company internal records) to indicate that the Noeur Pty. Ltd. payment of \$70,000 was a loan.

On 20 September, 1983, the Albert Shire Council town planning committee decided to forward the amended application for rezoning approval to the Local Government Department with a recommendation that it be approved.

On 23 September, 1983, Colrene Pty. Ltd. paid Kanni Pty. Ltd. \$30,000 which Kanni Pty. Ltd. passed on to Waverley Park Stud Pty. Ltd.

On 15 December, 1983, Colrene Pty. Ltd.'s application for rezoning was approved but the Bartlett group of companies were later placed in receivership and liquidators appointed.

A deed of forgiveness dated 25 July, 1985, was produced to this Inquiry, which provided that Noeur Pty. Ltd. had agreed to forgive the debt and release Kanni Pty. Ltd. from its obligations to repay the amount of the debt. Hinze and Mrs. Hinze's signatures appear on the deed over the common seal of Kanni Pty. Ltd.

Notwithstanding the deed of forgiveness, Kanni's balance sheets continued to show the amount of \$100,000 through the 1986 and 1987 financial years as a current liability owing to Noeur Pty. Ltd.

Hinze gave evidence that the loans from Noeur Pty. Ltd. had not been forgiven but might be offset by other claims to which reference was made. The latter proposition was plainly incorrect.

### **(iv) Leslie Corporation**

Leslie Corporation, a group of entities which included Fine Braid Leslie Partnership, was the developer of a canal estate "Coral Gardens".

Subsequent to the serious flooding in south-east Queensland in 1974, a cautious approach was adopted to the approval of canal estates and, as a result, the "Coral Gardens" development was delayed.

There was considerable negotiation between Leslie Corporation and various Government authorities, and Hinze was lobbied by representatives of the group and arranged and attended various meetings between the company and officials of Government Departments.

An Order in Council approving the construction of canals on the "Coral Gardens" estate was gazetted on 17 March, 1983.



Prior to that time, Leslie Corporation had lent \$61,300 to a Hinze company, Lowanna Pty. Ltd.

In April, 1983, the Hinze group made a payment of \$100,000 to Leslie Corporation. According to John Francis Langsworth, an associate of Leslie Corporation, that sum was paid to discharge the earlier loan of \$61,300, together with interest of \$38,700, by Leslie Corporation to Lowanna Pty. Ltd.

In the same month, Leslie Corporation paid \$100,000 to Waverley Park Stud Pty. Ltd. Mrs. Hinze deposited the cheque into the bank account of that company, noting on the deposit book that it was a "deposit on purchase of Waverley Park unconditional contract fallen through". Waverley Park Stud was then and still is the domestic residence of Mr. and Mrs. Hinze, and there was never any intention to sell it to any of the companies in the Leslie Corporation group.

An unstamped document described as an "option to purchase" and signed by Hinze and Mrs. Hinze over the common seal of Waverley Park Stud Pty. Ltd. was produced to this Inquiry. According to that document, the option had not expired by April 1983 and was available for exercise until 30 June 1983.

Inconsistently, an unsigned form of contract annexed to that document required that any sale to arise from any exercise of that option was to be completed by 31 July, 1982, more than eight months prior to the banking of a cheque for \$100,000 into the Waverley Park Stud Pty. Ltd. bank account.

In May 1983, Leslie Corporation made a further payment of \$35,000, this time to Lowanna Pty. Ltd. According to the records of Leslie Corporation that payment was a loan.

In August 1983, Leslie Corporation wrote to Waverley Park Stud Pty. Ltd. in terms which suggested that the option was still current and had been extended to 31 December 1986 in return for \$35,000.

A further \$35,000 from Leslie Corporation was paid into the bank account of Waverley Park Stud Pty. Ltd. on 10 October, 1983.

According to Langsworth, there was an extension of the option in consideration of the sum of \$70,000, comprised of \$35,000 by way of release of the loan to Lowanna Pty. Ltd. and a further payment of \$35,000.

Hinze agreed that the total amount received from Leslie Corporation in the period in question was \$170,000, and that at least \$100,000 of that amount was not repayable.

#### **(v) Bill Acceptance Corporation Ltd.**

Although Hinze did not become the Minister for Racing until late in 1982, he had ministerial responsibility for racing from the end of 1980. As such, he was responsible for Racing Development Fund, which was established in mid 1981 to facilitate an extensive racing development programme in Queensland and for that purpose needed to borrow large sums which it serviced from income derived from the clubs and the Totalisator Administration Board.

On 18 June, 1981, Bill Acceptance Corporation Ltd. approved a loan facility of \$500,000 for Lowanna Pty. Ltd., and a first instalment of \$178,772.41 was paid to Lowanna Pty. Ltd. on 17 July 1981.

On 6 August, 1981, a Bill Acceptance Corporation Ltd. officer attended a meeting of the members of the Racing Development Fund at which Hinze was present in his ministerial capacity. The finances and borrowing requirements of the Racing Development Fund for the redevelopment of a number of racecourses were discussed.

On 11 November, 1981, Bill Acceptance Corporation Ltd. approved a loan facility of \$275,000 for Kanni Pty. Ltd., and the first payment of \$161,910 was made on 4 January 1982. On 24 February 1982, Hinze, Mrs. Hinze, and the Bill Acceptance Corporation Ltd. officer who had attended the meeting of the Racing Development Fund members met to discuss the personal requirements of Hinze and his associated interests.

During that meeting, there was also discussion of Racing Development Fund business, including a proposed \$10 million Albion Park redevelopment programme. The Bill Acceptance Corporation Ltd. officer noted:

“Building tenders are to be called in March with construction to commence in April 1982”.

On 7 April, 1982, Bill Acceptance Corporation Ltd. agreed to provide a \$5 million facility to the joint venturers in respect of the Gemini Court project.

On 18 June, 1982, the trustees of the Albion Park Paceway resolved to accept a tender by Bill Acceptance Corporation Ltd. for a loan of \$10 million for the Albion Park redevelopment programme.

Subsequently, on Hinze’s recommendation, Cabinet approved the transaction, and the money was lent by Bill Acceptance Corporation Ltd. on 10 August, 1982.

#### **(vi) George Herscu**

In about August 1982, the Brisbane City Council gave approval for the development of a shopping centre at Sunnybank. The approval was subject to certain conditions which restricted vehicular and pedestrian access. The centre opened in July 1983, but a fence inhibited pedestrian access and there were restrictions on the methods by which vehicles could enter and leave the site.

By October, 1983, Hersfield Developments Corporation Pty. Ltd., a company associated with George Herscu, had purchased the shopping centre, and was then concerned at the commercial consequences of the access difficulties.

Approaches to Brisbane City Council proved unsuccessful, and Herscu approached Hinze with whom he shared an interest in horse racing.

On 21 November, 1983, Herscu’s solicitors, Messrs. Cooper Korbl & Co., forwarded \$50,000 which was paid into the trust account of Hinze’s solicitors, Messrs. Short Punch & Greaorix. In their letter dated 21 November, 1983 Herscu’s solicitors had stated that the money was advanced “... for six months at 15 per cent per annum payable on repayment of the deposit at the end of six months on 22 May 1984”. Reference was also made in that letter to a further loan to be made to “one of your clients”.

The amount received was provided by Hinze’s solicitors to Kanni Pty. Ltd.

Hinze actively involved himself in attending to the access difficulties at the shopping centre.

In December, 1983, Hinze approached the then Commissioner of Main Roads and requested him to consider the possible methods of overcoming the problem.

On 19 December, the Commissioner of Main Roads wrote to the Town Clerk of the Brisbane City Council stating that Hinze had asked him to inform the Town Clerk that he supported a review of the access.

On 22 December, a second instalment of \$50,000 was paid by Cooper Korbl & Co. to Hinze’s solicitors, who again paid the sum to Kanni Pty. Ltd.

On 13 March, 1984, Mrs. Hinze sent her solicitors an acknowledgement of debt under the common seal of Kanni Pty. Ltd. which provided for \$50,000 to be repaid on 22 May, 1984, and \$50,000 to be repaid on 19 June, 1984.

The matter of the access to the shopping centre was finally resolved in mid-October 1985, when the Brisbane City Council accepted in principle the proposed changes.

No demand for repayment of the loan was made until 30 August, 1988, during the course of this Inquiry.

By November, 1988, no amount of principal or interest had been repaid.

**(vii) Kevin Will Seymour**

Seymour is a property developer and friend of Hinze, with whom he shares a common interest in racing. Seymour is, or was, the Chairman of the Albion Park Trotting Club. He was appointed by the Governor in Council variously a member of the Queensland Trotting Board, a member and Deputy Chairman of the Queensland Harness Racing Board and one of three trustees of the Albion Park Raceway during the period that Hinze had ministerial responsibility for racing.

In late 1985, a Hinze company, Oxenford Tavern Holdings Pty. Ltd., was attempting to sell a property which it owned near its Oxenford Tavern. The property for sale was a shop which was subject to a lease and was operated as a "Big Rooster" food outlet.

Between 23 December, 1985 and 18 February, 1986, Seymour Developments Pty. Ltd. paid amounts totalling \$320,000.00 to Oxenford Tavern Holdings Pty. Ltd.

In January, 1986, Seymour received from his solicitors a draft contract for the purchase of the property for \$320,000 with completion on 2 February, 1986, together with documentation appropriate for the transfer of the property, with the name of the transferee left uncompleted. Seymour's solicitors advised him that the contract had to be lodged for assessment of stamp duty within one month of execution.

No contract was ever signed, but there was evidence asserting that a memorandum of transfer was executed and handed by Mrs. Hinze to Seymour together with a certificate of title to the property.

No documentation was stamped until after the conclusion of the evidence at the public sittings of this Inquiry, and no transfer was registered. Oxenford Tavern Holdings Pty. Ltd. remained the registered proprietor of the property and continued to receive rent from the lessee.

In mid 1987, Oxenford Tavern Holdings Pty. Ltd. sold the property to a third person, to whom the property was transferred.

On 29 June, 1987, Oxenford Tavern Holdings Pty. Ltd. repaid \$320,000 to Seymour by a bank cheque. No interest was paid.

On the same day, Seymour gave a bank cheque for \$150,000 to Mrs. Hinze which she deposited into her bank account. On the same day, she drew a cheque on her bank account for \$150,000.

On 15 March, 1988, during the course of this Inquiry, \$150,000 plus interest was repaid to Seymour.

**(viii) Pabbay Pty. Limited**

Pabbay Pty. Limited was incorporated in May 1981. Its shareholders and directors were Hinze's solicitor, Punch, and one of his partners, Ian Alexander McDonald Short. It became the trustee of the Pabbay Property Trust, in which Kanni Pty. Ltd. held 50 units and the other 50 units were held by Keelbrook Limited on behalf of a Hong Kong businessman.

There is nothing to indicate that Hinze or any of his interests made any subscription to Pabbay Pty. Limited or the Pabbay Property Trust or assumed any responsibility for the borrowings of either.

In September, 1981, Pabbay Pty. Limited paid \$200,000 to Kanni Pty. Ltd. A letter written at the time indicated that the sum was a loan to be repaid with interest at 15% per annum on 21 September 1983.

On 22 September, 1981, the directors of Pabbay Pty. Limited resolved that Mrs. Hinze be the sole signatory on its bank account.

On 14 October, 1981, Pabbay Pty. Limited paid a further \$25,000 to Waverley Park Stud Pty. Ltd.

On 1 December, 1981, Pabbay Pty. Limited paid a further \$50,000 to Waverley Park Stud Pty. Ltd.

On 17 April, 1982, Pabbay Pty. Limited purchased 7 industrial units from Lowanna Pty. Ltd. for a total outlay of \$511,204 including stamp duty and other charges. Lowanna had been unable to sell the units and had advertised them throughout Australia.

After Pabbay Pty. Limited purchased the units, the interest of Kanni Pty. Ltd. in the Pabbay Property Trust was transferred to Keelbrook Limited.

Pabbay Pty. Limited did not sell the units until 16 September 1985, when it received \$220,000, a loss of almost \$300,000.

Pabbay Pty. Limited later went into voluntary liquidation, and there is nothing which indicates any repayment to it by Kanni Pty. Ltd.

### **(ix) Cowrie Corporation Pty. Ltd.**

On 2 April, 1980, a Victorian, Roger John Burt, wrote to Mrs. Hinze (then Ms McQuillan) to inform her that her application for a loan of \$80,000 had been granted subject to certain conditions. Those conditions included that the loan would be in a form of "venture" for three years and would attract no interest, and that it was to be used to finance exploration and testing for builders' sand on Waverley Park Stud, with Cowrie Corporation Pty. Ltd. entitled to a \$0.30 cent royalty per ton of sand mined. There was a request for a second mortgage as security and for monthly reports with results of exploration testing of the land for sand or gravel suitable for extraction and commercial sale.

On 14 April, 1980, Burt wrote again to Mrs. Hinze, this time acknowledging that the \$80,000 was paid on a "totalling non-recourse basis", and that it was to be treated "notionally" as a contribution to equity by Cowrie Corporation Pty. Ltd. in the venture with repayment to be made on a royalty basis and pre-taxed profits from the venture to be shared equally. The request for a second mortgage was waived.

In his evidence to this Inquiry, Hinze stated that he did not know Burt, that he did not know whether Cowrie Corporation Pty. Ltd. was acting as principal or agent, and that if it was acting as agent, he did not know who was its principal.

Waverley Park Stud Pty. Ltd. received \$80,000 from Cowrie Corporation Pty. Ltd. on 3 July 1980. No areas were designated for testing, no reports were made, and no accounts for the joint venture were kept.

A letter to Burt dated 14 March, 1984 was produced in evidence. It advised that exploration had come to an end, that samples of gravel had failed to meet specifications, and that it had been decided "to abandon our joint project and sell the associated equipment which we believe will yield in the vicinity of \$5,500". On 18 June, Burt replied advising that Cowrie Corporation Pty. Ltd. had taken "the appropriate steps in our accounts to reflect the failure of this project".

The sum of \$80,000 was written off in the books of Waverley Park Stud Pty. Ltd. on 30 June 1984.

There is no indication of there having been any communication between Hinze or any of his interests and Cowrie Corporation Pty. Ltd. between July 1980 and March 1984.

The letter dated 14 March, 1984, which Mrs. Hinze sent to Burt was signed with her maiden name, "F.J. McQuillan". Mr. and Mrs. Hinze have been mamed since 27 June, 1981.

### **(x) Syd Truscott and C.T. Simmons**

In March 1981, Mrs. Hinze deposited a bank cheque of \$11,480 and \$35,000 in cash into the bank account of Waverley Park Stud Pty. Ltd. and the deposits were recorded in the books and records of the Hinze group as a loan of \$45,000 from Syd Truscott.

In the same month, Mrs. Hinze deposited a bank cheque for \$30,000 into the bank account of Lowanna Pty. Ltd., and the deposit was recorded in the books and records of the Hinze group as a loan of \$30,000.00 from C.T. Simmons.

An uncle of Mrs. Hinze, Lawrence Kirwan McQuillan, was a pensioner who died in 1986. For the last years of his life he lived at Waverley Park Stud with Mr. and Mrs. Hinze. Neither Mr. nor Mrs. Hinze knew a Syd Truscott nor a C.T. Simmons and there is no record of either name in Commonwealth or Queensland electoral office records from 1980 to 1986, nor any record of either of them having died between 1981 and October 1988 according to Queensland and New South Wales records.

In 1988, Waverley Park Stud Pty. Ltd. informed the Australian Tax Office that there had been no recent contact with Truscott, that the amount of the loan had been transferred to Mrs. Hinze's loan account, and that she had assumed liability to the creditor.

According to the internal records of the Hinze group, the loan of \$45,000 by Truscott had been reduced to \$30,000 by 30 June 1984 and had been extinguished by 30 June 1985.

In a written memorandum to the Australian Tax Office, Lowanna Pty. Ltd. stated:

“‘The loan’ (by C.T. Simmons) ‘was arranged by Mrs. Hinze’s uncle. At a later stage when the company could not afford repayment Mrs. Hinze’s uncle advised that he had made arrangements for satisfaction of the loan. Thus the loan was written off in the company records’”.

The internal records of the Hinze group indicate that the debt owed by Lowanna Pty. Ltd. to C.T. Simmons had been forgiven by 30 June 1985.

Evidence to this Commission by Hinze supported by the statutory declaration of Mrs. Hinze was to the effect that her uncle had provided the bank cheques and cash originally either from his own funds or from borrowings which he had organized and, presumably, they were repaid. It was said that he had used the names Syd Truscott and C.T. Simmons so that Mr. and Mrs. Hinze would not be embarrassed by his generosity.

The following is the text of a note written by Mrs. Hinze to the accountant employed by the Hinze group:

“Marilyn, please set each loan out on a separate piece of paper—company on top then list particulars as you understand them. We can then discuss with Bob Tuesday. We’ll leave arrangement that he can come here at this stage. Russ will make the 2 calls re Nikraine and Nathan this arvo. We hope to be back by lunchtime.

Mr. Truscott can be friend of my uncle. I think making Simmons as well could be a bit willing?”

### **(xi) Geoffrey Henry Burchill**

Burchill is an engineer and town planner who has been commercially associated with Hinze and has known Kornhauser since the late 1970's.

In late 1985 and early 1986, Burchill obtained options to acquire approximately 400 hectares of land in the Albert Shire and lodged an application for the rezoning of approximately 150 hectares intended to be developed as a residential canal estate. However, Burchill was unable to arrange finance for the project.

The evidence before this Commission was generally to the effect that there was an oral, informal arrangement that Mrs. Hinze was entitled to half any profit made by Burchill if finance was arranged through Hinze. There were differences in the detail of the respective accounts given of the arrangements.

According to the evidence, the extent of Hinze's involvement appears to have been to suggest to Kornhauser that he finance Burchill's development and reintroduce Burchill to Kornhauser.

By a contract dated 4 September 1987, it was agreed that part of the land would be transferred for \$1.3 million to Alabar Pty. Ltd., a company owned and controlled by Kornhauser and his brother, and that it would obtain necessary rezonings and approvals with a view to further development of the land and its resale. Burchill was to receive 50% of the profit realized from the sale of the land.

On 26 October, 1987, Burchill wrote to Punch, who was also the solicitor for Mr. and Mrs. Hinze, asking him to draft a form of agreement. The letter is in the following terms:

“Re Alabar Pty. Ltd.

The writer confirms his previous verbal enquiry about the possible participation of other parties in his interest in current dealings with Alabar Pty. Ltd., Smith and Davidson properties, Hope Island.

The attached copy of an existing agreement with Alabar indicates the arrangement to be shared.

Would you please draw up a Form of Agreement to be used.”

In a statutory declaration dated 20 November 1988 which he provided to this Inquiry, Burchill said:

“When I wrote this letter I was conveying to the Solicitor that a relationship had already been established between myself and Mr. Hinze which would allow Hinze the right to participate in the profits of the Joint Venture between Alabar Pty. Ltd. and myself as long as Kornhauser, the financier, could satisfy my requirements.

I was indicating further that Hinze was in effect associated only with the Kornhauser participation in the subject land, and if, for any reason, Kornhauser’s participation ended, then Hinze would not participate in the profits associated with the subject land.”

Mr. Burchill’s enigmatic letter is the only document bearing a date before the end of 1987 which might bear upon the entitlement of Hinze or his wife or any of their interests to participate in Burchill’s share of the profits from the development.

On 28 October, 1987, Alabar Pty. Ltd., lodged an application for the rezoning of the remainder of the land the subject of the contract between it and Burchill dated 4 September.

By early November, 1987, Alabar Pty. Ltd. had negotiated the sale of the land to Shinko Australia Pty. Ltd., subject to rezoning of canal development approvals.

The Order in Council affecting the rezoning requested by Alabar Pty. Ltd. was gazetted on 17 December 1987.

Hinze had been the Minister for Local Government until about 7 December 1987.

In February 1988, Alabar Pty. Ltd. transferred the land to Shinko Australia Pty. Ltd. for \$21 million. Its nett profit was something in excess of \$7.5 million.

A document executed by Burchill and Essvee Pty. Ltd., was produced to the Commissioner of Stamp Duties on 3 March, 1988.

The document inaccurately recites that Essvee Pty. Ltd. was party to Burchill’s original interest in the land and foresaw with Burchill the viability of acquiring and developing it, and assisted Burchill in his “dealings with the original proprietors of the Coomera land in order for contracts to acquire the same to be entered into”.

Further, the document is inaccurately dated 18 January 1988, but was not entered into until early in March.

Under the document, Burchill was obliged to pay Essvee Pty. Ltd. “one half of the net profit” which he had received “pursuant to the arrangements which exist between the parties”.

On 7 March, 1988, \$3,768,278 was deposited in an account conducted by Burchill with Tricontinental Corporation Ltd., a merchant bank which was also at the time a major lender to Hinze.

On 8 March, 1988, Burchill authorized Tricontinental Corporation Ltd. to transfer the sum of \$1,884,139 to Essvee Pty. Ltd., and on the following day that amount was deposited in an account with Tricontinental Corporation Ltd. in the name of Essvee Pty. Ltd.

Thereafter, the money was paid by Essvee Pty. Ltd. to Waverley Park Stud Pty. Ltd.'

**(f) Lane**

Lane was sworn in as a constable in the Queensland Police Force on 31 January, 1955. His 16 years service included three years in the Special Branch during which he attained the rank of senior constable, and service in the Consorting Squad. He was one of the police officers represented before the National Hotel Royal Commission. From his police service, he was friendly with many present and former police officers, including Lewis, Murphy and Herbert. He also had a wide circle of other acquaintances, including some whom he had met in the course of his police duties, such as Robinson, the owner of Austral Amusements, purveyor of in-line machines.

In July, 1971, Lane was elected to Parliament as the Liberal Member for Merthyr, the electorate which includes Fortitude Valley, and he resigned from the Police Force.

On 23 December, 1980, Lane became Minister for Transport, a portfolio which he retained until December 1987, apart from a three month period after the coalition parties split in August 1983. After he was re-elected in the State elections held in October 1983, Lane changed to the National Party and in November regained the Transport portfolio. In December 1987, after the incumbent became Premier during the course of this Inquiry, Lane returned to the back-bench.

Herbert gave evidence to this Inquiry, that Lane had been paid corrupt moneys, but Lane swore that this was not so.

However, as Lane appreciated, an examination of his financial affairs revealed that the assets he owns, some with his wife, and the expenditures which they made, as returned to the Commissioner of Taxation were incompatible with his earnings and raised a possible inference that he had been in receipt of moneys from some other source.

Lane made some reference in his evidence to private benefactors, including a cash loan by an acquaintance who has since died and cash received from winning bets which were placed on his behalf, but substantially his explanation was based upon inaccurate claims to income tax deductions for expenditures which had not been made and the practices which he adopted to electoral campaign funds and his ministerial expense account.

Before 1983, Ministers were required to itemise and return their expenditure under a number of headings, including hotel expenses, travel costs and incidental expenses. In mid 1983, Cabinet decided that some travel costs and some other expenditure incurred by Ministers and their support staff were to be included in departmental expenditure, with the result that fewer details of ministerial expenses would emerge for public scrutiny and possible criticism. In mid 1987, the Treasurer's instructions covering ministerial expenses were revoked, after which there was no longer any requirement to table details of ministers' expenses in Parliament.

Shortly stated, Lane asserted in his evidence to this Inquiry that he used campaign funds for private purposes and for mixed private and electoral purposes, and that he, and according to him numerous other present and former Ministers, did the same thing with funds available to them through their ministerial expense accounts, In this connection he named a number of his former colleagues, who denied his assertions by statutory declarations.

As Lane saw the position, the circumstance that others acted as he did, or that he believed that they did so, justified what he did, particularly in any marginal cases where it was not totally clear that an expenditure was for a private purpose.

Further, there seemed to be a suggestion of implicit community approval by reference to the political cliché that politicians are judged by the electorate and that he and the Government had been consistently voted for over many years.

However, entirely apart from any issue related to electoral boundaries, it seems somewhat artificial to contend that an electorate which is deprived of information can be taken to have condoned that of which it is unaware.

### 2.4.3 Public Scrutiny

Public debate has been curtailed by the use of the processes of Parliament and the courts. Discussion within Parliament has been stifled by the wide use of the sub judice convention in relation to current litigation and defamation writs have been used to silence critics of public administration outside Parliament.

#### (a) Sub Judice

On 7 and 8 September, 1976, the Australian Broadcasting Commission telecast information and comment concerning the Cedar Bay incident. On 9 September, the Speaker learned that a writ had just issued that day by one of the police officers involved in the raid. He ruled that the matter was sub judice, and stopped all discussion of the topic in the Parliament.

Less than a week later, on 14 September, 1976, the Parliamentary Privileges Committee was asked to consider the sub judice convention and, on 8 December, the Committee's report was tabled.

The Committee stated that the application of the rule was dependant upon the Speaker's discretion based upon consideration of the need to avoid substantial prejudice in pending court proceedings. It recommended that the only restriction Parliament should place upon itself was to ensure that it did not act so as to become an alternative forum to the courts or to permit its proceedings to interfere with the course of justice. It was recognized that the commencement of either criminal or civil proceedings need not automatically prevent consideration by Parliament of a matter, although the wide discretion of the Speaker would properly be applied earlier in criminal than in civil proceedings and in jury trials than in those presided over by a judge sitting alone.

Guidelines were suggested. Matters involved in criminal trials should not be referred to after a charge was brought until a verdict and sentence were handed down, but matters involved in civil cases could be referred to up until four weeks preceding the date fixed for determination of the substantive issues in the case.

There is no purpose to be served in multiplying instances of the matters which have been ruled sub judice since that time. One occasion early in 1986 to which reference is later made provides a sufficient example for present purposes.

#### (b) Litigation

Until 1976, there was a broad and generally appropriate policy of providing legal assistance to public officials who were sued in relation to activities in the course of their duties, and ordinarily the Crown Solicitor was appointed to act. (As has been noted elsewhere, later at least, there were even payments of the legal costs of some police acquitted of criminal charges).

Defamation writs appear to have been in a slightly different category in the mid 1970's. Public servants generally had to fund their own defences but were indemnified if they were successful, whereas the position of Ministers was considered on a case by case basis with the assistance of advice from the Solicitor-General.

In 1976, the Crown Solicitor considered that it was not fitting for him to be involved in the conduct of defences of defamation actions since, theoretically, defamation might also amount to a criminal offence. Accordingly, from 1976 to 1980, if Cabinet approved legal assistance to a Minister who had been sued for defamation, he arranged his own legal representation. However, all expenses of his defence and any damages awarded were paid from public funds.



An example can be found in a writ for defamation against Bjelke-Petersen issued in 1977 by John Sinclair, a Queensland public servant. Sinclair and Bjelke-Petersen held opposing views on the use of Fraser Island, and Sinclair sued after Bjelke-Petersen made disparaging remarks about him.

Sinclair obtained a judgment against Bjelke-Petersen in September, 1981, but the verdict was overturned on appeal and Bjelke-Petersen was awarded his costs.

There was controversy at both stages. Many were disturbed at Bjelke-Petersen's avowed intention to pursue Sinclair for the substantial costs which he was ultimately ordered to pay, just as there had initially been concern that Bjelke-Petersen would have been indemnified out of public funds if the original judgment had stood.

On 2 November, 1981, before Bjelke-Petersen's appeal was heard, Cabinet adopted a new policy. From then on, there was no need for case by case decisions. If a Minister was sued, costs and damages were to be paid out of public revenue, and ordinarily the Crown Solicitor was to act even in defamation actions.

However, there was no suggestion that public money might be used to fund civil proceedings brought by, not against, a Minister until 1986.

### **(c) The Callaghan Sequel**

Callaghan was one of a number of former ministerial press secretaries who were appointed to senior positions in the public service. By early 1986, he was head of the Department of Tourism, National Parks, Sports and the Arts, and his wife, Judith Anne Callaghan, was the Executive Director of the Queensland Day Committee. Both were later convicted of offences involving dishonesty in relation to the misuse of public money.

By February, 1986, the Auditor-General had provided a report to the Executive which was critical of Callaghan. By 13 February, a police investigation had been commenced on the advice of the Solicitor-General, and Callaghan had resigned. It was apparent that there would be a furore in Parliament when it resumed on 18 February. The Solicitor-General advised Bjelke-Petersen that the subjudice convention would not prevent debate on the Auditor-General's report if it were tabled in Parliament because it was unlikely that charges would be brought against Callaghan for some weeks.

By 18 February, Mrs. Callaghan had been charged, and the Speaker prohibited discussion of any matter related to her activities on the basis that they were subjudice.

Bjelke-Petersen refused to table the Auditor-General's report in relation to Callaghan, and stated that he had received police advice that tabling the report "would seriously inhibit sensitive police enquiries". Not surprisingly, some Opposition members of Parliament were frustrated.

On 19 February, the Deputy Leader of the Australian Labor Party Opposition, Mr. Thomas James Burns, M.L.A., was suspended for five days for his remarks.

Outside Parliament, Burns made allegations of Government mismanagement and corruption, and spoke of Ministers "having their hands in the till".

There was considerable public controversy, and Bjelke-Petersen spoke to Lewis on **22** February. According to Lewis' diary, Bjelke-Petersen wanted proceedings commenced against Callaghan, and Lewis gave instructions to Detective Inspector D. Plint. By **24** February, he was able to advise Bjelke-Petersen that action had been taken. According to Bjelke-Petersen's evidence to this Inquiry, while he could not remember what had occurred, he could have asked Lewis to take action but only in the interests of expediting the course of justice.

On the following day, **25** February, the Speaker ruled that debate in relation to Callaghan was subjudice.

At the next Cabinet meeting, on **3** March, Bjelke-Petersen spoke of the need to stop talk about corrupt government, and a policy was adopted to allow Ministers who were criticized in connection with their official duties to bring actions for defamation and that public funds would be used to pay their costs.

A search of Cabinet records has failed to reveal any written submission or any formal record which explains the basis for the adoption of such a policy. The policy is impossible to reconcile with the reasonable exercise of free speech by ordinary citizens and by the parliamentary Opposition on the frequent occasions when Parliament is not sitting.

On the following day, 4 March, 1986, Bjelke-Petersen took advantage of the new policy to issue five writs for damages for defamation at the public expense.

On the following day, he issued another writ on the same basis.

Within a week, on 11 March, every member of Cabinet joined Bjelke-Petersen in a publicly funded action against Burns.

The defendants in all of the actions were political opponents of the Government and media organizations. The subject matter in every case concerned allegations which had been made of corruption.

In his evidence before this Inquiry, Bjelke-Petersen sought to justify what had been done. His general position appears sufficiently from the following passage in his evidence:

“... if Premiers and Ministers had to carry all their own litigation, you wouldn’t have any members of Parliament because then any party, whoever they are, could annihilate a government simply by saying all sorts of terrible things about them day after day. You have to have the system.”

However, Bjelke-Petersen himself had not been inhibited from suing for defamation before the new policy was adopted. One of his actions has already been noted; namely, the action in which Bjelke-Petersen sued Queensland Television Limited and negotiated a \$400,000 payment with Bond.

In all, over a five year period he brought five defamation actions apart from the publicly funded actions which he commenced after the new policy was adopted on 3 March 1986.

For reasons which are not apparent, and which are not explained by the Cabinet records, two weeks later, on 17 March, Cabinet decided, again on the oral submission of Bjelke-Petersen, that in cases where the Government bore the costs of initiating and pursuing actions for defamation brought in the name of Ministers, damages should be paid into consolidated revenue.

Perhaps there was some contemporaneous controversy about the earlier decision to fund such litigation at the public expense, or perhaps the decision of 17 March reflected an unusually sensitive preference for public over private interests. Certainly, there are logical difficulties associated with the second decision when regard is had to the intent of damages for defamation which are supposed to be a solace to plaintiffs whose reputations have been injured.

Perhaps there was simply no intention of ever taking such actions to trial, and none went so far. However, the writs were undoubtedly useful weapons to silence critics, a traditional use of writs for defamation which has been known for many years and engaged in by police officers such as Parker amongst others. The additional refinement which arose from the policy decisions in March 1986 was the use of public funds to promote such actions.

By another Cabinet decision made on 6 June, 1986, the Crown Solicitor’s certificate that costs incurred by a Minister were reasonable was required, but that inconvenience was removed on 30 March, 1987, when, on another oral submission from Bjelke-Petersen, Cabinet decided that future accounts submitted by the private solicitors acting for Ministers in such actions would be paid upon certification by those private solicitors that the fees were reasonable.

Meanwhile, Bjelke-Petersen had taken further advantage of the modern policy.

In August, 1986, the amount which Queensland Television Limited had paid to Bjelke-Petersen became public and, on 5 August, the then Leader of the Australian Labor Party Opposition, Mr. Neville George Warburton, M.L.A., called on Bjelke-Petersen to resign and described the compromise which Bjelke-Petersen had negotiated with Bond as involving mutual “back scratching”.

On the following day, Bjelke-Petersen issued another writ against Warburton at public expense.

While the Cabinet policy enabled a Minister to sue at public expense provided that the proceeds were paid to consolidated revenue, it left each Minister free to choose whether he would sue at his own expense and retain any damages which he was awarded.

According to Bjelke-Petersen's evidence to this Inquiry, the distinguishing test which he applied was whether the defamation was "personal".

In all, there have been sixteen publicly funded defamation actions since March 1986, in thirteen of which Bjelke-Petersen was the plaintiff. Many, if not, all have been discontinued, and costs in excess of \$200,000 have been paid by the Justice Department.

## **111. THE POLITICAL CONTEXT**

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# CHAPTER III

## THE POLITICAL CONTEXT

### 3.1 THE PARLIAMENT

#### 3.1.1 The Role of Parliament

Parliament is meant to be the forum in which the necessity and worth of proposed laws, including those raising revenue and appropriating funds, can be debated. It should also serve as an inquest in which all or any aspects of public administration can be raised.

The effect of modern practice is that the law is shaped outside Parliament. Ministers present bills to the Parliament which are the products of resolution in Cabinet and sometimes the Government party room (or both). Similarly, policy on executive and administrative matters is largely formed and developed outside Parliament.

Laws and policies often address highly complex matters. Formulating them requires expertise.

No Government will have all the ideas, expertise and insight on any particular topic. As well, Governments are not the only bodies which have these attributes. Whatever the expertise required, the solution to any problem is something about which people can and do reasonably differ. The best result will be produced from rational debate by those with opposing views. The community is entitled to such a result.

This is particularly so when the problem to be tackled affects the whole community or significant parts of it, as is the case with corruption and law enforcement. The community is entitled to be fully and properly informed about what laws and policies are needed, their object, cost, purpose and effectiveness. The community must also be told the consequences of applying the laws.

On such fundamental matters, whatever the expertise or inspiration of those in Government, they have a responsibility to invite and consider the counsel of those with differing views. Parliament is a forum for those differing views.

It is much less likely that a pattern of misconduct will occur in the Government's public administration if the political processes of public debate and opposition are allowed to operate, and the objectives of the parliamentary system are honestly pursued.

In order to be an effective forum, Parliament must have sufficient resources to enable it properly to research topics and evaluate Government proposals. Parliament can easily be prevented from properly performing its role by being denied time and resources. Any Government may use its dominance in the Parliament and its control of public resources to stifle and neuter effective criticism by the Opposition.

This can be prevented by mechanisms such as an impartial Speaker. Because of its necessary numerical strength, the Government in a parliamentary democracy is obviously able to change or ignore the rules. In these circumstances the authority and neutrality of the "referee" is of critical importance. The Speaker cannot afford to adopt a partisan role, either voluntarily, or in order to retain the confidence and support of the Government party. If the Speaker enters the arena, there is a risk that Parliament will not be able to make the Government accountable.

An effective Opposition is also essential for the proper functioning of parliamentary democracy. The members of the Opposition are the constitutional critics of public affairs.

Non-government party members must be provided with appropriate resources and detailed information to enable them to supervise and criticize, just as Governments naturally are well equipped and staffed.

Without information about Government activities and research staff to properly assess it, the opposition party or parties have no basis on which to review or criticize the activities. Without information, there can be no accountability. It follows that in an atmosphere of secrecy or inadequate information, corruption flourishes. Wherever secrecy exists, there will be people who are prepared to manipulate it.

One of the functions of any opposition party in Parliament is to expose errors and misconduct by public officials. Unless the Opposition can discover what has happened or is happening and give consideration to events with expert assistance, it cannot expose and criticize activities and the people involved. It is effectively prevented from doing its job.

Apart from isolated incidents which are brought to its attention by individuals with inside knowledge, the Opposition is dependent for information on the Government's own accounting to Parliament. There is a need for structures and systems to ensure that the Parliament and the public, are properly informed.

Obviously there are some matters which are appropriately kept secret. These include matters of national security, foreign relations, personal privacy and business affairs and some aspects of law enforcement, at least where the balance of public interest justifies secrecy. In these cases, it is essential that the application of exceptions and exemptions should, as far as possible, be placed in the hands of Parliament or independent tribunals and the Judiciary. It is essential that the Government is not able to claim that secrecy is necessary when the only thing at risk is the exposure of a blunder or a crime.

### **3.1.2 Parliamentary Committees**

The operation of the party system in an unicameral assembly, the continuing growth in the scale and extent of Government activity, and the increasing complexities of policy making affect the ability of Parliament to review the Government's legislative activity or public administration.

If Parliament is to perform this vital role, procedures which allow it to obtain and analyze information are essential.

Elsewhere, the effective and efficient operation of Parliament has been enhanced by the setting up of all-party policy and investigatory committees. The committees have become a vital and energetic part of giving effect to the democratic process particularly in respect of complex issues. They serve as Parliament's research arm and as an independent source of information to aid proper Parliamentary debate.

Scrutiny of Government legislative activity and of public administration is more effective as a consequence.

Before 1988, Queensland's functioning Parliamentary Committees were almost exclusively confined to miscellaneous, innocuous "in house" concerns: the Legislative Assembly's Standing Orders provided for Library, Refreshment Rooms, Parliamentary Building and Printing and Standing Orders Committees. The only operative select committees concerned privileges and subordinate legislation.

A Public Accounts Committee was established in 1988, as was a Public Works Committee. The latter has the potential to prevent many of the problems arising from Cabinet's intrusion into the details of administrative decision making, and is to be commended.

There is need to consider introducing a comprehensive system of Parliamentary Committees to enhance the ability of Parliament to monitor the efficiency of Government.

Parliamentary Committees enhance the skills of backbenchers of all parties and increase their experience in and familiarity with public administration, as well as reinforcing their sense of purpose and appreciation of their independent Parliamentary role and responsibility.

Committees could examine the expenditure and administration of Government departments and associated public bodies, as well as the policies they administer. This would increase the chance that misconduct, incompetence or inefficiency will be exposed.

Committees may conduct inquiries into major areas of policy or investigate matters of public concern, or both. The useful roles they can play are varied and diverse.

Parliamentary Committees should have the power to conduct public hearings, as well as the power to investigate and obtain information and documents and, where appropriate, accept and report on petitions and complaints. The legislative process should allow sufficient time for the involvement of Parliamentary Committees, having regard particularly to members' general Parliamentary duties, including attending to their constituencies.

The skills individual members bring to Parliament are often inadequate for the analysis of complex public accounts and transactions and scrutiny of major legislation. A Parliamentary Committee at times may need, and must be able to obtain, independent expert staff and consultants.

In 1988 legislation was enacted establishing a Parliamentary Service Commission, on which the Opposition is represented. This is a suitable vehicle for the provision of the necessary resources and facilities for members of Parliament and may help improve Parliament's ability to perform its role. Properly administered, it would be an appropriate source of support for a full Parliamentary Committee system.

## **3.2 THE EXECUTIVE**

### **3.2.1 The Cabinet**

The Cabinet has no legal status but is a recognized essential element in a parliamentary system. It determines Government policy in all areas of public administration and it directs, co-ordinates and exercises overall control of Governmental activity, both legislative and executive. In Queensland, all the Ministers of the Crown are members of the Cabinet.

The Executive Council, comprising the Ministers of the Crown presided over by the Governor, has a mainly formal role.

There are many people who have authority to make decisions to enter into transactions or spend public money on the Government's behalf, or who make recommendations in respect of such decisions. They are, almost without exception, subject to ministerial and Cabinet direction and control. Important decisions and actions are taken by Ministers, either individually, or in Cabinet.

Their involvement is not, however, confined to major matters. The modern practice in Queensland is for individual Ministers and even Cabinet to make detailed decisions which routinely arise in the course of public administration.

The Queensland Government makes contracts in a number of ways. Thousands of Government purchases are made by the State Stores Board by standing State Stores contracts. Individual departments negotiate contracts pertinent to their own concerns and some, for example those made by the Main Roads Department and the Public Works Department, regularly involve capital works with many millions of dollars.

Various broad and flexible guidelines exist for awarding Government contracts, but may be changed without reference to Parliament. Similarly, the Public Finance Standards (pursuant to the Financial Administration and Audit Act) can be varied with the approval of the Treasurer.

Tenders or quotations are ordinarily, but not always, required in respect of departmental transactions. The lowest quoted or tendered price is not necessarily accepted for Government contracts. That alone does not excite concern: there may be good reasons, as with any other tender or quotation in business, for preferring to deal with people other than those who offer the lowest price. Reasons for decisions to let contracts and enter into transactions are normally not provided, except internally.

Apart from contracts, the Queensland Government issues or approves land grants, mining tenements, property rezonings and makes a myriad of other decisions which have financial and social significance. These decisions often entail a choice between rivals, and involve competing considerations.



The involvement of Cabinet in these details creates a number of significant complications. The most serious complication is that it invites the blurring of the boundary between the formulation and the implementation of policy. This results in part from the increasing range and complexity of Governmental activities.

Political (but not personal) considerations are quite properly taken into account in the formulation of policy. Political considerations have no legitimate role (or, at most, a very limited role) in the implementation of policy to arrive at decisions on specific matters, for example, to whom a contract should be awarded or whether a land rezoning should be granted.

Unless politicians are forced to consider carefully the ramifications (including the political consequences) of their actions, they may easily overlook the distinction, and the implementation of policy can be influenced by loyalties to political parties and to those who provide support, including financial support, for political objectives.

Once such a pattern is established, similar considerations are likely to affect the decisions made by departmental officials.

### 3.2.2 Secrecy

Although “leaks” are commonplace, it is claimed that communications and advice to Ministers and Cabinet discussions must be confidential so that they can be candid and not inhibited by fear of ill-informed or captious public or political criticism. The secrecy of Cabinet discussions is seen as being consistent with the doctrines of Cabinet solidarity and collective responsibility under which all Ministers, irrespective of their individual views, are required to support Cabinet decisions in Parliament.

It is obvious, however, that confidentiality also provides a ready means by which a Government can withhold information which it is reluctant to disclose.

A Government can deliberately obscure the processes of public administration and hide or disguise its motives. If not discovered there are no constraints on the exercise of political power.

The rejection of constraints is likely to add to the power of the Government and its leader, and perhaps lead to an increased tendency to misuse power.

The risk that the institutional culture of public administration will degenerate will be aggravated if, for any reason, including the misuse of power, a Government’s legislative or executive activity ceases to be moderated by concern for public opinion and the possibility of a period in Opposition.

As matters progress and the Government stays in power, support will probably be attracted from ambitious people in the public service and the community. Positions of authority and influence and other benefits can be allocated to the wrong people for the wrong reasons. If those who succeed unfairly are encouraged by their success to extend their misbehaviour, their example will set the pattern which is imitated by their subordinates and competitors.

The ultimate check on public maladministration is public opinion, which can only be truly effective if there are structures and systems designed to ensure that it is properly informed. A Government can use its control of Parliament and public administration to manipulate, exploit and misinform the community, or to hide matters from it. Structures and systems designed for the purpose of keeping the public informed must therefore be allowed to operate as intended.

Secrecy and propaganda are major impediments to accountability, which is a prerequisite for the proper functioning of the political process. Worse, they are the hallmarks of a diversion of power from the Parliament.

Information is the lynch-pin of the political process. Knowledge is, quite literally, power. If the public is not informed, it cannot take part in the political process with any real effect.

The involvement of Cabinet in an extended range of detailed decisions in the course of public administration gives principles intended to apply in different circumstances an operation that cannot have been contemplated or intended. Excessive Cabinet secrecy has led to the intrusion of personal and political considerations into the decision-making process by bureaucrats and politicians.

The letting of contracts, the issuing of mining tenements and rezoning or other planning approvals are matters that should not generally be subject to the principle of Cabinet secrecy. In the majority of cases, these decisions should be formal and merely give effect to advice. In those cases where the advice is rejected, even for legitimate policy reasons, the decision and the reasons for the decision should ordinarily be disclosed.

In most cases however, these kinds of administrative decisions should be removed entirely from the Cabinet room, in which case the principle of Cabinet secrecy will not arise at all.

### 3.3 ELECTORAL LAWS

A fundamental tenet of the established system of parliamentary democracy is that public opinion is given effect by regular, free, fair elections following open debate.

A Government in our political system which achieves office by means other than free and fair elections lacks legitimate political authority over that system. This must affect the ability of Parliament to play its proper role in the way referred to in this report. The point has already been made that the institutional culture of public administration risks degeneration if, for any reason, a Government's activities ceased to be moderated by concern at the possibility of losing power.

The fairness of the electoral process in Queensland is widely questioned. The concerns which are most often stated focus broadly upon the electoral boundaries, which are seen as distorted in favour of the present Government, so as to allow it to retain power with minority support.

Irrespective of the correctness or otherwise of this view, the dissatisfaction which is expressed is magnified by the system under which electoral boundaries are determined. It has not always been obvious that the Electoral Commissioners were independent of the Government. Submissions and other material upon which the Commissioners have proceeded have been secret. The Commissioners did not report to Parliament, but to the Premier.

There is a vital need for the existing electoral boundaries to be examined by an open, independent inquiry as a first step in the rehabilitation of social cohesion, public accountability and respect for authority. Such an inquiry should be conducted by a person or group of people of undoubted integrity whose judgment will be acceptable to all political parties and the general community. It should be allowed to do its task unfettered by predetermined restrictions.

The inquiry must be permitted to reconsider basic assumptions which shape the present electoral boundaries, such as whether there is a genuine justification for a zonal system. If it finds that there is a justification for the present system, it should assess the appropriate zones and what, if any, special considerations ought to apply in different zones.

The inquiry must be totally open with public access to the evidence and submissions received by it. It should be given appropriate staff and adequate resources to fulfill its task and it should report directly to Parliament.

The Elections Act 1983-85 should similarly be reviewed in an impartial manner to ensure that more effective means are developed to guarantee the accuracy of electoral rolls, to prevent fraudulent voting practices and to maintain the confidentiality of individual voters, particularly in the case of absentee and postal votes.

In addition, regulations governing the distribution of electoral material at polling booths should be reviewed with the object of determining whether they should be wholly contained within the Elections Act, rather than the Traffic Regulations 1962. It is arguable that the Police and the Government have no legitimate role in determining who is permitted to hand out how-to-vote cards at polling booths. If there is a dispute

or difficulty about the distribution of political materials, it could be heard and determined by a member of the Judiciary, who would be independent and impartial.

## 3.4 ADMINISTRATIVE REVIEW

### 3.4.1 The Problem

The Judiciary are empowered to protect an individual from the abuse of governmental powers by ensuring that those powers are kept within the legal bounds imposed by Parliament, and their exercise constrained by accepted principles of natural justice.

The legality of decisions of individual Ministers and other boards and tribunals may all be challenged in the courts on such grounds as bad faith or improper purpose, or on the ground that the decision was made as a result of irrelevant considerations, impermissible external influences or lack of procedural fairness. These grounds (except perhaps bad faith) can now also be relied upon to challenge the legality of decisions made by the Governor or the Governor-in-Council, on the advice of Ministers.

The judicial mechanisms for challenging ministerial and administrative decisions in Queensland are quite limited and accordingly of little practical effect. The Ombudsman has not been able to make up for the deficiency in effective procedures for review, since the Ombudsman is limited to making recommendations.

There is no general process of independent determinative external review of administrative action in this State. Reliance must be placed upon the extremely cumbersome judicial procedures to achieve any review of administrative action.

Although narrowed by the High Court in recent times, the common law rules limiting a citizen's right to take actions against Governments remain. A person must have a special interest in the subject matter of an action to have standing to sue.

It is true that a person need not have this special interest if the "fiat" or consent of the Attorney-General to take the action is obtained. However, notwithstanding the fact that the Attorney-General has a traditional responsibility to enforce the law, the office of the Attorney-General is also a political office and is part of the Government of this State. If any Attorney-General is motivated by political consideration to decline to act, there is often nothing the average citizen can do, with the result that, practically speaking, the Government is placed beyond the reach of the law in these situations.

Any judicial review of administrative or ministerial actions is limited to a review of the manner of the decision-making process. There are no general mechanisms in Queensland for a determinative review of administrative decisions on their merits.

It is true that a host of industry control and marketing boards have been established to deal with specific areas of administration. Special boards, tribunals and courts have also been established to deal with appeals and complaints about particular elements of the public administration.

Many of these bodies, however, have no determinative role. That often remains with the Government, whatever the issue. Even when the tribunal is constituted or chaired by a magistrate or judge and given the trappings of judicial prestige, independence and power, it frequently can do no more than provide a report to the responsible Minister. This report, sometimes made after quite extensive inquiry and research, may be partially or even entirely rejected without being published or disclosed.

Any potential litigation may be hamstrung by its inability to discover the basis, the reasons or even the fact of a decision. In the absence of any legislation giving individuals an enforceable right to obtain reasons and to see unpublished Government documents, including documents about themselves, these documents remain secret. Unfortunately, the High Court has ruled that a person has no right to reasons for a Government or departmental decision, even where a person's own special interests are affected. In this State both the litigant's ability to sue, and an individual's right to be informed about the Government, are limited by the absence of legislation giving individuals access to information held by the Government.

### **3.4.2 Reform**

These deficiencies in systems for review of administrative action have been tackled in other common law jurisdictions by the adoption of a general system of administrative review. There is wide agreement that this system has improved the quality of decision-making in those jurisdictions. A similar system could be adopted in this State under which:

- the existing complicated judicial remedies are replaced by simple machinery for the making of applications for judicial review, and an array of statutorily based remedial powers;
- the rights of an individual to bring an application are broadened;
- there is a right to obtain reasons for a decision, subject only to limited exceptions; and
- decisions are reviewed on their merits by an external independent review body.

This general system of effective administrative review could be accompanied by efforts to ensure that those tribunals, boards and courts which already exist are given, where possible, the authority to make the determinative decisions on the matters under consideration rather than mere recommendations or reports.

The only ministerial involvement in reviews should, in the normal circumstance, be to ensure that there are proper systems and policies which are being honestly and efficiently implemented by the board, tribunal or court, and that they are properly resourced. To avoid widespread confusion and resentment, interference in the mechanics and detail of implementation should be avoided.

### **3.4.3 Freedom of Information**

Allied to these improvements in administrative laws has been the concept of freedom of information.

Freedom of Information Acts, along the lines of the United States model, have been adopted to grant a general right of access to documents held by Government and Government agencies.

The professed aim of such legislation is to give all citizens a general right of access to Government information. Appeals are allowed to an external independent review body when a request for information is refused in whole or in part, or when a person objects to a decision to release information about their affairs, or when the accuracy or completeness of personal information held by Government is disputed by the person it concerns.

It is true that, where such legislation has been enacted in Australia (the Commonwealth, Victoria and more recently New South Wales) there has been criticism. Government agencies say that answering requests has been costly and disruptive. Applicants claim that some agencies are obstructive, and that the exemptions are too wide or are abused, and that increasing charges make the cost of requests prohibitive.

The importance of the legislation lies in the principle it espouses, and in its ability to provide information to the public and to Parliament. It has already been used effectively for this purpose in other Parliaments. Its potential to make administrators accountable and keep the voters and Parliament informed are well understood by its supporters and enemies.

## **3.5 THE ADMINISTRATION**

### **3.5.1 Politicization**

The Westminster system of parliamentary democracy is based on the proposition that Governments answerable to the people decide policy, and public servants implement it. There are conceptual and practical difficulties with this model, but it essentially states the basic constitutional position.

The boundaries between the creation of policy, in which political considerations may legitimately be taken into account, and the application of that policy, in which political considerations have no place, are however, easily blurred.

Ministers and their senior officials share a common interest in success, which can lead to more influence for the Minister and the department, and improved prospects for its senior officers. They also share a basis for mutual antagonism towards the Minister's political opponents, whose criticisms may reflect on the department as well as the Minister.

There is a natural human inclination for a subordinate to seek to give effect to the wishes of a superior, and policy can be sufficiently broad and elastic to allow public servants to exercise considerable discretion. With the passage of time, it probably becomes easier for bureaucrats to claim, and even believe, that dubious considerations are either coincidental or covered by what has become an established approach to policy.

A system which provides the Executive Government with control over the careers of public officials adds enormously to the pressures upon those who are even moderately ambitious. Merit can be ignored, perceived disloyalty punished, and personal or political loyalties rewarded. Once there are signs that a Government prefers its favourites (or that a particular Minister does so) when vacancies occur or other opportunities arise, the pressure upon those within the system becomes immense. More junior public servants rapidly become aware of the need to please politicians and senior officials who can help or damage their careers, and not to provoke displeasure by making embarrassing disclosures. The advantages of co-operation and discretion and the disadvantages of any other course are manifest.

One of the first casualties in such circumstances is the general quality of public administration.

Politicians have neither the time nor the qualifications and skills to make informed judgments upon the numerous complex issues which they confront. They are dependent on their advisers.

Of course, politicians are entitled to political advice from staff appointed for that purpose, but that is not the job of bureaucracy. Its role is to provide independent, impartial, expert advice on departmental issues. Public officials are supposed to be free to act and advise without concern for the political or personal connections of the people and organizations affected by their decisions.

Public servants used to dealing with a particular Government tend to give advice which supports predetermined policies. People who seek to enter the walls of the forbidden city, where politicians and bureaucrats live in harmonious control, are resented and treated as impertinent outsiders. The process of giving advice becomes incestuous. It is more about confirming opinions than challenging them. Research or new information, if it manages to penetrate at all, is rejected if it does not fit the rigid but unwritten agenda.

When a Government creates a bureaucracy peopled by its own supporters, or by staff who are intimidated into providing politically palatable advice, the Government is effectively deprived of the opportunity to consider the full range of relevant factors (including but not confined to political considerations) in making decisions.

As a result, wrong decisions are made. When problems crop up because of such decisions, the politicization of the bureaucracy means that the Government is unlikely to realize their extent and significance. The bureaucracy can also help the Government to hide what is happening if that is what is wanted.

Inevitably, with time, the problems assume such dimensions that they cannot be contained and they create major political difficulties. The community and the Government pay the price for the short-term political benefits by failing to recognize or respond to the problems.

Other major consequences of the politicization of the bureaucracy are that reliance upon inappropriate considerations in the decision-making process is made easier and more frequent, and the prospects of disclosure and political embarrassment or worse are reduced.

Not only are wrong decisions made, but some are tainted by misconduct. That has been amply demonstrated by the evidence before this Inquiry.

It has also clearly emerged that the structures and systems which exist and the practices and procedures which have been followed are not adequate to prevent or detect those errors and offences when they occur.

The vastness and complexity of public administration make misconduct difficult to combat. Each department has internal systems and controls concerned mainly with financial integrity; making sure that public money is not abused or stolen but spent lawfully and effectively. Even these limited systems are dependent on the integrity of the senior officers in the departments.

These internal mechanisms are very unlikely to expose errors or improprieties in the decision-making process, especially if those decisions are made at senior level. Department records will justify the decisions by reference to legitimate considerations, and factors such as personal financial interest or political bias may not be known to anybody except the decision maker. Often it will be unclear whether political advantage is the sole or a dominant motive for a decision or merely an incidental consequence.

Whatever standards are practiced or accepted by politicians will strongly influence the standards of public officials. If politicians practise (as distinct from claim and preach) high standards, their example and commitment to ensuring similar standards for others will significantly reduce impropriety by public officials. If politicians' standards are low, that will likewise be mirrored in the conduct of all but the most principled public officials. A Government which is self serving and cynical will have a bureaucracy which wholly or partially reflects the same attitude.

In these circumstances, attitudes and practices which would in different circumstances have developed positively, instead deteriorate. The aspirations of those outside the elite circle are converted to frustration and indignation. Discontentment, dissatisfaction, misconduct and inefficiency expand.

### **3.5.2 Appointments, Promotions, Appeals and Discipline**

Cabinet Ministers should not be concerned with public service appointments, promotions, transfers and discipline, other than those of chief executives, to which special considerations apply. A Minister's legitimate concern with personnel is to see that honest and efficient policies and systems are designed and fairly implemented.

The more important the office, the more imperative that appointments be made with scrupulous propriety. There will obviously be diversity and competing claims among those who are eligible for employment, but it would be wrong for those who know politicians and senior bureaucrats to be preferred, while a pool of talent is ignored or disqualified for no good reason.

Inappropriate appointments, particularly to important positions, are very disruptive of public administration, and increase the exposure of the decision-making process to the risk of improper influences.

Detailed decisions on personnel should be left to suitable people to whom authority has been delegated, and that authority should be exercised impartially and openly.

The Public Service Management and Employment Act 1988 considerably reforms the administration of the public service in this State. All the reforms are consistent with modern theories of public administration: the reduction in the role of central agencies such as the Public Service Board, the increase in responsibility for efficient administration by chief executives, the employment of people by contract, the creation of a redeployment/redundancy scheme, and promotion by merit alone.

There are three things, however, that should be addressed.

First, there does not appear to be any reason why there should be power to make exemptions from the requirement to advertise public service vacancies, and why all vacancies should not be advertised.

Secondly, it is not clear why there should be an extended power to limit appeals against promotions. At the very least, while it may not be feasible to have appeals to an independent body in the case of all appointments to the most senior positions, interview and reporting procedures should be established to ensure that the

claims of all candidates are objectively judged on the merits and that an opportunity is given for candidates to answer adverse comments that may turn out to be unfounded and even malicious.

Finally, it is not immediately apparent why appointments and promotions, and appeals against promotions and disciplinary action should be formally subject to the decision of the Governor in Council. Arguably independent bodies charged with these functions should be able to make a decision; not just a recommendation.

### **3.5.3 Contract Employment**

None of the above should be taken to mean that objection is made to a system of contract employment.

Contract employment, rather than permanent tenure, does not make political interference or bureaucratic partiality any more likely, nor does it decrease the chances of public servants reporting misconduct.

Public servants can be manipulated and intimidated whether their concern is for advancement or for the renewal of a contract.

There are significant advantages, on the contrary, to a system of contract employment.

A sound contract system should achieve the object of providing an effective incentive to improve efficiency and productivity within the public service. Contract employment also provides a greater opportunity for regular interchange of employees at senior levels between the public and the private sectors.

If the wrong people are appointed for the wrong reasons to senior positions they will only be there for limited periods. There will be reduced opportunities for the bureaucracy to be politicized to a degree which is difficult, if not impossible, to reverse.

Contract employment may well lead to greater independence for public officials. Senior public officials, in particular, will come to recognize that they have a wider range of economic options and career opportunities and need not submit to improper political influence. This independence will obviously be enhanced if superannuation rules are adjusted to allow members to leave the service with their own and the employer's contribution and accretions prior to retiring age and without fiscal penalty.

### **3.5.4 Special Appointments**

In a further attempt to develop administrative impartiality, it might be desirable to make special conditions apply to the appointment of officials with independent functions, such as the chief executives of Government departments and instrumentalities (and perhaps their immediate subordinates), statutory and Parliamentary officers such as the Auditor-General, the Ombudsman, the Commissioner of Police and the Clerk of Parliament, and members of tribunals, Government bodies and other organizations to which, by law or convention, the Governor in Council or a Minister has a right of appointment.

Appropriate appointment procedures for senior positions could be made in a way that not only ensures that talented people apply for those positions, but that public scepticism is reduced.

A reasonably practical compromise may be the public adoption of guidelines to govern all senior public appointments. Such guidelines might observe the following principles:

- all eligible persons of whom the Minister is aware should be accorded proper and impartial consideration and evaluation;
- extraneous considerations, including personal and political associations or donations should not be regarded. The appointment should be based on professional selection and recruitment processes where merit is the underlying criterion for appointment;
- appropriate qualifications for appointment should be formulated and publicly notified; and advertised where appropriate; and

- there should be appropriate consultations with “Opposition Shadow Ministers”, professional associations and other relevant bodies and people, with reference to all potentially relevant circumstances, including any personal or political connections which the appointee has with the Government or any of its members or their political party.

There are some positions such as some members of Minister’s personal staff which may call for such close personal contact and confidence that the community accept that appointments be properly influenced by purely personal considerations. Where personal connections or political affiliations are valid considerations, however, that fact, and the reasons, should be openly acknowledged.

### **3.5.5 Judicial Appointments**

Judges are independent of the Legislative and Executive Branches of the State, although appointed by the Executive and liable to removal for cause by Parliament.

Regrettably, there is evidence available to suggest that inappropriate lobbyists were involved and that immaterial considerations were introduced into a small minority of judicial appointments.

It would be an over-reaction at this time to create some special body to select and nominate a panel of suitable persons for consideration in relation to judicial vacancies. A process, including consultations, generally similar to that suggested above in relation to “Special Appointments” would be satisfactory and would ensure that the present high standards of the appointees are maintained.

### **3.5.6 Ethical Considerations**

Legislative changes or changes to the mechanics of public administration cannot, of course, be the complete answer to misconduct and inefficiency. Propriety and ethical behaviour are difficult to encapsulate in legal and structural terms.

Codes of conduct for public officials, already partially developed by the present Government, must be extended to deal satisfactorily with such important things as the correct relationship between such people as public servants and their Ministers.

Ethical education must also play a role in long term solutions to problems. Such education would help individuals to find the correct balance between competing considerations, and should help groups of employees to establish a supportive atmosphere within which it would be harder for corruption to flourish.

Education and good management would also eradicate relatively minor misbehaviour such as misuse of public resources and deliberate time-wastage, which help develop attitudes which lead, in turn, to more serious misconduct.

The quality of internal management and supervision has a significant influence on the behavioural standards of employees. Equally, in the absence of meaningful work, staff find other ways to occupy their time.

At a broader level, it was apparent that only limited standards or indicators are used within the bureaucracy to monitor the effectiveness of an individual employee’s effort or the impact of departmental performance. All these problems appear to be widespread and institutionalized and need major attention, particularly by the relevant chief executives who, under the Public Service Management and Employment Act, are responsible for the efficient and proper management and functioning of departments.

### **3.5.7 Whistleblowers**

Systems which reduce the opportunity for political interference in the careers of public officials will assist in depoliticizing the public service and, to that extent, contribute to a reduction in maladministration and misconduct. However, it is doubtful whether such systems will alone convince knowledgeable public servants that it is not contrary to their personal interests to disclose improper matters of which they are aware.



Honest public officials are the major potential source of the information needed to reduce public maladministration and misconduct. They will continue to be unwilling to come forward until they are confident that they will not be prejudiced.

It is enormously frustrating and demoralizing for conscientious and honest public servants to work in a department or instrumentality in which maladministration or misconduct is present or even tolerated or encouraged. It is extremely difficult for such officers to report their knowledge to those in authority.

Even if they do report their knowledge to a senior officer, that officer might be in a difficult position. There may be no-one that can be trusted with the information.

If either senior officers and/or politicians, are involved in misconduct or corruption, the task of exposure becomes impossible for all but the exceptionally courageous or reckless, particularly after indications that such disclosures are not only unwelcome but attract retribution.

Strong honest leadership is one step which is essential to a build-up of confidence.

There is an urgent need, however, for legislation which prohibits any person from penalizing any other person for making accurate public statements about misconduct, inefficiency or other problems within public instrumentalities. Such measures have recently been made law in the United States of America by the Whistle Blowers Protection Act 1989.

Obviously, there will be some within the bureaucracy who will make malicious and untrue allegations. Any legislation should prescribe penalties for people who make damaging public statements knowing them to be untrue.

The bureaucracy, however, must not penalize people simply because they are outspoken. In an open society people have a right to speak freely on matters of concern to them.

The public interest in good administration means that Governments should be prepared to withstand robust, and even ill-founded criticism. This is particularly true in the absence of empirical evidence that such public criticism is harmful to established institutions.

It is also necessary to establish a recognized, convenient means by which public officers can disclose matters of concern. What is required is an accessible, independent body to which disclosures can be made, confidentially (at least in the first instance) and in any event free from fear of reprisals.

The body must be able to investigate any complaint. Its ability to investigate the disclosures made to it and to protect those who assist it will be vital to the long term flow of information upon which its success will depend. The constitution and powers of such a body will be addressed in detail later in this report.

### **3.5.8 Court Administration**

The independence of the Judiciary is of paramount importance, and must not be comprised. One of the threats to judicial independence is an over-dependence upon administrative and financial resources from a Government department or being subject to administrative regulation in matters associated with the performance of the judicial role. Independence of the Judiciary bespeaks as much autonomy as is possible in the internal management of the administration of the courts.

It is not appropriate to devise any detailed scheme in this report to address this particular difficulty. The potential danger should be recognized and consultation should take place between the Government and the Chief Justice. The Government should give the closest attention to any requests or comments that the Chief Justice or the Chairman should make as to the introduction of any procedures which in the administrative field will better reflect the Judiciary's independence.

Independence is such an important requirement that, not only must it actually be present, but also it must be seen to be present.

## 3.6 FINANCIAL CONTROLS

### 3.6.1 The Auditor-General

The expenditure of public monies, with limited exceptions, can be made only with the authorization of the Parliament. The Auditor-General has traditionally been responsible for ensuring that Ministers, their departments and other agencies have raised, kept and spent public monies within the amounts authorized and in accordance with legal procedures.

There are, however, three practical limitations upon the ability of the Auditor-General to supervise properly the financial administration of the Government.

The Auditor-General has relied for information upon the various Government departments and instrumentalities, each of which has its own “accountable officer” (or other individual or body responsible for financial matters). That officer has been subject to the direction and control of superiors including the relevant Minister.

It would appear that when the Auditor-General encountered any accounting problem, Parliament was not advised but instead the department or instrumentality concerned. Where necessary, the type of corrective action required was specified, and the department or instrumentality was able to correct it.

Insofar as reporting the matter was concerned, it has been largely left to departments and instrumentalities to report to Parliament on their activities and financial affairs as they have seen fit.

The Auditor-General’s reports to Parliament, other than in exceptional circumstances, have been basically formal and contained little by way of critical comment. The Auditor-General has not concentrated upon the discovery of errors or improprieties in the general decision-making process of the departments and instrumentalities which have been audited. The primary concern of the Auditor-General has been to monitor and improve internal financial systems and controls. Limited attention has been paid to specific items of expenditure.

This is partly because it has been thought that any other course would be impractical and too expensive. It was also considered that all financial systems were vulnerable to error and impropriety, and that the effectiveness of the Auditor-General’s staff was less in relation to senior officials who had greater authority.

These self-imposed limitations should be reviewed if the Auditor-General is to become an effective check on the abuse of public money. The Auditor-General’s office should also be given resources to the extent necessary for the role to be fulfilled.

### 3.6.2 Internal Audit

Accountable officers (including chief executives in many cases) in terms of the Financial Administration and Audit Act 1977-88, are responsible for ensuring that necessary standards of management and control are exercised over all departmental operations and systems, especially financial systems.

It is the role of internal audit to assist in the fulfillment of this responsibility by independently reviewing operations and systems and reporting to management the kind of corrective action considered necessary. Summary reports are presented to the accountable officer to bring to attention any major concerns and outstanding matters requiring follow up action.

The internal audit approach is a well accepted element of the control and evaluation processes necessary for the effective functioning of departments. It complements the role of the Auditor-General by providing a cyclic programme of review and improvement action which is in turn able to be reviewed by the Auditor-General’s officers during their audit investigations.

Some large departments have well developed internal audit groups. Because the Bureau established to provide internal audit services to smaller departments has been abolished, there is a need for these departments to

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establish their own internal audit programmes. Periodic reviews and evaluation of all departmental systems and activities will thereby strengthen the accountability process within departments.

### 3.6.3 Ministerial Expenses

The general limitations upon the effectiveness of the Auditor-General have been acute in the area of ministerial expenses.

The Auditor-General has relied largely on documented evidence of a Minister's transactions, The Auditor-General's staff, perhaps prudently, have, not probed too deeply into subjective areas, such as whether the expenditure declared to be for an "official function" was in fact for a private gathering.

Public servants seemed unable or unwilling to question the activities or expenditures of Ministers and their personal staff. This is probably not surprising given the fact that Ministers have had final authority over their respective departments and instrumentalities and could influence the careers of public servants. In any event, problems were easily ignored or dismissed.

This meant that Ministers have not been subjected to external controls or internal supervision.

Special additional controls are needed for politicians and senior officials whose positions and authority render internal measures to prevent and detect impropriety particularly ineffectual.

Measures have recently been taken to enhance accountability.

Guidelines have been published in relation to a Ministerial Code of Conduct, dealing with such things as expenses and gifts. Ministers' offices will be run as cost centres, with the Minister to be an accountable officer in terms of the Financial Administration and Audit Act 1977438. The expenditure of the Minister's office will form a separate appropriation to Parliamentary Estimates, and be subject to separate Parliamentary reporting, presumably open to review by the Public Accounts Committee.

The practice of Ministers receiving cash advances has been abolished, except in the case of foreign currency required for overseas travel. The practice that existed prior to 1983 of annually tabling in the House details of Ministers' expenditure will be reintroduced.

In addition, however, it is essential for the Auditor-General to conduct a detailed audit of ministerial expenditure at least once a year to ensure ministerial guidelines are followed, and report on this to Parliament.

### 3.6.4 Public Accounts Committee

It is to be hoped that the review by Parliament of ministerial expenses and other Government outlays will be greatly assisted by the Public Accounts Committee, established by the Public Accounts Committee Act 1988.

**It is to** be hoped that the institution of the Public Accounts Committee was the product of a new awareness of the Government's obligation to account to Parliament.

There are however, two aspects of the Act which could be reviewed: first, Ministers have the ability to veto any investigations; and second, Ministers have the power to veto the production of certain documents and information.

If the Government is to be genuinely accountable, the Committee must not become merely an arm of the Executive. It is not practically possible for this report to embark upon a detailed examination of the Public Accounts Committee Act 1988, but these two aspects appear to require either immediate review or close monitoring. On their face, the provisions which reflect these criticisms appear to be far in excess of what is necessary or reasonable.

## **3.7 FINANCIAL INTERESTS**

Impartial objective decision-making is the hallmark of rational government. In a democracy, it is also imperative that decision-making be seen to be impartial and objective.

Confidence in the political system is undermined if the circumstances are such that people may say, with some justification, that a decision was biased.

### **3.7.1 Pecuniary Interests Register**

The financial interests of any Parliamentarian or person in authority are of public significance. Such interests can result in conflicts between public duty and private interest.

Measures have recently been adopted to allow for the public registration of Queensland Ministers' own business interests, a confidential register of the business interests of Ministers' immediate families and a public register of the business interests of all Members of the Legislative Assembly (but not those of their spouses). Those measures closely parallel equivalent conventions of the Commonwealth Parliament. In both systems, however, there are obvious limitations.

Ministers' families financial interests pose a problem. It is obvious that members of Ministers' families, not themselves elected representatives or holding office, have a legitimate expectation that their privacy, including in respect of their financial affairs, will be maintained. However, there is the competing public interest in ensuring that a Minister has not been subject to or moved by any conflict of duty and interest. Inevitably, the financial interests of a Minister's immediate family are capable of giving rise to such a conflict.

In those circumstances, it is unsatisfactory that details of the financial interests of members of a Minister's immediate family are not available for scrutiny in appropriately controlled circumstances.

A further deficiency is the absence of a specific requirement for disclosure of indirect or contingent pecuniary interests or benefits. The obligation on Ministers is to disclose amongst other things, any interest (which is a broad term) which might reasonably be thought to conflict with their public duty or improperly to influence their conduct in the discharge of their responsibilities. That obligation, properly discharged, would include disclosure of indirect or contingent pecuniary interests or benefits, but specific reference is advisable.

Direct and indirect pecuniary interests and benefits can be readily concealed by the use of legal devices. Whilst the use of such devices may be a perfectly legitimate organization of Ministers' financial affairs, or of those of their families, the potential for conflict does not lessen.

The significance, power and influence of high public office requires that accountability mechanisms be effective. The privacy of Members of the Legislative Assembly, particularly Ministers, and of the families of Ministers, is important but it is arguably outweighed by the need for decision-makers to be accountable for their decisions, with part of that accountability being the exposure of the decision-maker to scrutiny for conflicting or ulterior motives.

Registration of interests should not expose Members of Legislative Assembly, Ministers or their families to undue intrusion. The question, of access to and use of the register, and the mechanics of keeping the register should be decided by the Electoral and Administrative Review Commission, mentioned later in this section.

By parity of reasoning, it may be advisable for chief executives of departments and chairmen or principals of all statutory bodies to register at least their own direct, indirect and contingent pecuniary interests and benefits. Such is their power in making decisions of significance to the community and with respect to public money and resources that they could be made similarly accountable.

### **3.7.2 Political Donations**

The possibility of improper favour being shown or being seen to have been shown by the Government to political donors must also be eliminated.

There is a legitimate entitlement, ordinarily, to privacy in respect of membership of or loyalty to political organizations. It may be that, however, that private right should be subservient to the public interest in proper standards in public administration.

Evidence before the Commission indicates that there is an urgent need to consider establishing a public register of political donations. Lack of such a register has given rise to community suspicion and lack of confidence in the political process.

The requirement for disclosure should extend far beyond those who because of their public positions, ought to disclose financial, political and any other relevant interests. Arguably, there should be disclosure of all donors, and the amounts they give. Alternatively all donations above a minimum sum could be disclosed.

## **3.8 LAW REFORM**

There are a number of institutions in Queensland which have in the past been responsible for recommending the amendment and reform of various laws: the Justice Department, the Parliamentary Council, the Law Reform Commission and various departmental committees, most of which in the area of criminal justice have been controlled by the Justice Department.

### **3.8.1 The Office of the Attorney-General and the Justice Department**

The Justice Department and the Ministry of Justice exemplify the local distortions which have been introduced into the Westminster system of Government. They are probably both causes and consequences of those distortions.

Traditionally, the Attorney-General is not only a member of the Executive but the Chief Law Officer of the Crown. There has been some debate upon the extent to which these latter functions enjoy autonomy from Executive control, but as chief law officer, the Attorney-General has extensive powers and discretions which are intended to be exercised in the public interest, including powers and discretion with respect to the initiation, prosecution, and discontinuance of criminal proceedings. The Attorney-General also has primary responsibility for legal advice in relation to matters of public administration and government. The proper performance of such functions is dependent upon independence and impartiality and freedom from party political influences, which is threatened if the Attorney-General is subject to Cabinet control and Parliament is effectively dominated by the Executive.

In Queensland, the risks of partiality were accentuated by the effective amalgamation of the offices of Attorney-General and Minister for Justice (and now the Ministry of Corrective Services).

It would be a substantial step towards proper principle if the office of Attorney-General were separated from that of Minister for Justice.

Whatever may be the position in relation to the Justice Ministry, legal expertise can be beneficial for the discharge of the functions of the office of Attorney-General. The practical result of the appointment of a non-legal person to the amalgamated ministry was probably, however to emphasize the dependence of the Minister upon Justice Department officials. The influence of those officials has increased since the early 1970's, which saw both the beginning of the modern round of constitutional battles between Queensland and the Commonwealth and a rapid increase in the complexity and proliferation of legal issues.

The Justice Department has become the principal source of the Government's legal advice related to issues of current or potential political significance. Such a role is obviously important in an increasingly complex, legalistic society.

The Justice Department has developed a special section responsible for research and advice to the Government on "policy" issues, especially in relation to matters of sensitivity. This is now known as the Legislation and Research Programme (formerly the Legislation and Policy Branch). This Branch is able to exert a considerable influence, directly through its Minister, and indirectly, by its advice, upon a number of major policy issues including those which need to be freed as much as possible from party political considerations.

In consequence, there has been no real critical assessment within the Government of draft legislation. Further, there has been no mechanism by which fresh points of view could be expressed.

The Opposition in Parliament may highlight some matters, but all too often the time and resources available, and sometimes the restricted opportunity of debate, precluded all but superficial consideration and discussion of legislation.

Outside comment by interested people and professional associations obviously occurred, but it was limited compared to the time and research facilities available to the public servants. In any case, the bureaucrats had the last word, and wrote the submissions and statements which went to Cabinet, the party room and Parliament. What is not said in those submissions, and their manner of expression, can be as important as what is said.

If the Justice Department had been competent and professional during the last two decades, it could not have failed to observe the problems in Queensland's political and criminal justice systems.

There are no indications that the Justice Department persistently sought to draw those problems or their ramifications to the Government's attention, or that it provided advice related to the need, and the appropriate methods, to counteract the problems.

A substantial body of legislation will be needed to carry out the recommendations in this report, and past deficiencies must now be overcome.

In the aftermath of this report's release, present and former Justice Department personnel, who are steeped in attitudes which have contributed to the current problems, may well try to reassert their influence and regain control of the agenda for reform.

As was mentioned in the introduction to this report, there are many ways in which that can be done. It is best avoided if the responsibility for implementation of recommendations which are adopted is contracted to independent persons from outside the bureaucracy, with overall ministerial control vested in the Premier. Particular aspects of what is recommended can appropriately be overseen by the Minister for Police and, if the Justice and Attorney-General's portfolios are separated, by the Attorney-General.

### **3.8.2 The Law Reform Commission**

The Law Reform Commission Act 1968-84 established a commission to consider reform and amendment to the laws of Queensland.

It has undoubtedly had outstanding chairmen. All of them have been serving Supreme Court Judges and therefore able to devote only limited time to the Commission's work. It has produced considered reports which reflect a variety of opinions, with explanations for the recommendations offered. No more could reasonably have been asked of it.

What is significant is that relatively few of the references to the Law Reform Commission have concerned highly sensitive matters relevant to the administration of criminal justice. Such matters have generally been retained in the hands of the bureaucracy or departmentally controlled committees.

The Law Reform Commission, in addition, has neither the time nor the resources to monitor the operation of or review electoral and administrative law or the law relevant to the administration of criminal justice.

The Commission, moreover, has no expertise or capacity to perform a wider function of assessing what resources are available, at what cost and what social objectives realistically can be obtained with what resources and at what cost, in recommending changes to the electoral, administrative and criminal laws. Such a function is no part of its proper statutory role.

Elsewhere the special need for electoral and administrative reform and the peculiar nature of the criminal law is discussed. Recommendations are made for the establishment of separate bodies to deal with electoral and administrative reform and criminal law reform.

The Law Reform Commission in the past has addressed and will continue to address areas of enormous potential significance to the community, and will deal with a variety of legal topics and initiatives of major significance in the general law. Its resources for that should be enhanced. In the two respects mentioned, however, it is proposed that separate bodies be established to consider appropriate law reform.

### **3.8.3 The Parliamentary Counsel**

The Parliamentary Counsel traditionally has had primary responsibility for preparing draft legislation giving effect to departmental proposals. In the course of that activity, the nature and wisdom of those proposals is often discussed, and advice provided to the department in question by the Counsel. The Counsel also assists members of Parliament in relation to specific legislation.

In Queensland, the Parliamentary Counsel is attached to the Premier's Department, not the Attorney-General's Department as in other states. The office is not established as an independent entity by statute, as in the case of the Commonwealth Parliamentary Counsel.

The Parliamentary Counsel obviously should not tailor advice to political expediency or fail to point out fundamental errors in principle or obligation in any proposed course. The present role and functions of the Parliamentary Counsel should be reviewed (in the light of other matters identified in this report) to ensure its independence.

### **3.8.4 The Reactive Approach to Law Reform**

There is a natural tendency by Governments, in their haste to be seen to solve problems, to deal with them in an ad hoc manner.

Problems, when they emerge, tend to be presented as isolated dilemmas with simple solutions, and Governments are often tempted to solve them by passing laws forbidding certain behaviour. This is often done without any real research and without any regard to the ability of the law enforcement system, including the Police, the courts and the prisons, to cope with the burden of extra enforcement.

Passage of such a law usually, however, gives the Minister responsible a sense of accomplishment, leaves the bureaucracy in control, and gives the public an impression that the Government is alert and active. The media rarely examines the issues in any depth, often endorsing the view that problems have simple solutions which can be applied by quick legislation.

When problems are not simple, the passage of a badly drafted law, especially if the resources are not available to enforce it, simply compounds the problem as well as further taxing the resources of the system. When the pressure is on, and the problem become impossible to ignore, more ad hoc legislation is passed.

Those who conduct reviews of the law should not only present recommendations to the legislature, but should also present any rational arguments against the recommended course of action. If this is done, Cabinet and Parliament will have an objective basis for proper critical assessment of the proposals.

Reform affecting the administration of criminal justice, in particular, is fundamentally different from other social or economic reforms which usually involve merely the raising, spending and distribution of money.

The administration of criminal justice should therefore surmount party political barriers. All parties share a fundamental dependence on the criminal justice system. All in the Parliament must help, in good faith, to identify objectives and grant the resources and powers to attain them.

In the field of criminal justice, identifying the options and understanding their merits and drawbacks is technical and difficult. Individual politicians, with their limited time, resources and training, and even party machines cannot by themselves adequately analyze complex proposed legislation. This is even more the case when the legislation is presented in an urgent reactive way to the Parliament.

Since this Inquiry began, the public service, superannuation and retirement benefits, the Police, the prisons and public accounts have all been the subject of significant legislative attention. The criminal law, the powers of investigation of criminal offences and the law of evidence have all been variously added to or changed.

Some of this activity provides excellent examples of the shortcomings in the present approach to criminal justice, and demonstrates the need for on-going review by an independent specialist agency, such as that recommended in this report. Such a body is a necessity if crime is to be addressed properly. In general, the significance of some of the initiatives undertaken in 1989 underline the need to seek out opposing points of view when considering delicate and difficult reforms to the criminal law.

The Parliament must identify objectives and provide (or attract) the resources to attain them. In that, it must be given objective advice. Recommendations elsewhere in this report for the presentation of competing viewpoints by a permanent independent agency address that need.

Enactments must be considered for their impacts upon an whole structure, particularly impact on the administration of criminal justice.

Bills introduced to Parliament could be accompanied by an ‘impact statement’ which addresses and details the financial and other practical considerations which would be associated with the bills’ implementations.

The laws which remain or which are passed after this report must reflect and identify social need and be aimed to meet realistic objectives. When enacted, they must be attended by the means of enforcing them properly.

It is of the greatest concern that the de facto power of the bureaucrats to filter information and argument when advising their Ministers be removed. If reform, and for that matter, democracy, is to work, the administrators should not have the last word on what is put to the Parliament. Recommendations in this report for the presentation of competing viewpoints by a permanent independent agency address the stated needs. It is vital that an ongoing mechanism for research and reform of the criminal law and the administration of criminal justice be developed, and later in this report, the nature and type of that mechanism is discussed.

## **39 THE MEDIA**

### **3.9.1 The Role of the Media**

The media is one of the most important and effective mechanisms for the control of powerful institutions and individuals by reason of its ability to sway public opinion. Those who wish to mould public opinion must do so largely through the media.

The media played a part in exposing corruption, and two media organizations contributed to the setting up of this Inquiry.

Unfortunately it is also true that parts of the media in this State have over the years contributed to a climate in which misconduct has flourished. Fitting in with the system and associating with and developing a mutual interdependence with those in power have had obvious benefits.

### **3.9.2 News Management**

The complementary techniques of secrecy and news management allow governments to exercise substantial and often disproportionate influence on what is published in the media.

The media is able to be used by politicians, police officers and other public officials who wish to put out propaganda to advance their own interests and harm their enemies. A hunger for “leaks” and “scoops” (which sometimes precipitates the events which they predict) and some journalists’ relationships with the sources who provide them with information, can make it difficult for the media to maintain its independence and a critical stance. Searches for motivation, and even checks for accuracy may suffer as a result.



In Queensland, Government reports and information are invariably “leaked” to selected journalists who are able to delude themselves that they are not being used, but on the contrary are establishing and maintaining contacts which help them in their appointed task of discovering information and communicating it to the public. Should these journalists ever “bite the hand that feeds them”, the flow of information would presumably dry up, or be diverted to a rival media outlet or colleague.

Instead of “leaks” becoming an alternative to official information, they become a way of making the media act as a mouthpiece for factions within the Government.

This places an extra responsibility on the journalist. Both the journalist and the source have a mutual interest: both want a headline. Yet if the journalist is so indiscriminating that the perspective taken serves the purposes of the source, then true independence is lost, and with it the right to the special privileges and considerations which are usually claimed by the media because of its claimed independence and “watchdog” role. If the independence and the role are lost, so is the claim to special considerations.

### **3.9.3 Media Units and Press Secretaries**

It is legitimate and necessary for Government Ministers, departments and instrumentalities to employ staff to help ensure the public is kept informed.

Media units can also be used, however, to control and manipulate the information obtained by the media and disseminated to the public.

Although most Government-generated publicity will unavoidably and necessarily be politically advantageous, there is no legitimate justification for taxpayers’ money to be spent on politically motivated propaganda.

The only justification for press secretaries and media units is that they lead to a community better informed about Government and departmental activities. If they fail to do this then their existence is a misuse of public funds, and likely to help misconduct to flourish.

It may be that some guidelines to prevent the misuse of public resources by Government media units should be introduced.

Consideration should be given to establishing an all-party parliamentary committee to monitor the cost and workings of Ministerial and departmental media activities, including press secretaries, media units and paid advertising. This committee could analyze whether the money is being spent on informing the public, or distributing propaganda for political gain. It could also bring to the attention of Parliament any misrepresentation or misinformation emanating from the administration.

## **3.10 CRITICISM AND DISSENT**

### **3.10.1 The Right to Dissent**

Apart from the established institutions of a parliamentary democracy, informal methods of dissent are useful mechanisms for checking the abuse of power by governments. Dissent may also foster and promote public policies and legislation not previously considered by a government or bureaucracy.

In the past, when church and other community leaders, including academics, have expressed independent concerns with respect to public issues in Queensland, their comments frequently have been rebuffed by a barrage of propaganda and personal abuse.

Many persons of ordinary sensitivity, who have not been hardened by experience in public life, are effectively deterred by such invective from valuable participation in public affairs.

People of differing opinions have the right to express those opinions, and to act peacefully to bring their arguments to the attention of the wider community.

### **3.10.2 Public Protests**

The right of public assembly has traditionally been regarded as analogous to the right of free speech, and a touchstone of the respect given to other civil liberties within a society. In these days of a mass media, it holds an even greater significance since the main way for groups within the community to gain the attention of the media and therefore the public is by “creating” news events by holding rallies and marches.

The banning of street marches in Queensland and the 1977 amendments to the Traffic Act 1949-77 made a police officer the final arbiter of whether a demonstration should be permitted. These measures produced for many years confrontation between demonstrators and the Police Force, to their mutual disadvantage. The bans increased the civil disorder which they were ostensibly intended to prevent.

Other states in Australia have adopted systems, which appear to work well, for allowing public meetings and processions. March organizers inform the Police Force of their plans, with details as to time, route and expected numbers to be involved in the demonstration. Police and organizers then negotiate. If agreement cannot be reached, and police believe the plans of the demonstrators pose a real and unreasonable risk to public safety and order, they have the right to apply to a court for an order prohibiting the march.

There is clearly a need for a review of the laws relating to planned street marches and meetings in Queensland, and the laws in other parts of Australia may provide a useful guide to such a review.

### **3.10.3 Defamation Actions**

The right to voice dissent from the opinion of the Government and its manner of decision-making are no less important for parliamentarians or the established Opposition party or parties.

A parliamentarian’s role to review and constructively criticize Governmental activity could be hampered by being inhibited from speaking out publicly by threats of claims for damages. This is particularly so if the defamation actions which result are funded out of the public purse.

The use of public resources at any time or in any way to inhibit or suppress the expression of opposing political opinion or a criticism of any administration is wholly objectionable. Those in public life must accept the risk of criticism even if it is at times, unfair, unfounded or even mischievous and couched in unflattering or abusive language. While personal abuse and wrong allegations are to be condemned, they do not justify the use of public resources to provide legal redress for individual members.

There are ample opportunities for criticism or allegations to be addressed at a political level, in the Parliament and by public statement. An elected representative’s response to, or treatment of, wrong or unfair allegations is itself a yardstick for that representative’s suitability and aptitude for the role.

If politicians’ public statements are wrong or misconceived or mischievous or malevolent, that should be demonstrated in public exchange. The politicians and their party will suffer the political consequences. That is the only detriment which should normally be involved (criminal offences excepted).

If members of Parliament (including Ministers) choose to resort to legal redress, it should be at their own cost just as any damages recovered would be to their personal material gain.

## **3.11 ELECTORAL AND ADMINISTRATIVE REFORM**

### **3.11.1 The Need for Reform**

The above discussion demonstrates that administrative and electoral laws and processes are in need of independent and comprehensive review.

There have been reforms in Queensland. Some have been well-intentioned and have achieved improvement in public administration.

It remains substantially correct, however that in the past there has been an emphasis upon the economy and development, often to the detriment of other political and social considerations.

In addition, initiatives often appear to lack proper integration and have been somewhat inhibited by an overriding concern with financial efficiency and economy, rather than by a balance of concerns for efficient, integrated administration, responsible, accountable Government, individual rights and democratic principles.

The initial temptation in a report such as this is to firmly prescribe the new administrative laws needed, or needed in the opinions of the Commission, to overcome the deficiencies. While such a move would probably attract short term public support, such a course would be just as deficient as the steps and prescriptions which have led to the current predicament.

At best, the laws would reflect inadequate deliberation, research, and community input, and cursory Parliamentary attention. Worse still, the prescriptions may inadvertently suffer from bias, caused by the limited time this Commission has had to conduct necessary research and analysis of the impact of the many disparate reforms recommended in submissions.

Short term prescriptions of this kind will not lead to the ultimate solution, which must be for the democratic and Parliamentary process to work in the manner intended.

On the other hand, it is undesirable to leave reform to those people who are steeped in the previous philosophies and policies and who would no doubt find it difficult to willingly and co-operatively adopt an objective approach to the issue of reform.

An enduring process with adequate independence and Parliamentary (as distinct from Government or bureaucratic) support must be set up to review and recommend the necessary laws and guidelines, and to attend to the multitude of administrative matters which need improvement.

### **3.11.2 Electoral and Administrative Review Commission**

A properly authorized and satisfactorily resourced Electoral and Administrative Review Commission which reports directly to a Parliamentary Select Committee on Electoral and Administrative Review as well as to the Premier is needed. The Commission should comprise members quite independent of political parties and the bureaucracy, especially those who have been responsible for the architecture of existing administrative law.

Matters of priority already mentioned include:

- (a) advice to Parliament on the setting up of a system of parliamentary committees;
- (b) a review of the necessity presently imposed by statute for the assent or consent of a Minister or the Governor in Council to any given action or undertaking or conferring of any benefit;
- (c) a review of the electoral system, especially the fairness of electoral boundaries, the basis of representation, the processes of registration and counting and the distribution of electoral material at polling booths;
- (d) the provision of independent administrative appeals and of simpler procedures for obtaining judicial review of administrative decisions;
- (e) a review of the constitution and powers of tribunals and boards;
- (f) an investigation into Freedom of Information legislation and its desirability;
- (g) a review of the law and practice pertaining to the advertising of vacancies and the appointment and appeals against the appointment of people to positions within the public service;
- (h) a determination of appropriate guidelines for Government appointments for such positions as the Judiciary, Chief Executives and the Clerk of the Parliament and also guidelines for the proper relationships between ministers and bureaucrats;
- (i) the preparation and enactment of legislation protecting any person making accurate public statements about misconduct, inefficiency or other problems within public instrumentalities,

- and provision of penalties for those making damaging public statements knowing them to be untrue;
- (J) a consideration of the alternative mechanisms open for the administrative independence of the Judiciary, with particular attention to the views of the Chief Justice and the Chairman of the District Court;
  - (i) improved reporting to Parliament by the Auditor-General and proper resourcing of the Auditor-General's office;
  - (j) a revision of the laws and guidelines relating to pecuniary interests of Ministers, parliamentarians and senior bureaucrats;
  - (m) a report on the considerations relevant to the registration of political donations;
  - (n) the review of the resources available to the Law Reform Commission;
  - (o) a review of the role and functions of the Parliamentary Counsel; and
  - (P) a review of the law and practice relevant to public demonstrations.

A review of this nature will require an ongoing mechanism which complements and supports proper Parliamentary processes. The Parliamentary Committee on Electoral and Administrative Review to which the Electoral and Administrative Reform Commission would report should be established as soon as possible.

Legislation will be needed to provide for the establishment of the Commission. A draft bill for that purpose is in an advanced stage of preparation. Other legislation arising out of this report is in the course of preparation and the proposed Commission will obviously develop recommendations for various legislative reforms. By arrangement with the Premier, the former Parliamentary Counsel has been retained for these purposes.

It is not intended that the Commissioners be employed full-time, but that they direct and view reports from specialist consultants on the various matters requiring attention. It may be that the Chairman will have to be employed full-time initially. The Commission should consist of five members, including the Chairman.

The suggested size reflects the part-time nature of its membership, and the fact that, at least initially, there are a wide ranging number of issues to be considered by the Commission. It will obviously be necessary to give the Chairman a deliberative, as well as a casting vote.

The members of the Commission should be appointed for two to five year terms. All appointments should be preceded by public advertisement of any vacancy, and a consultant should be used to compose a short list of suitable candidates for the position.

In selecting a member of the Commission attempts should be made to find a balance of people from academia, public or private administration, the law and the industrial arena.

The Commission should be the responsibility of the Premier.

The Premier as the Minister responsible for the Commission should be obliged to consult the members of the Parliamentary Committee about any appointments to the Commission. It may also be desirable for the leader of the Opposition party or parties to be consulted about the appointment of persons to the Commission.

The Commission must be provided with adequate resources, and entitled to employ its own staff, engage its own consultants, and second relevant specialists to immediately attend to the priorities. The Parliament, Government and community must actively encourage and support the demanding process with which the Commission will be involved.

Entrusting the processing of the reforms to an independent Commission will require some adjustment in the way the Westminster system normally works. However precedents already exist for giving to an independent statutory agency the roles of preparing draft legislation and of acting as a policy adviser to a Minister or Ministers. The use of select committees of Parliament to review draft legislation has always been possible under the Westminster system, and has been increasingly used in other Parliaments.

## IV. CRIME AND LAW ENFORCEMENT

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#### 4.1.2 Law Enforcement

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# CHAPTER IV

## CRIME AND LAW ENFORCEMENT

### 4.1 INTRODUCTION

#### 4.1.1 Crime

There is a serious crime problem in Australia. Our community has grown and become more materialistic, urbanized and impersonal. Some sections of the community have little confidence or respect for political and public institutions. Many people feel understandably envious and resentful because of social injustices and financial inequalities.

Politicians regularly create unrealistic expectations for short term political advantage. This leads to more cynicism and disappointment.

In these circumstances, personal conscience, moral standards and social disapproval have not been enough to prevent dishonesty and lawlessness.

Many crimes can be committed with ease and little risk. The fear of punishment is not an effective deterrent unless laws are efficiently enforced and penalties are adequate.

Laws which are not or cannot be enforced, or which seek to establish disputed moral standards, generate disrespect for the law and authority. This disrespect is particularly pronounced amongst those who support and patronize illegal activities and those, especially young people, who reject what they consider to be hypocrisy.

There are relatively obvious explanations for the increased popularity of some crimes.

- The increased use of addictive drugs creates its own ancillary crime as addicts offend to fund their habit.
- The increased affluence of the community has created more opportunities for “low-skill” offences such as breaking entering and stealing, and motor vehicle theft.
- The large number of financial organizations and their many branches mean there are more venues and opportunities for armed robbery.
- It is relatively easy to defraud and exploit large public and private institutions.
- Many common offences, including consensual offences, take place in secret. The anonymity and disinterest which characterize large communities help to keep them secret. These offences are difficult to investigate without the help of witnesses or covert operations.

The direct and indirect costs of crime to the community are enormous and increasing. Retailers allow for a level of theft when setting prices, and insurance premiums also reflect the incidence of crime. Many private organizations, particularly financial institutions, prefer not to report theft by staff, because of the bad publicity. Misconduct goes unreported, and the costs are passed on to the public.

The general community is frustrated, confused and gravely under-informed. It is also alienated from and sceptical about its Police Force. The social order is increasingly vulnerable to contempt, particularly of young people.

Criminals distort and manipulate every aspect of the social order and of civil liberties to advance their own self-interest.

People trying honestly to fight crime become the subject of personal abuse, criticism and vicious slurs. Fewer are willing to risk the damage to reputation which such work entails.

Conspiracy and collusion make major criminals virtually invulnerable to the criminal justice system. Our otherwise fortunate society is being stealthily weakened by the spreading influence of crime, while deficiencies in the criminal justice system lie hidden in a mass of other social issues, unaddressed by administrators and politicians. Yet these issues must be quickly and efficiently dealt with if the nature of our society is not forever to be changed.

## 4.1.2 Law Enforcement

The administration of criminal justice is intrinsically hard and reform is controversial. That is daunting for politicians, government and public officials, who do not like problems and are often unwilling to admit they exist.

A problem is seen only as a possible cause of criticism, embarrassment, loss of electoral support or career setback. Bureaucrats and politicians are naturally predisposed to deflect criticism and avoid controversy.

Despite much recent publicity, crime and its causes, the lack of effective law enforcement and the social and financial consequences get little real attention and are dealt with on a piecemeal basis. The approach is further fragmented by sectional political interests, geography and the complications of a federal system of government.

Almost every issue affecting law enforcement is discussed in a maze of confusion and contradiction. This is because no attempt has been made realistically and comprehensively to define the problem or the possible solutions. In many important areas, information crucial to sensible decision-making is simply not available, and there is at present no mechanism for getting it. The essential issues which have not been comprehensively and objectively analyzed include:

- what type of activities should be against the law;
- how should the law be enforced, with what powers, by what bodies; and
- how law enforcement bodies should be organized, integrated and co-ordinated.

As well, no similar analysis has been made of the funds and resources needed to identify and catch criminals or to prevent further degeneration in the situation. There has been an associated failure effectively to tackle the question of what powers are needed for effective law enforcement.

Part of the problem is money.

Law enforcement is enormously time consuming and demanding of staff and resources. If the detection of crime and the apprehension of offenders were performed properly, there would be more prosecutions with more increasingly complex and time consuming trials with the consequence that more courts, judges, court staff, prisons and prison staff would be needed.

Even now, with the constantly widening gap between crime and prosecution, the criminal justice system is not coping. Delays in completing investigations, delays in finalizing prosecutions, and overcrowding in prisons are but a few examples of the failure.

At the same time, recidivists and dangerous criminals have been released early resulting in an increased and avoidable threat to the community. The recent introduction of alternative methods of punishment for less serious offences such as home detention, community service and 'fine option' orders has sought to address that problem in part. The effectiveness of these measures over time has yet to be seen.

A satisfactory level of law enforcement will cost substantially more than is presently spent. Imposing charges to raise the necessary funds is politically unattractive.

The resignation of law enforcement agencies to a continuing deterioration in the situation is reinforced, if not largely caused by, a cynical view that political realities rule out improvement.

The community must be told of the seriousness of the crime problem and steel itself to providing the necessary resources so that attitudes change and the character of our society can be preserved.

The irreversible damage which the crime and law enforcement problem, not effectively combatted, has done to comparable communities elsewhere is gravely disturbing. Similar damage is occurring here, at an ever increasing rate. It threatens our happiness, security, freedom and future, and must be combatted whatever the cost.

## 4.2 THE CRIME RATE

### 4.2.1 The Growth in Crime

An analysis by this commission of the statistics published since 1969 has revealed that crime has increased more and more rapidly. The Police Force has failed to contain that rate of increase.

During the last 20 years, homicide has nearly trebled, rape has increased more than sevenfold and serious assault has increased more than 20 times. This is well ahead of population growth, which slightly more than doubled over the same period.

The problem may be even worse. Many serious offenses are never reported. For example, studies suggest that only between 10% and 15% of rapes and only some 65% to 70% of house breakings are reported.

The reasons for the non-reporting of different types of serious offence vary. For example, shock, embarrassment and fear of further trauma inhibit many rape victims from reporting the offence.

It is plain that many victims of crime cynically, if correctly, regard reporting the offence as useless because it is unlikely to result in the apprehension and punishment of the offenders.

The growing crime rate is clear if one examines the statistics for crime in general which have been published in the Police Commissioners' Annual Reports for the last 20 years; notwithstanding the conceptual problem with using these statistics.

The gross crime figures contained in Figure 4.1 below show a rise, over the last 2 decades in "general crime", "selected crime" and specific offences such as motor vehicle theft, break and enter, drug offences and drink driving offences. (The concepts of "general crime" and "selected crime" will be addressed shortly.)

Crime Category	Gross Crime Rates			
	Number of Offences		Increase	Overall Trend
	1969/70	1987/88		
General Crime	54,384	213,931	293%	Rising
Selected Crime	17,016	74,475	338%	Rising
Homicide	91	254	179%	Rising
Rape	39	288	638%	Rising
Assault	149	3,455	2218%	Rising
Motor Vehicle Theft	2,534	10,068	297%	Rising
Break and Enter	9,050	34,282	279%	Rising
Drug Offences	200	9,450	4625%	Rising
Drink Driving	3,626	28,185	677%	Rising

FIGURE 4.1



More importantly, this illustrates the alarming trends in crimes against the person, including homicide, serious assault and rape, and shows the Force has apparently had very little success in ensuring personal security.

A better indication of the level of criminal activity within a society can be given by the number of offences or groups of offences per 10,000 head of population in a given year.

The crime rate per 10,000 head of population has also been inexorably rising, particularly in the categories already mentioned. That is tabulated in Figure 4.2 below.

Crime Category	Crime per 10,000 Head of Population			
	Number of Offences		Increase	Overall Trend
	1969/70	1987/88		
General Crime	305.5	784.0	157%	Rising
Selected Crime	95.6	273.1	186%	Rising
Homicide	0.51	0.93	82%	Rising
Rape	0.22	1.06	382%	Rising
Assault	0.84	12.67	1408%	Rising
Motor Vehicle Theft	14.2	36.9	160%	Almost Steady
Break and Enter	50.8	125.7	147%	Rising
Drug Offences	1.1	34.6	3045%	Rising
Drink Driving	20.3	103.3	409%	Rising

FIGURE 4.2

These trends show that from the figures available for the period reviewed, the chances of an individual becoming a victim of crime increased significantly. For example, the chances of being assaulted increased more than fourteenfold, while the chances of being raped more than trebled and of being murdered almost doubled.

A similar picture emerges from details of the incidence and clear-up of crime and the court appearances and convictions recorded for the types and groups of offences referred to above, which have been obtained from Department of Justice records and graphed as set out below (See Figures 4.3-4.11)

In the pages which follow, offences have been taken to be 'cleared-up' once charges have been laid against an offender, court appearances are those which have occurred in the Magistrates Courts and the counts of convictions have been taken from the Magistrates, Children's and Higher Courts.

Figures 4.3 and 4.4 demonstrate the widening gap between offences reported and crimes cleared up for 'general' and 'selected' crime categories.

## CRIME TRENDS — GENERAL CRIME

OFFENCES, CLEAR-UPS, APPEARANCES AND CONVICTIONS

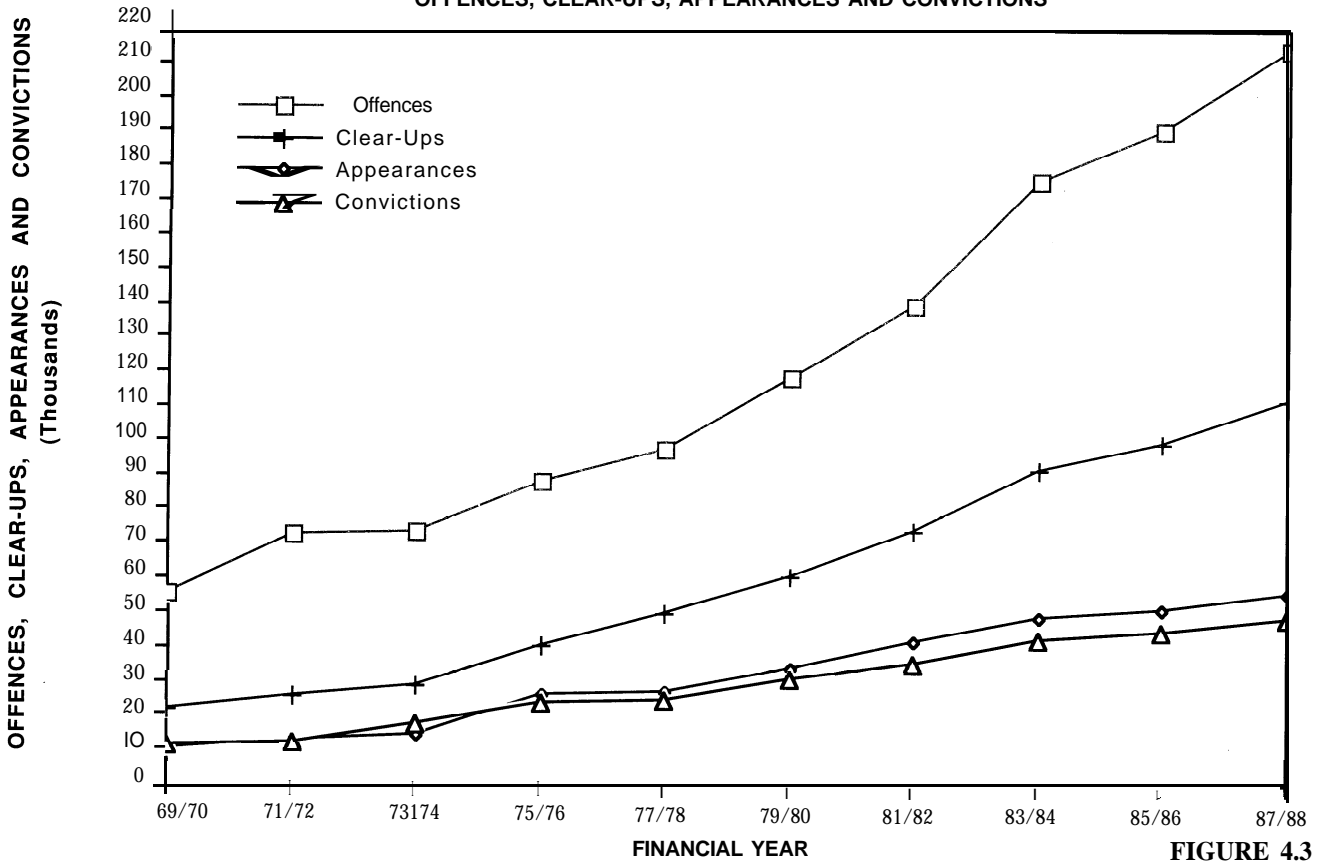


FIGURE 4.3

## CRIME TRENDS-SELECTED CRIME

OFFENCES, CLEAR-UPS, APPEARANCES AND CONVICTIONS

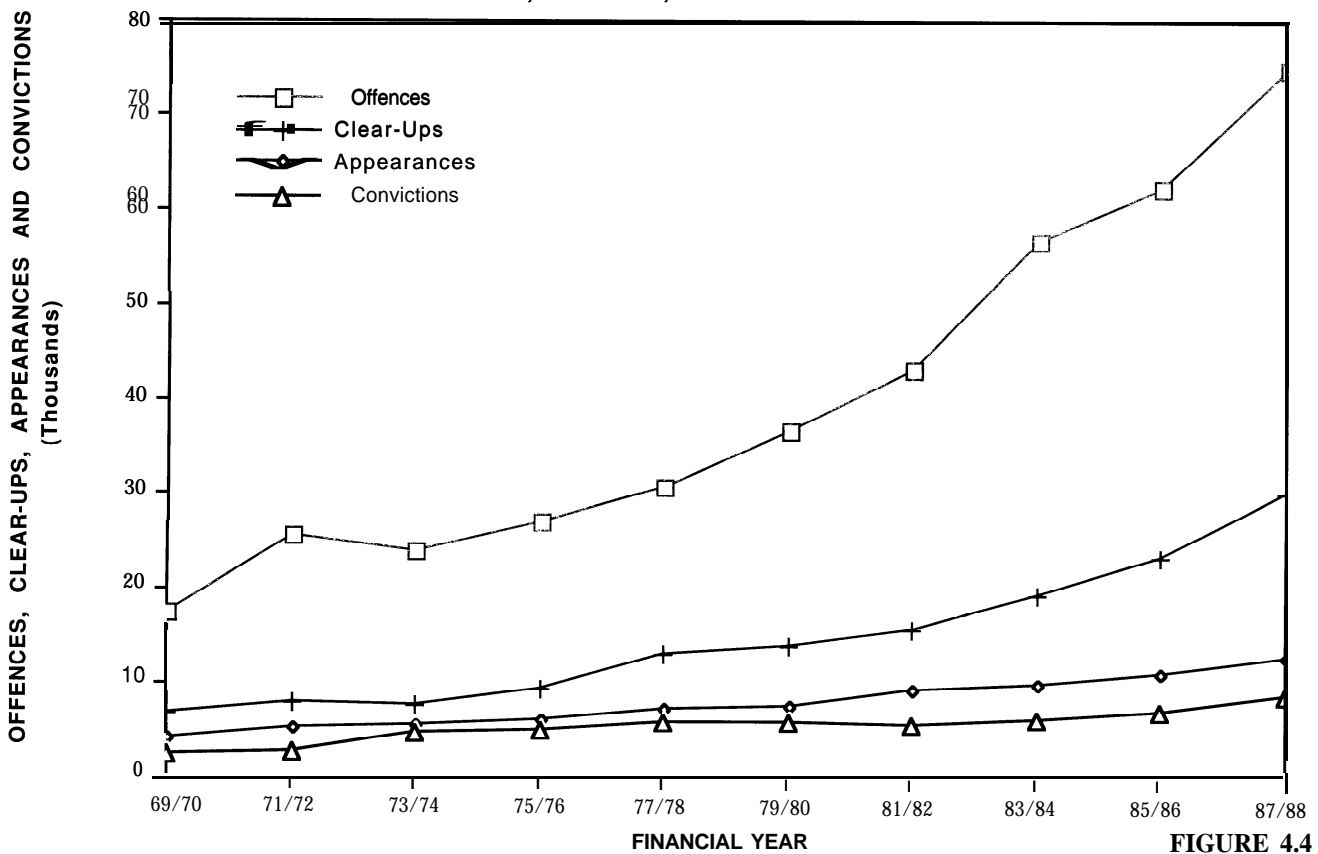


FIGURE 4.4

Figures 4.5, 4.6 and 4.7 depict the trends as regards crimes against the person.

## CRIME TRENDS — HOMICIDE

OFFENCES, CLEAR-UPS, APPEARANCES AND CONVICTIONS

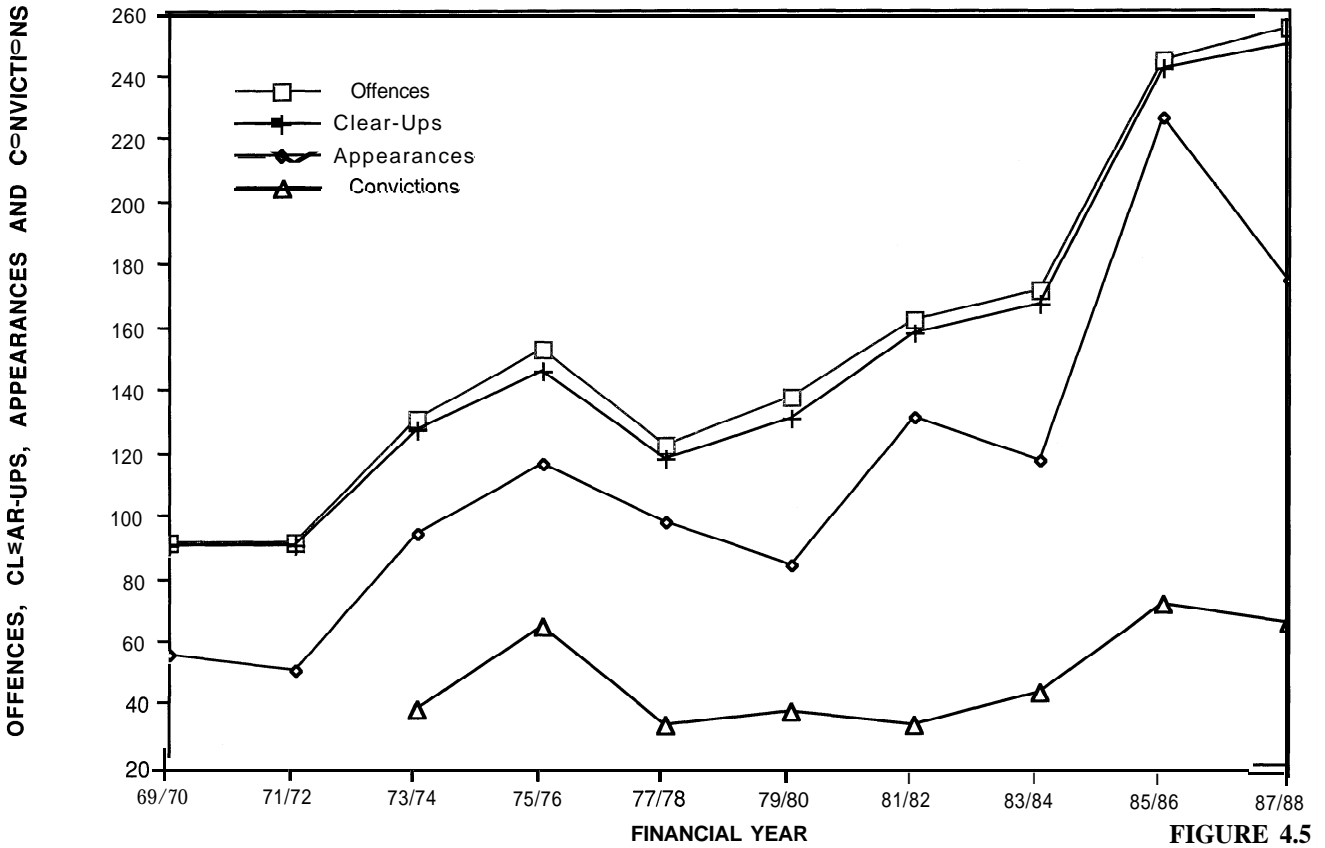


FIGURE 4.5

## CRIME TRENDS — RAPE

OFFENCES, CLEAR-UPS, APPEARANCES AND CONVICTIONS

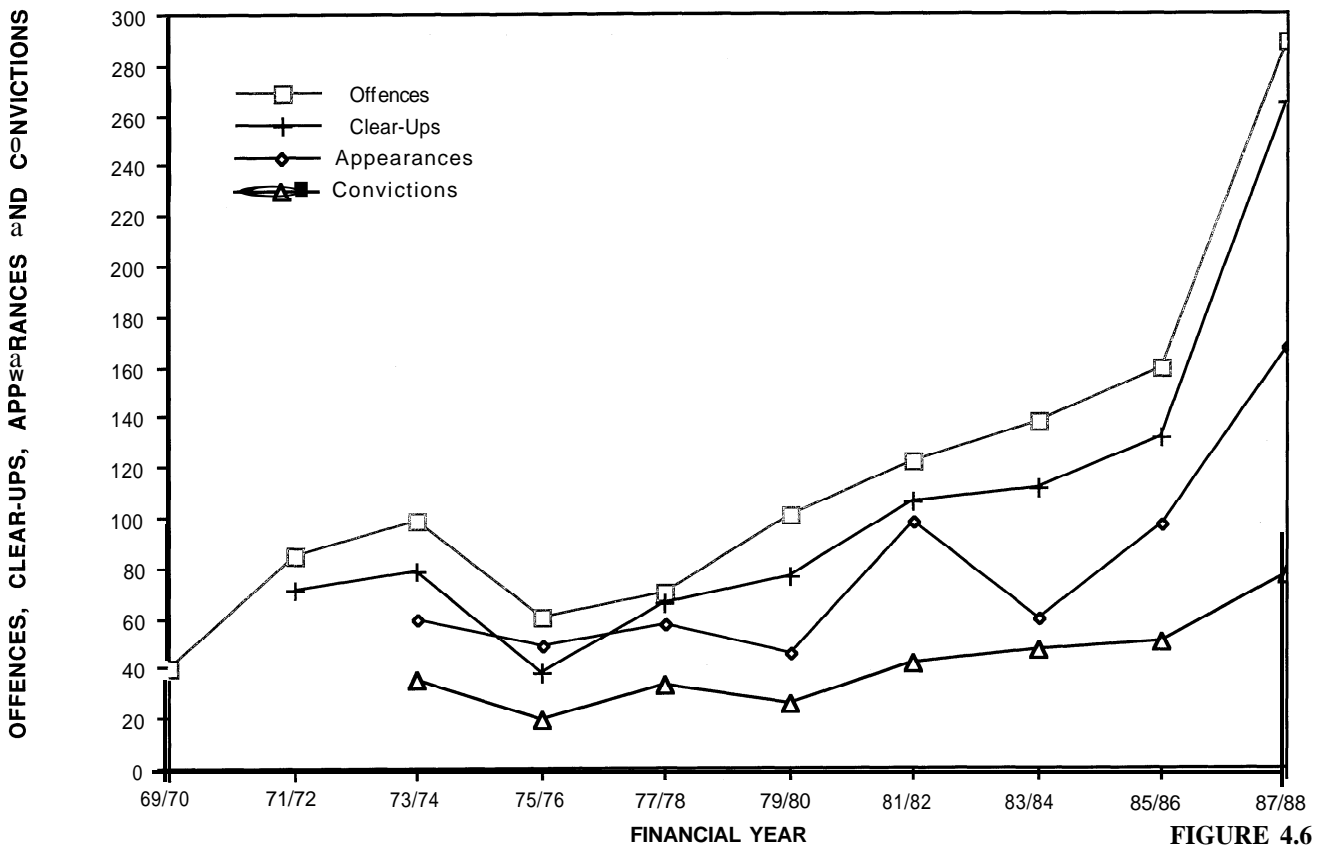


FIGURE 4.6

## CRIME TRENDS — ASSAULT

OFFENCES, CLEAR-UPS, APPEARANCES AND CONVICTIONS

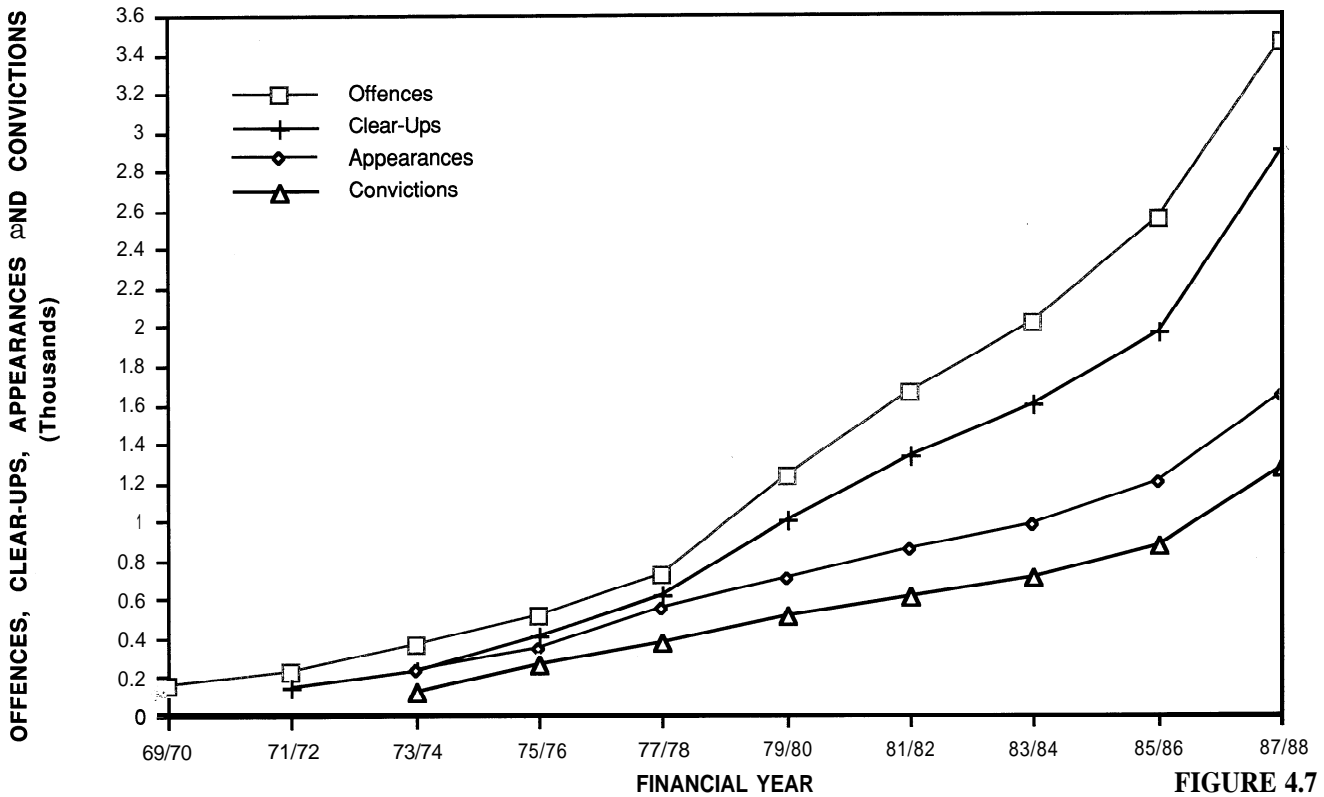


FIGURE 4.7

These figures show a widening gap between clear-ups and convictions. For property crimes, this trend is far less pronounced, because for these crimes, the clear-up rate is comparatively much lower than for crimes against the person; as can be seen from Figures 4.8 and 4.9.

## CRIME TRENDS — CAR THEFT

OFFENCES, CLEAR-UPS, APPEARANCES AND CONVICTIONS

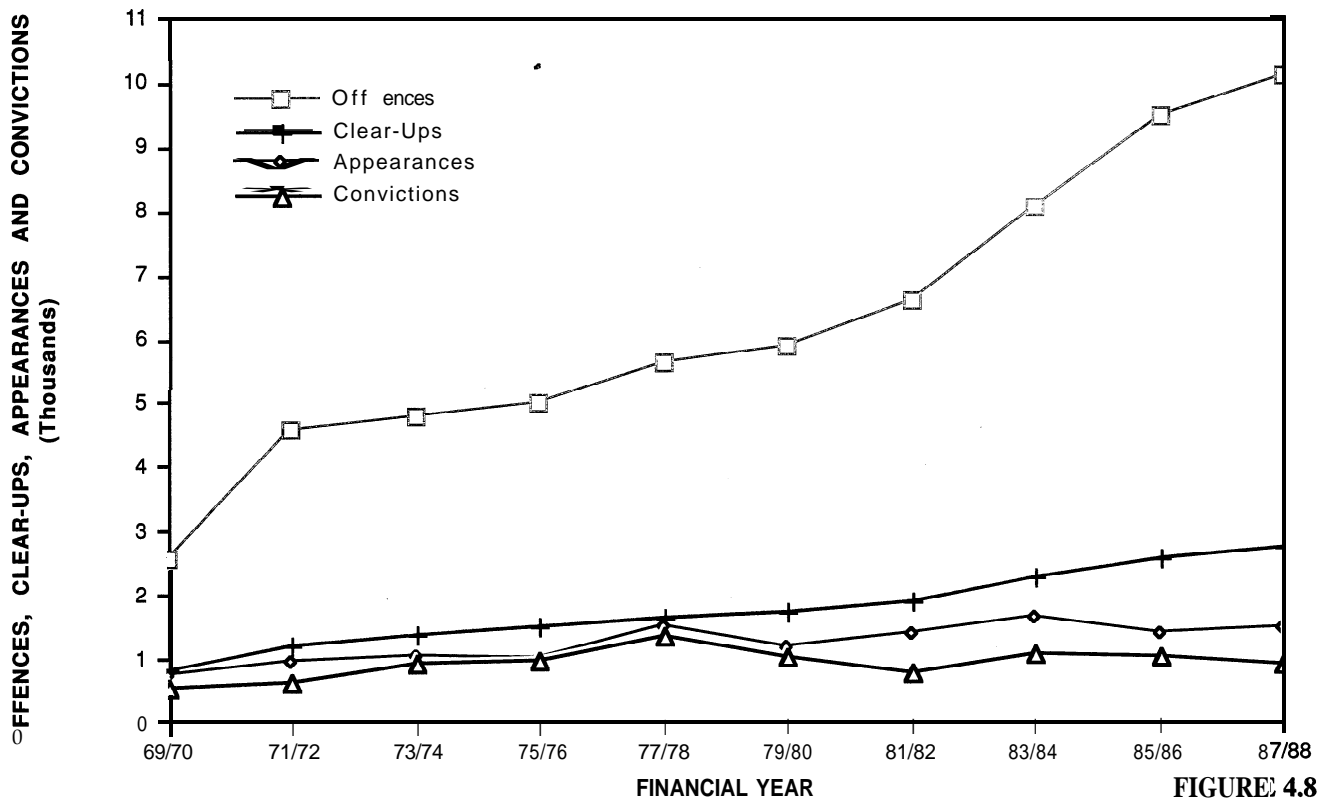


FIGURE 4.8

## CRIME TRENDS — BREAK & ENTER

OFFENCES, CLEAR-UPS, APPEARANCES AND CONVICTIONS

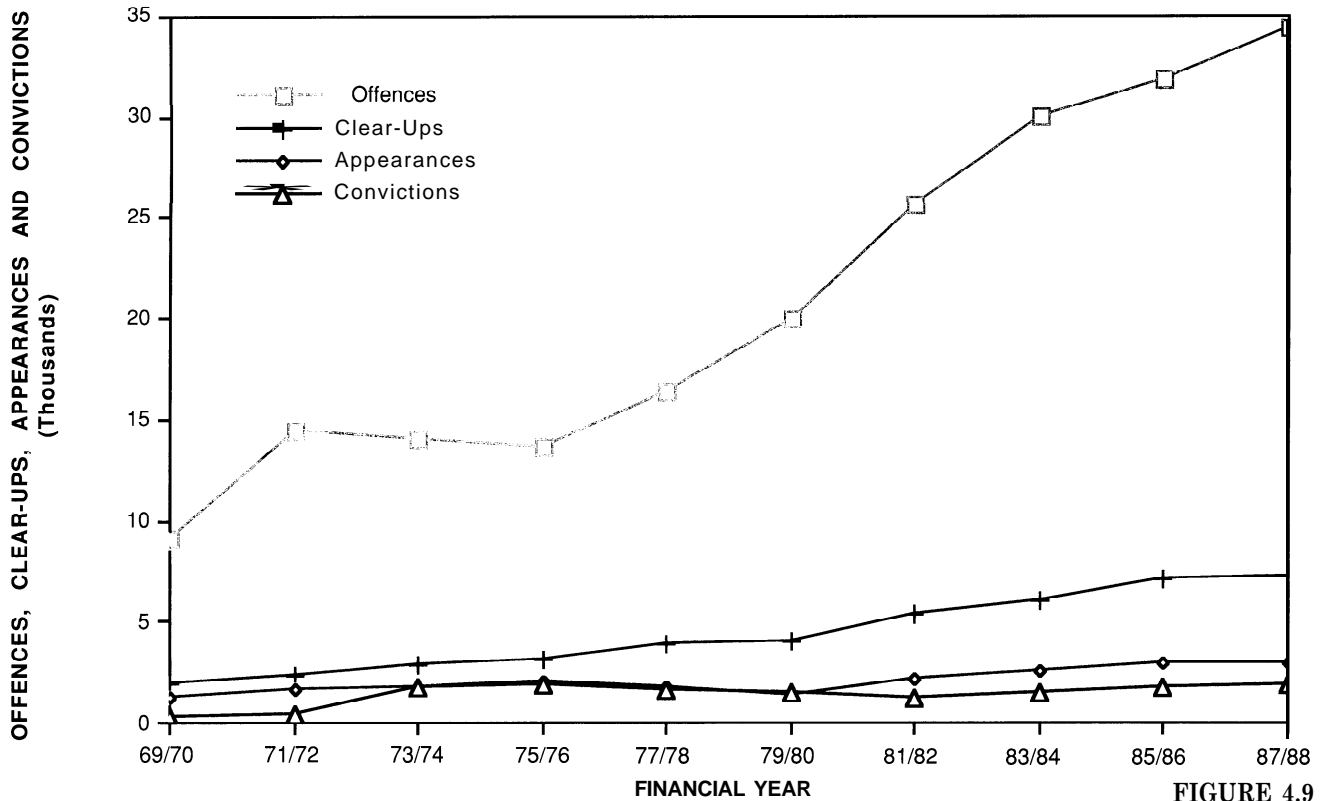


FIGURE 4.9

Figures 4.10 and 4.11 reveal that for drug offences and drink driving the clear-up rate by definition coincides with the number of offences recorded. The significant gap between clear up and appearances for drug offences can be related to individuals being charged with multiple offences.

## CRIME TRENDS — DRUGS

OFFENCES, CLEAR-UPS, APPEARANCES AND CONVICTIONS

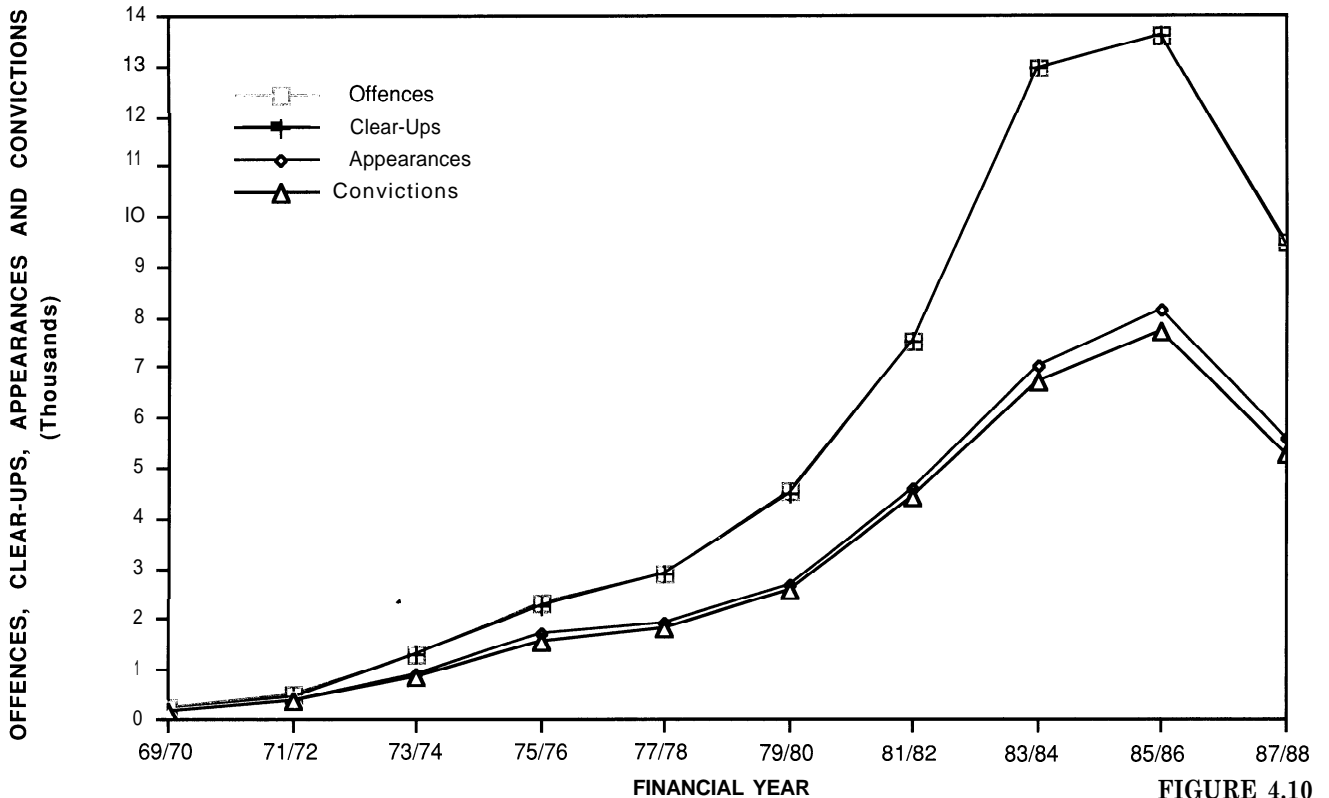
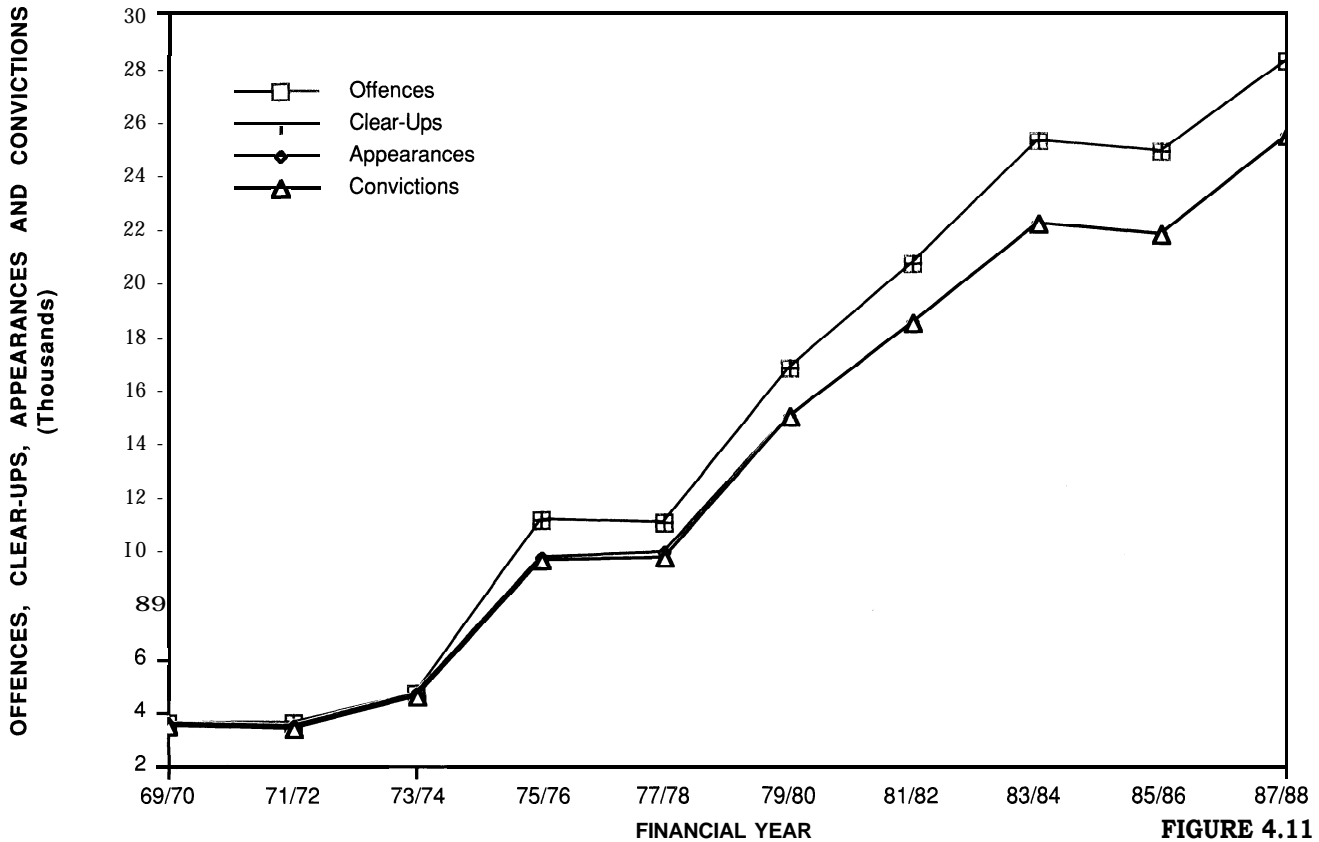


FIGURE 4.10

## CRIME TRENDS — DRINK DRIVING

OFFENCES, CLEAR-UPS, APPEARANCES AND CONVICTIONS



**FIGURE 4.11**

From the above, it is clear that the situation is worsening dramatically. For example, the preceding graphs show that:

- apart from drug offences and drink driving, crime clear up falls far short of total recorded crime;
- apart from drug offences and drink driving cases, the gap between offences detected and appearances in court has widened;
- in all cases, court appearances and convictions are lower than the clear up rates quoted in the police reports; and
- the shortfall between cases cleared and convictions has been getting worse.

Finally, it is worth noting that the rising crime rate has meant that there has been a corresponding rise in the workload of the Police Force. A comparison of the number of offences or groups of offences against the number of sworn members of the Force in 1969-70 as opposed to 1987-88 is shown in the Figure 4.12 below. The number of offences recorded per head of sworn member has risen with the obvious consequence that the amount of time spent on each offence must fall.

Crime Category	Crime per Head of Sworn Member			
	Number of Offences		Increase	Overall Trend
	1969/70	1987/88		
General Crime	17.6	42.3	140%	Rising
Selected Crime	5.5	14.7	167%	Rising
Homicide	0.03	0.05	66%	Rising
Rape	0.01	0.06	500%	Rising
Assault	0.05	0.68	1260%	Rising
Motor Vehicle Theft	0.8	1.9	137%	Almost Steady
Break and Enter	2.9	6.7	131%	Rising
Drug Offences	0.06	1.87	3016%	Rising
Drink Driving	1.1	5.5	400%	Rising

FIGURE 4.12

Taken as a whole, these figures show starkly that there is a crisis in crime prevention and control. Despite an increase in the actual numbers of police over the period in question, the hours of police effort available per unit offence has fallen and the most common types of crime are rising more and more steeply.

## 4.2.2 Misleading Statistics

Unfortunately, the level of community awareness about the seriousness of the crime prevention and control problem has been masked by the nature and presentation of Police Department statistics in recent years.

The crime statistics published by the Police for the period 1976/7 to 1986/7 contained figures for only the previous three years. This meant that the reader could only compare the figures for any year against recent history, and that long term trends were obscured. By reference to those trends, it is clear that the incidence of crime has grown more and more rapidly over the past 20 years.

Secondly, crime categories were grouped in a way which tended to artificially inflate the overall clear-up rate. This gave the reader a false understanding of the incidence of crime and the performance of the Police Department in its prevention and control.

To understand how this was done, it is necessary to see what types of crime are included in the various categories presented in the Police Annual Reports and how they inter-relate. In broad terms, crime can be divided into three categories: general crime, good order offences (like drunkenness), and traffic offences (such as moving violations). Within that scenario, selected crime is a subset of general crime, as can be seen by reference to Figure 4.13.

CRIME CATEGORIES ADOPTED BY THE FORCE

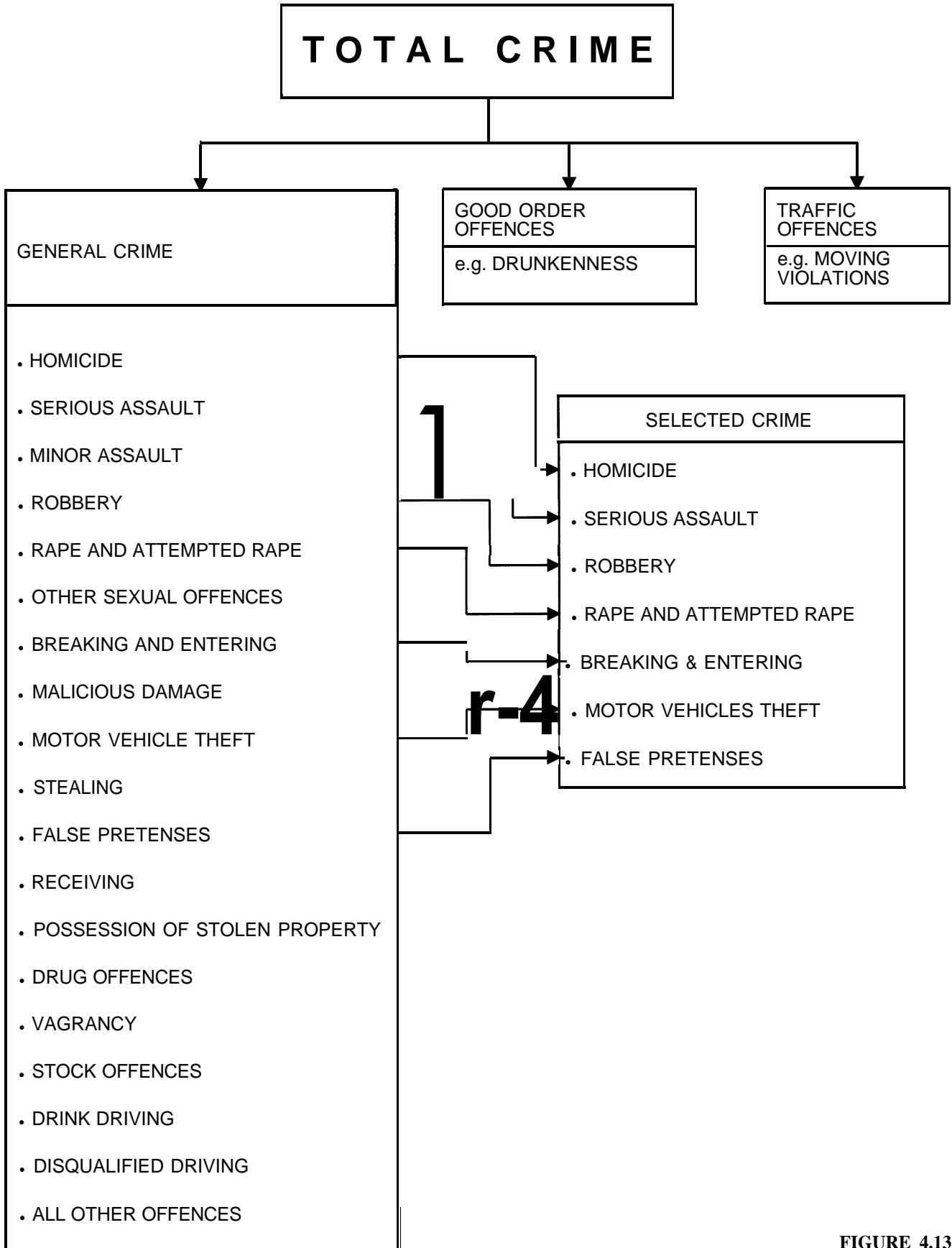


FIGURE 4.13



Importantly, general crime includes offences such as drink and disqualified driving, which are both numerous and invariably have a clear-up rate of almost 100 percent.

By including these categories within general crime, the overall “clear-up” figure for general crime gave the impression that crime was under control, whereas in categories such as drug offences and assault, it was anything but under control.

Finally, the Police Annual Reports came to focus on crime rates and “clear-up” rates as measures of performance. The “clear-up rate” is the number of offences cleared-up by charges being laid, as against the number of offences reported to or detected by police. It is usually quoted as a percentage. It takes no account of whether or not people charged are later convicted or found guilty of the offence. It also does not take into account offences committed but not reported to the police.

The clear-up rate for drink driving and drug offences is likely to be high: the correspondence between offences detected, offences cleared up, appearances and convictions is largely due to the fact that offence detection and offender apprehension are simultaneous events, both of which are within the control of the police. (Neither figure has any relationship to the offences in fact committed, which especially in the case of drug offences, are likely to be many times greater than the offences detected.)

This attribute of crime such as drink driving and drug offences is important. For convenience these cases may be termed “unreported” offences, because no report is made to police.

Police charging drug and drink driving offenders generate crime rates and clear up rates at their own level of choosing, since crime detection and the apprehension of the offender are in these cases simultaneous and the only way in which the offences come to be reported at all.

This means that the inclusion of drug and especially the drink driving figures can inflate general crime statistics to make it look as though clear-up rates are at acceptable levels, when in fact all that has happened is that more drink driving and drug offences have been “generated”.

Indeed, during the last 13 years, the general crime clear-up rate has been bolstered in precisely that way.

Excluding this factor, it is clear from Figures 4.14 and 4.15 (as set out below) that:

- until recent times the growth in reported crime has been shadowed, or matched, by the growth in “unreported” crime.
- without the “unreported” crime component, the clear-up rate in general crime falls from about 52 per cent to about 38 per cent.

# GROSS CRIME RATES

REPORTED CRIME AND UNREPORTED CRIME

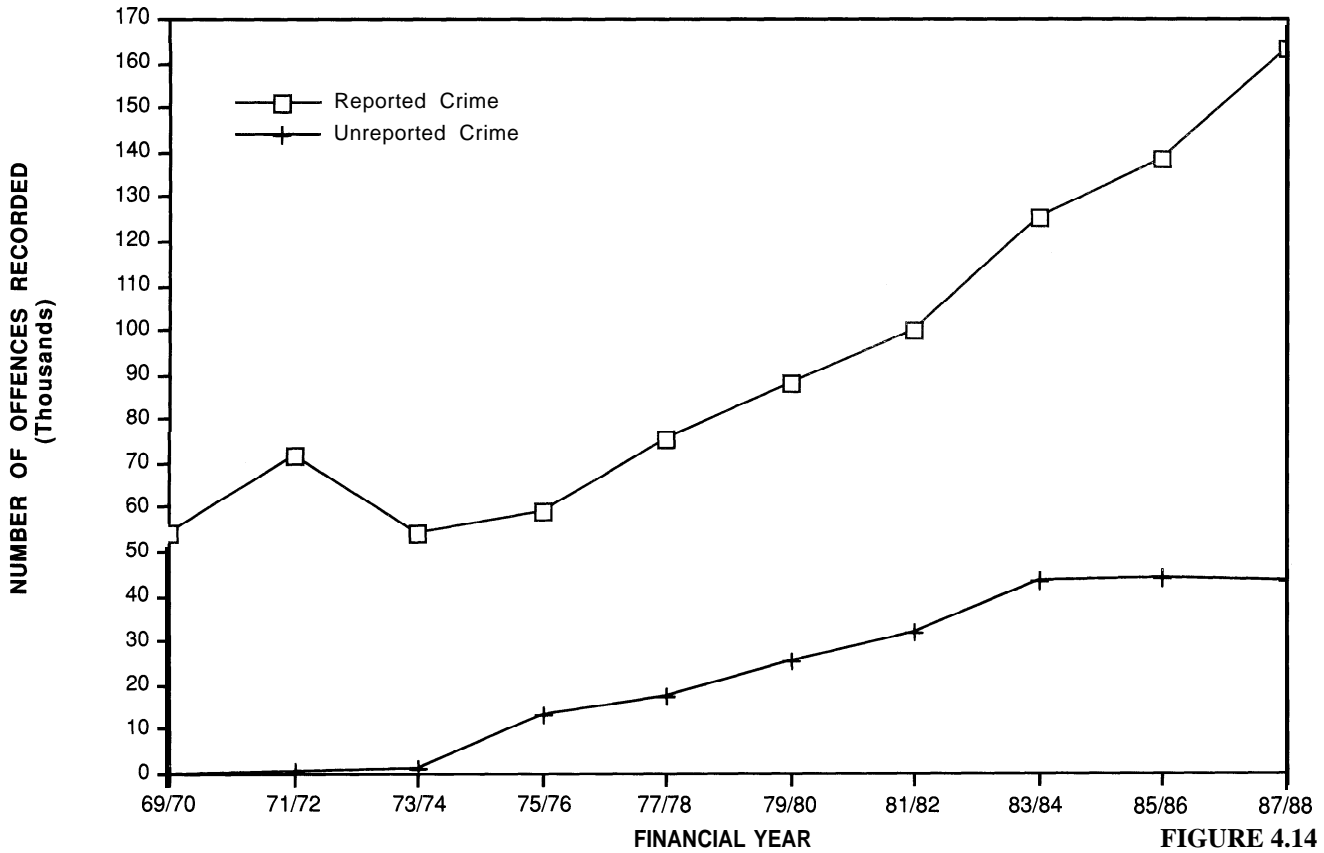


FIGURE 4.14

# PERCENTAGE CRIME CLEAR UP RATES

WITH AND WITHOUT THE 'UNREPORTED' COMPONENT

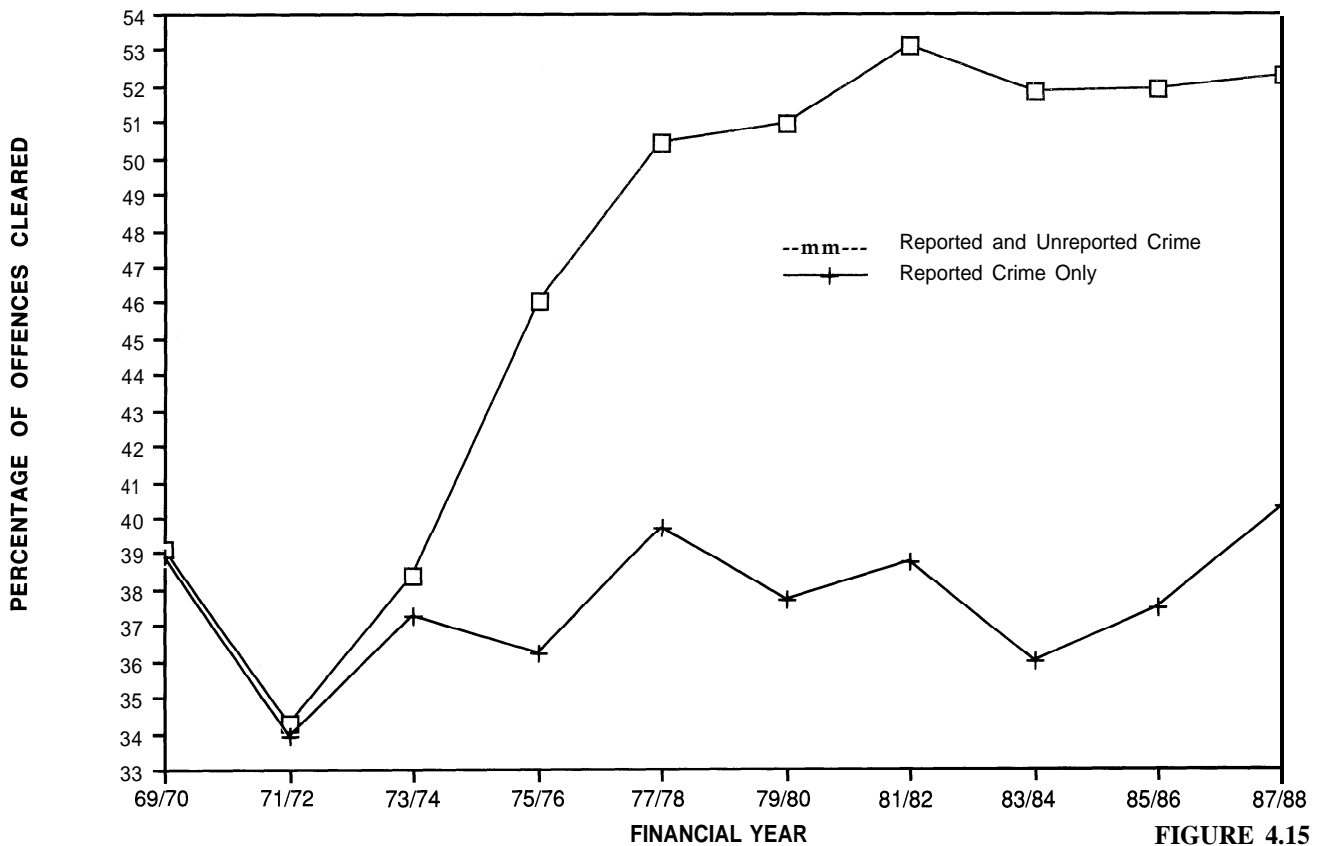


FIGURE 4.15

It is obvious from the above that the Queensland Police Department Annual Reports were misleading, especially when one considers the comments which were attached to the published results.

The introductions to the Annual Reports were used to laud the performance of the Queensland Police Force, by reference to the clear-up rate in isolation from other indicators of success. In those reports, crime statistics were presented in a manner which tended to disguise the nature and extent of the crime prevention and control problem.

The Police Annual Report for 1982 is a good example. In the introduction to that report, it was said:

“For the year past, Queensland police officers have excelled in selflessly applying themselves to maintaining our Department as the most effective in the Commonwealth. In so doing, an all time record high crime clear-up rate of 53.07 per cent was set. This is a clear indication of the high morale existing in all sections throughout the State and a recognition of how valuable Government support has been in recent years in providing additional manpower and sufficient finance to improve the living and working conditions of officers across a broad front.”

In fact, as the graphs show, if unreported crimes are omitted, the actual crime clear up rate for 1982 was only about 39 per cent.

In the same vein the introduction to the 1985 Annual Report, stated:

“It is worthy of recording that this year my officers cleared 92,227 criminal offences of the 180,660 reported. Astonishingly, this is more than the 85,203 offences reported in my first year as Commissioner. Such an achievement is more remarkable when it is realised that uniformed plain clothes and detective personnel increased by only 1,037 in that period from 3,738 to 4,775.”

No comment was made on the enormous growth in crime over the period, but only to the clear-up rates, which (if the inflationary effects of unreported crime were to be excluded from the calculation) had in fact dropped. Crime rates per 10,000 head of population, meanwhile, had increased from 450 to about 750 between 1977/8 and 1985.

Ironically, the crime problem is now so severe that the figures in the 1988 report (made by Acting Commissioner of Police, Ronald Joseph Redmond), as against 1987, are of themselves alarming.

Those reports show trends such as 65% increase in complaints against police, 14% increase in “selected crime”, 59% increase in false pretenses, and, in the first half of 1988, 2 1% increase in bank robberies and 250% increase in building society and TAB robberies.

The facts are that the fight against crime has been a losing battle and the crime statistics published by the Police Department for more than ten years have tended to hide the state of crime within our society.

## **4.3 ORGANIZED CRIME**

### **4.3.1 The Hydra**

#### **(a) The Concept**

“Organized crime”, is a term frequently used but rarely defined. It embraces serious crime committed in a systematic way involving a number of people and substantial planning and organization, sophisticated methods and techniques.

Offences commonly associated with organized crime include theft, fraud, tax evasion, currency violations, illegal drug dealings, illegal gambling, getting money from vice activities engaged in by others, extortion, violence, corruption of or by officials, bankruptcy and company violations, harbouring of criminals, forging of passports, armament dealings or illegal trafficking of fauna into or out of Australia.

In modern organized crime, theft and fraud have included systematic robbery, organized shoplifting, wharf and cargo theft, motor car theft and credit card theft, arson/insurance fraud, bankruptcy/insolvency fraud and public fiscal fraud, for example, fraud of health insurance and social security and tax evasion.

An exhaustive definition of organized crime is both impossible and unnecessary. A working definition might focus on the destination of the proceeds of crime. If they stay with and are used on “legitimate” expenses by the people directly engaged in misconduct, then the crime is usually local. If a “cut” goes to others, remote from the misconduct, then the crime is clearly “organized”.

## **(b) The Effect**

Organized crime involves large scale illegal conduct which is planned, complex and uses sophisticated techniques and skills. It exploits weaknesses in human nature and vulnerabilities in public and major private institutions.

Organized crime is self-perpetuating. The organization persists in criminal activities for a long period, in fact for years or decades. It is intended to endure indefinitely. The nature of and emphasis given to particular criminal activities changes over time, but the organization is the same.

The organization is like a Hydra, and the removal of some of its heads will not kill it. Its executives continue to wield influence from prisons. Others may be promoted to take their place in the operation. So long as it holds on to its wealth, and a share of it can be given to the participants, organized crime will survive.

Often the organization will gain its financial base from consensual offences, such as prostitution and s.p. bookmaking, which are difficult to detect, but are lucrative. These so called victimless crimes often involve violence, intimidation and corruption.

The purpose and motivation for organized crime are huge profits. Those profits are used to corrupt officials and buy skilled services from expert lawyers, accountants, financial and other advisers. That money also buys sophisticated technology and the services of criminal subordinates and agents.

The technology includes electronic communications, interception and monitoring equipment, secure information processing and storage systems, good transport and the best weaponry.

There is a widening gap between the economic strength of organized crime and its accumulated wealth (including the proceeds of “legitimate” investment), and the impoverishment of law enforcement agencies.

The architects of organized crime are rarely, if ever, directly involved in committing offences. Rather, they conspire and plan, usually behind a veneer of respectability which is difficult for law enforcement agencies to penetrate. Such criminals use the wealth derived from organized crime to obtain property and commercial interests with which to make yet more money. They enjoy living standards and gain prestige which helps them to get influence in the community and to contact and associate with honest influential people.

For some of those principals, the acquisition and use of power, including political power, is an ultimate and an even greater motive than the accumulation of vast wealth. They are not only insulated from the criminal act and so from the likelihood of prosecution but, if convicted and jailed, they are less likely to feel the brunt of imprisonment.

They continue to wield influence from prison by contact with their agents and by corruption of officials. They gain comforts, concessions and privileges not available to other prisoners.

They are usually ‘model’ prisoners, and attract maximum remission and parole entitlements. Often the individual offences of which they are convicted (conspiracy or complicity as an accessory for a single offence), attract sentences which do not reflect the gravity of their habitual criminal behaviour.

The ready market for the usually illicit services provided by organized crime is matched by a reluctance of the consumers to complain about it. But in any case, organized crime does not tolerate complaint.

Since the criminal organization cannot rely on ordinary legal processes to settle its disputes, it tends to have its own enforcement arm which carries out executions, violence, intimidation and blackmail.

The crime organization can provide handsomely for those who are loyal to it. It rewards people for silence by meeting legal costs. It pays criminals while they are in jail and looks after their dependents. It also harbours criminals, gives them false identities and relocates them.

Organized crime cannot get its massive power, or the opportunity to use its illicit wealth in 'legitimate' undertakings, without corrupt officials who aid and shield its activities, and corrupt or unethical professional advisers to guide it.

The greater the spread of organized crime and the more obvious its disproportionate wealth, the greater the pressure on honest people to help it or take part in it. Organized crime is subversive. It erodes the ethical standards of those on the periphery and encourages disrespect for the law.

The corruption of law enforcement officers, officials in criminal justice administration, other administrators and politicians and judges is a basic stratagem of organized crime. If such corruption is successful and frequent, the criminal justice system is crippled.

Dishonest agents tell criminals how much law enforcement agencies know about them, and from where the information came. Honest agents cannot trust each other or the system.

Corrupt people in authority misdirect resources and deflect attention from the proper targets of investigation. Bad management becomes deliberate. Evidence is "lost", and bureaucrats "bungle".

Witnesses, upon whom prosecutions depend, cannot trust the system and it cannot protect them.

Organized criminals can use threats and retribution to deter witnesses from coming forward or co-operating. Jurors and investigators can also be deterred from performing their duties.

Once identified and charged, organized criminals can arrange for documents to be destroyed or falsified. People can be paid to tell lies in the witness box.

Lies, perjury and threats are not exclusive to organized crime, of course. Any criminal may attempt the same techniques. But organized crime uses them regularly and has the money and means to do it effectively. Unless counter measures are taken, the organized criminal is thus insulated from the normal consequences of breaking the law.

Criminal business organizations, often operating under a veneer of legality, also pose a huge problem for their law abiding competitors. Legitimate businesses are forced to compete with criminal operators who, thanks to tax evasion schemes and illicit income (devoid of any taxation at all) can offer goods and services to clients at more attractive rates. In time, this competition may mean that legitimate businesses cease to operate in particular areas, which then become the preserve of organized crime.

### **(c) Control**

The investigation of organized crime is hampered by its size, and the nature, identities and status of the people involved. Law enforcement agencies are hampered in the battle by structural weaknesses and lack of resources. Overlaid on this is the fact that there are so many law enforcement agencies. More will be said of this later.

The ever increasing strength of organized crime intimidates honest people, and blunts their natural dislike of unjust and oppressive laws. The community becomes willing, even eager, to adopt draconian and invasive laws to deal with the threat.

It would be folly to overlook the experience of other countries, such as the United States of America, which have similar ethics but larger populations and are at a more advanced stage of economic development.

Effective response to organized crime is dependent upon recognition:

- of the social changes crime causes, and the fact that it diminishes the quality of life;
- that crime escalates if it is not controlled;
- that there are vulnerabilities in the social order which expose it to exploitation; and
- of the steps needed to control crime.

Organized crime has never, anywhere in the world, been brought under control by a piecemeal process. An integrated, comprehensive and wide range of corrective measures have to be made available.

The cost of doing that will be large. It must be measured, not only against the depredations of organized crime on public funds, for example, in the huge social security, insurance and taxation frauds, but against the real if immeasurable worth of the security and quality of life of the community.

### **4.3.2 Laundering and “Legitimacy”**

A major concern of organized criminals is to find a way to “launder” the profits of crime so they can be openly used to earn more money from lawful sources and activities. This allows the architects of crime to acquire “legitimacy”, display their wealth openly and live in luxury.

Money laundering can be defined as a technique to make dishonestly acquired money appear to have been legitimately earned. It involves both concealing the real source of the money, and “inventing” or constructing a fictitious, legitimate source.

Laundering money is not just the hiding of money, although money usually has to be hidden before it can be laundered.

Money can be hidden, rather than laundered, by:

- maintaining accounts and deposits in false names, either onshore or offshore;
- buying assets, such as real estate, in a false name;
- buying bullion, gems or bearer securities;
- accelerating repayment of debts;
- spending on lifestyle and holidays; and
- physically hiding cash.

Obviously, eventually, criminals will want to use their money openly, and if there is a lot of it, the amount alone can make it impossible to use unless it can be attributed to a legitimate source.

This Commission has become aware of the following methods of money laundering:

- understating the purchase price of an asset, and paying the difference between the declared price and the real price in cash from illicit funds;
- buying winning betting tickets at a premium;
- falsifying significant betting wins with registered bookmakers;

- circular loans from a “dummy” to the recipient;
- false rental agreements in which the rent is paid from illicit funds;
- depositing illicit money as takings from a legitimate business concern;
- depositing cash to a TAB account, then withdrawing it and treating it as winnings; and
- similar deposits, or the purchase of credit at legal casinos.

Once the criminal has “legitimate” wealth, the way is open to become powerful and influential in politics or legitimate business. This influence and power, desirable for its own sake, may also be used to further criminal ends.

### 4.3.3 Business and the Professions

Large scale organized crime cannot exist in a community without the advice and service of otherwise honest citizens-both individual and corporate. Proper obligations of confidence must be met but are susceptible to abuse as justification or excuse for aiding or condoning the use of illicit profits.

#### (a) The Banks and other Financial Institutions

The problem of money laundering has been mentioned above. The use of bank accounts conducted in false names is a common way in which criminals hide money.

Bank accounts in false names are sometimes obtained by criminals deceiving banks. Sometimes corrupt bank employees aid criminals to obtain and operate accounts in false names. Inadequate screening and preliminary procedures by banks, and laxity in applying the existing safeguards, have contributed to the problem.

Recently, and partly as a result of the evidence before this Commission, the banks have begun to tighten operating procedures to prevent the conducting of accounts in false names. That need has been reinforced by the Commonwealth Parliament by the imposition of requirements recently imposed by The Proceeds of Crime Act 1989 and The Cash Transaction Reports Act 1988.

Two separate, cumulative, problems arise with bank records. The first is the recording process- the form and contents of records and the periods for which they are retained. That is being addressed by the banks and has also been the subject of statutory attention.

The other is disclosure of information about account holders and their accounts. Disclosing details of accounts in false names is part of this.

Just as legal professional privilege and statutory obligations of secrecy are natural impediments to investigations, so too are private obligations to secrecy, whether contractual or otherwise.

Banks and financial institutions are bound by obligations of confidentiality. There are many good reasons why these obligations should continue to exist, but such obligations of confidence are not absolute and may be over-ridden by judicial process and by some existing powers of investigation, for example those of the Commissioner of Taxation.

Financial institutions have generally been most co-operative with this Commission in supplying information. However, when the Commission took up the question of getting information (on a summons) about accounts in false names with the Queensland Division of the Australian Bankers Association, it was not helpful. The Association said that the matter was one for individual banks.

When the matter was taken up with the major banks, they declined to co-operate in arriving at an acceptable procedure. It was said that the staff of the particular branches who had allowed the false accounts to be opened would have to declare the fact and expose themselves to the risk of disciplinary action or dismissal. It was said that the banks could not offer

amnesty to such employees because they may have been involved in more serious criminal conduct. However, it was said, not giving an amnesty would be to risk industrial action.

Further it was said that if an individual bank co-operated by offering amnesties to staff, and others did not follow suit, the co-operative bank would be placed at a competitive disadvantage which it was not prepared to accept. It was said that focusing only on false accounts maintained by banks was unfair in that it placed the banks at a disadvantage against building societies. Disclosure would mean that those wanting to open false accounts would take their business to building societies!

The attitude of these reputable major commercial organizations as expressed through their senior officers may be regarded as a window into the community's moral attitude: the banks seemed to feel no obligation to help in the exposure and punishment of clandestine and illegal conduct.

Submissions to this Inquiry from one bank showed that the institution's major concern was the cost of complying with summonses to produce documentation or to provide information by testimony. It was not suggested that the financial institutions' profits were such as to suggest pressing need for compensation, but nevertheless, this Commission was asked to make a recommendation that if a permanent investigative body was set up, it should compensate banks for staff time taken up in providing information.

Provided proper lawful direction is given to a bank or financial institution, for example, by lawful summons or Court Order in the way of subpoena or otherwise, information about the holders and contents of bank accounts should be both available and willingly provided.

The problem is one of re-organization of systems so the information is easily retrieved, and reformation of attitudes by the bankers and financiers.

When institutions do not take simple measures to fight crime, apathy among individuals is hardly surprising.

It is accepted that corrupt staff can aid criminals by setting up false bank accounts, or selling information about insurance policy holders, without the knowledge of their managers. As well, financial institutions are themselves often the victims of fraud and theft by their staff. Often this goes unreported, because the institutions concerned want to avoid bad publicity.

Later in this report, some ideas are outlined for co-operation between police and institutions such as banks and insurance companies. It is hoped that these private institutions will adopt the same standards and attitudes of honesty for themselves which they publically demand of others, and attempt to build a more co-operative, honest relationship with law enforcement agencies.

## **(b) The Professional Adviser**

Crime and law enforcement today take place in a complicated commercial and legal world. Elaborate commercial dealings are part of normal business as well as being used as a facade for crime.

Therefore criminals need skilful advisers. Just as corrupt police and officials disgrace their office, some professional advisers disgrace their professions by becoming the handmaidens of crime. Organized criminals pay well for all-too-good advice about how to avoid being detected and punished. They are advised how to structure and mask dealings to avoid detection, how to complicate the "paper trail" to illegal funds and activities, how to exploit the protections, rights and privileges which the criminal law affords and how to acquire and maintain the facade of respectability.

Some professional advisers become directly involved in criminal activity. Others do not go so far, but still assist criminals to use illicit profits and achieve their ends. For example, a solicitor may be retained to do property conveyance. He does the task properly, without committing stamp duty fraud, or using false declarations or false names, but he knows the money being used to buy the property is the profits from a string of brothels, or worse, from



drug trafficking or child pornography. The solicitor has done nothing illegal, but he has helped the criminal.

Professional bodies and associations, aware of the possibility that their members' services may be used for ulterior or illegal purposes, have addressed the issue in ethical codes. These codes often do not adequately cover the complicated moral issues involved.

The issue of when professional advisers should be required to refuse services to potential clients is beyond the scope of this report, but must be tackled.

The fact that such advisers are available to organized crime is an acute example of community cynicism and the general failure of individuals and groups to take moral responsibility for their actions.

Lawyers are not obliged to advise clients how to evade the law, and are not obliged to turn a blind eye to questionable activities, even if they are not illegal.

The Commission heard evidence of solicitors who helped conduct property transactions which involved undeclared cash considerations to avoid stamp duty and the use of false names. These solicitors said that they did not know the activities to be illegal, and therefore they had no ethical obligation not to act.

The wealth, history and prestige of the legal profession can give moral torpor an aura of respectability, but in fact means there is less excuse. Claiming high standards of personal probity while knowingly helping criminals achieve their ends is hypocrisy.

Professions, including lawyers, accountants and journalists, need to recall that their professional codes are not replacements for personal probity, but guidelines for its exercise.

**The** problem is not limited to professional advisers.

Tradesmen and commercial dealers also help organized criminals. Repair bills are inflated to gain money from insurance companies. Purchase prices are overstated and valuations doctored.

## 4.4 ETHNIC NEEDS

Migrants have introduced a new richness to the national culture. Australia's insularity has been reduced and tolerance and education increased. Australia's status as a multi-cultural society is something of which to be proud.

The Australian Institute of Criminology has shown that the migrant population is generally more law-abiding than the Australian-born population. Conviction rates are lower, the majority of offences committed by migrants are of a minor nature and recidivism among migrants is about half that of the Australian born population.

Nevertheless, the investigation of crime committed by members of ethnic communities has special difficulties, partly to do with identification and language barriers. Other difficulties can include a distrust of authority within the community, loyalty towards compatriots, a code of silence, or fear of speaking out, including fear that relatives who remain in the homeland might be the target of retribution.

When migrants are involved in organized crime, these difficulties compound the already major problems which such crime presents to law enforcement agencies.

Diversity of culture means not only differences in music, art, food and dress, but also differences in attitudes. Some migrants are unfamiliar with, and perhaps scornful of, local standards and laws.

Of course, some people, no matter what their country of birth, will disrespect the laws of wherever they may be. Some migrants to Australia are already criminals when they arrive. Others, or their descendants, become criminals for various reasons, including extra hardship caused by poverty, lack of education and unemployment.

Unless the proportion of criminals is greater or the crime more serious, the fact that some migrants are criminals would ordinarily be of no more concern or significance than the fact that some Australian-born people turn to crime.

However, some migrant crime does have special significance. Migrant intakes have provided opportunities for criminal groups in other countries to establish footholds in Australia. In some of the countries from which migrants have come, serious crime, violence and official corruption are expected and accepted parts of life.

There are also large numbers of illegal migrants in Australia, and common sense suggests that they will find it difficult to live without resorting to crime, and impossible to complain when they are the victims of crime.

It is vital to the interests of migrant communities, which are, after all, often the victims of their criminal members as much or more than the rest of society, that the problems be acknowledged and their growth prevented while that is still possible.

Tackling the problems will be difficult, involving as it does questions of culture and tradition, as well as problems shared by many members of the Australian-born community, such as poverty, alienation and unemployment.

## **4.5 DISORGANIZED LAW**

Comprehensive accurate information is essential to combatting crime, especially organized crime. Yet our national system of sharing and acting on intelligence about crime is hopelessly inadequate.

A fragmented, inefficient or incomplete intelligence gathering network is an enormous reassurance for organized criminals. It means that essential connections will be missed, and only an incomplete and distorted picture will be gained of their activities.

As it stands, Australian law enforcement agencies and Government instrumentalities are fragmented and hampered by jealousies, rivalries and lack of co-operation. Information exchange, when it happens at all, is on an ad hoc basis.

Our law enforcement agencies are failing to keep up with organized crime. As a result, criminal organizations are flushed with increasing profits, more adept staff and the latest equipment.

This is happening at the same time as law enforcement agencies are becoming increasingly under-staffed, under-equipped and poorly financed.

The Commonwealth and each of the states have separate criminal laws and separate criminal law enforcement systems, yet the planning and execution of a crime and the investment and use of the profits can take place in many different states and even countries. Money and property can be easily invested and moved interstate and overseas, profits can be “laundered” and mazes of companies and trusts can be set up, with virtually no restriction until recently on the use of false names to avoid detection.

Even within a single jurisdiction, the activities associated with crime may fall into areas of responsibility covered by more than one law enforcement agency, and more than one Government department or instrumentality. Functions overlap and co-operation is impeded by rivalry and distrust.

Even within a single law enforcement agency, activities associated with crime fall within the responsibilities of different sections and regional groups.

Agencies with responsibility for policing organized crime and gathering intelligence include:

- The Australian Federal Police;
- The Australian Customs Service;
- State and Territory Police Forces;

- The Coastal Protection Authority;
- The Australian Bureau of Criminal Intelligence;
- The National Crime Authority; and
- The proposed Cash Transaction Reporting Agency (when fully operational).

Other public bodies also hold information directly relevant to the fight against organized crime. These include:

- The Australian Taxation Office;
- The Department of Social Security;
- The Health Insurance Commission;
- The State and Territory Corporate Affairs Commissions;
- The National Companies and Securities Commission or any body that replaces the Commission;
- Commonwealth and State prosecution agencies;
- The Department of Foreign Affairs and Trade;
- The Department of Immigration, Local Government and Ethnic Affairs;
- Australia Post;
- Telecom;
- State and Territory public records offices; and
- The Official Trustee in Bankruptcy.

On the other hand, until recently Federal Government departments affected by crime, such as the Department of Social Security and the Health Insurance Commission, did not have effective intelligence collection systems, let alone means by which intelligence could be passed on to law enforcement bodies.

Some attempts have been made to redress the fragmentation of information in the hope of planning effective operations against organized crime. The National Crime Authority and the Australian Bureau of Criminal Intelligence both act as central intelligence gathering agencies.

Yet co-operation between even these agencies depends on loose and relatively informal arrangements at ministerial and departmental level and on ad hoc arrangements when individual operations are underway. Examples of such ad hoc liaison occur between the Australian Bureau of Criminal Intelligence and the National Crime Authority, and between the Australian Federal Police Bureau of Criminal Intelligence and the ABCI. The same type of exchange occurs between the Australian Federal Police and the Australian Customs Service and so on.

The 1987 Review of Systems for dealing with fraud on the Commonwealth made recommendations which amounted to requests for the speeding up of centralized computerized information programmes and for the handing on of information to law enforcement agencies. In particular, the review recommended that the Attorney-General urge all states and the Northern Territory to hasten the computerization of Corporate Affairs and Land Titles records and to make these available to Commonwealth agencies, subject to some constraints.

Yet at the same time, federal legislation has imposed new limits on the use and exchange of Government information.

## **V. POWERS**

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### **5.1 CIVIL LIBERTIES AND LAW ENFORCEMENT**

5.1.1 The Debate

5.1.2 Finding the Balance

### **5.2 THE POWER TO OBTAIN INFORMATION**

5.2.1 Information in the Computer Age

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### **5.3 COERCIVE POWERS**

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### **5.4 PENALIZING THE FAILURE TO REPORT ILLEGAL ACTIVITY**

# CHAPTER V

## POWERS

### 5.1 CIVIL LIBERTIES AND LAW ENFORCEMENT

#### 5.1.1 The Debate

Australians have a healthy cynicism about Governments and bureaucracy. They are rightly suspicious of any concentration of power, including the power which comes from having private information about individuals.

A recognition of human failings leads one to an intuitive reluctance to magnify those failings by granting too much power to any public authority. Experience in the course of this Inquiry, which possessed extensive powers, has reinforced a strong belief that potentially oppressive powers must be carefully limited and controlled.

Yet the very rules and principles intended to protect individual rights are exploited by the criminal element for ulterior objectives which represent the antithesis of a free society. These people and groups are unconstrained by the sense of social responsibility and morality which govern legitimate interests.

The problem is that law enforcement involves values and interests which often conflict.

First, there is the desire to preserve and protect equality, privacy, reputation, freedom of thought, freedom of conscience, freedom of expression and religious and political freedoms as well as the rights to personal security, liberty and fair trial which traditionally include the presumption of innocence, a right to remain silent and for serious offences, the right to trial by jury.

Secondly, there is the right of the individual to protection by the State. There is a powerful public interest in opposing the spread of illegal drug trafficking, official corruption and other organized crime.

The apparent conflict between these interests is accentuated by the manner in which the discussion on them is conducted. The debate over the formulation of policies and laws relevant to crime tends to become emotional at the thought of rampant crime on the one hand and the loss of civil liberties on the other.

Rational, informed deliberation is often obstructed by generalized assertions, slogans, cliches or personal abuse and is stifled by a lack of community information and sometimes by the difficulties and unpleasantness of the matters under consideration.

The real point is that both individual freedom and the public interest in law enforcement are worthy of promotion in our system of Government and law. Good law enforcement is not only in the public interest, it is also a citizen's right. Crime poses just as great a threat to civil liberties as the State. A democratic state has the duty to promote individual rights, and it is in its interests to preserve and protect individual freedoms.

The true choice may be between a society altered by legislative or executive action to the extent which is necessary to hamper the misuse of civic privileges by criminals, or a society altered by the conditions created by those criminals and their activities. The increasing abuse of individual rights by a criminal minority, may in time alter society to the point where, even though individual rights theoretically continue to exist, they are devalued and eroded because of the state of the society in which they are exercised. It might be preferable to have a limited qualification of rights so that they can be enjoyed in the freer atmosphere of a fairer, more honest and honourable society.

## **5.1.2 Finding the Balance**

Whilst most individual offences against the person or property are easily detected, other crimes, such as corruption and organized crime, are extremely difficult to detect and it is often impossible to catch and convict the offenders. There is ordinarily no complainant and participants usually remain silent for fear of retribution, or because they believe that speaking out would achieve nothing.

Special powers and punishments may be needed to combat such crimes. The steps which are appropriate, to whom power should be given, and how the exercise of those powers should be controlled, undoubtedly involve very difficult issues which place very important public interests in conflict.

The answer to these questions is unlikely to be arrived at by uninformed, politically based activities or by theoretical discussion without official involvement.

If the much needed balanced response is to be achieved, there is a need for a wider and more accurate understanding based on general research, rather than a piecemeal and distorted picture based on the actions of particular individuals.

Later in this report, there is consideration of an ongoing mechanism for research and reform of the criminal law and the administration of criminal justice. Such a function is a vital necessity if crime is to be addressed properly.

Criminal justice law reform activities should, so far as is possible, be removed from the party political process and the bureaucrats who participate, and should also be distanced from any bias towards a particular point of view.

Any recommendatory body which is associated with criminal law enforcement organizations is likely to develop a bias towards an expansion of law enforcement powers. Deliberate attempts should be made to counter such a development by the inclusion of people committed to the expansion of civil rights. It may be desirable (not a cause for shame, as it is commonly regarded) if there are regular, dissenting reports as a result of such inclusions.

## **5.2 THE POWER TO OBTAIN INFORMATION**

### **5.2.1 Information in the Computer Age**

Various bodies hold a vast array of information which, properly used and analyzed might reveal details of criminal activity. The computer age and electronic information storage have brought an end to the days when the sheer volume of information held by Government, and the number of bodies by which it was held, stopped it from being collated, analyzed and used.

Concern about the use of information in the computer age has in the past focused on the potential abuse of modern technology by Governments and individual agencies or officials.

The justifiable concern about these risks has tended to distract attention from the fact that technological advances are available not only to the State but to individuals, including criminals. Criminals and criminal organizations have easy access to modern weapons and equipment, including optical and audio devices for surveillance and sophisticated communications interception and recording equipment.

As a result of the concern about official abuse, controls have been placed upon Government officials' use of such devices. There are strict restrictions, for instance, on the ability of law enforcement officers to intercept telecommunications. Yet there is not the slightest doubt that criminals intercept telephone conversations (sometimes with the corrupt aid of officials) nor is there the slightest doubt that criminals use the telephone system for criminal purposes.

The concern about the real risk of official abuse of Government information has resulted in federal laws which prohibit the use of information held by the Commonwealth Government for law enforcement. Information provided by tax payers to the Taxation Office, for instance, is generally secret by force of law.

On the other hand in Queensland, as a result of an amendment to the Police Act in 1980, the Police Commissioner is allowed to authorize the provision of information about any person, incident or other thing to any Government Department (State, Commonwealth or Territory) without any controls being placed upon either the exercise of that discretion or the use of the information.

Australia is obliged to protect individual privacy under the International Covenant on Civil and Political Rights and under the Privacy Principles promulgated by the Organization for Economic Co-operation and Development, of which Australia is a member. It is obviously desirable to protect individual privacy from “arbitrary or unlawful interference”, to adopt the language of the Covenant.

The scope for legitimate diversity of opinion concerning where the boundary is to be drawn between “arbitrary or unlawful interference” and proper or necessary official activities in the public interest is very wide.

Restraints on information collection and use conflict with the principles of openness and informed participation of citizens in the political process, which are hallmarks of effective democracy. Meanwhile, restraints on the collection and use of information by Governments, particularly law enforcement agencies, also conflict with the sensible and effective enforcement of the law.

## 5.2.2 Present Laws

In spite of our international obligations and the importance of the issue, the development of comprehensive legislation to protect individuals from breaches of personal privacy by either government or non-government organizations has been slow.

This is not to say that there are no laws relevant to the protection of privacy.

In Queensland, there is legislation such as the Invasion of Privacy Act 1971-88, the Privacy Committee Act 1984, and laws relating to the Ombudsman, consumer protection, territorial privacy, credit reporting, health services, education, employment, unsolicited communications, unordered goods and services and door-to-door sales.

In the Commonwealth sphere, the Privacy Act came into force in December 1988. It was the result of a report called “Privacy” from the Australian Law Reform Commission, which had been delivered in December 1983 upon a reference given more than seven years earlier in April 1976. The Privacy Act contains additional provisions to protect tax file number information and is aimed at preventing the unnecessary collection of personal information by Commonwealth Departments and agencies and at ensuring that information which is held is accurate, up to date, complete and securely stored. In particular, it stipulates that personal information obtained for one purpose is not to be used for another purpose, unless it comes within a recognized exception. Law enforcement is one of the exceptions.

## 5.2.3 Privacy and Law Enforcement

Any satisfactory legislation covering privacy must not only consider private and public invasions of privacy, but also take the competing public interests into account. At present, legislation covering information tends to deal with only one facet of the public interest: on the one hand, freedom of access to Government information, and on the other hand, privacy of personal information.

Legislation should reflect a consideration of both breaches of personal privacy by Governments, criminals and commercial organizations and the collection and use of information to combat crime, especially organized crime.

The difficult issue is to determine the extent to which law enforcement agencies should have access to information held by both Government and private organizations, especially when it is confidential information held by groups such as lawyers, accountants, banks and other financial institutions, insurance companies, employers, educational establishments, and doctors, hospitals, health funds, and others holding medical records.

The test adopted in the Commonwealth Privacy Act to determine the circumstances under which access to information should be granted to law enforcement agencies is that of “reasonable necessity”.

The practicality of such a restraint remains to be assessed, but it will often not be until material held by a Commonwealth agency is scrutinized that a decision can be made about its relevance, and whether its availability is reasonably necessary. Also, there will be cases when getting information about someone who is strongly suspected of an offence is not necessary, but just extremely useful.

The more usual concept for law enforcers is that of “reasonable suspicion”. There is a difficulty with this concept as well. Information may be reasonably needed for law enforcement, although there is no basis for suspicion about the person to whom the information relates.

Those investigating organized crime cannot afford to focus only on specific offences, or offences of particular types or degrees of seriousness, or upon the involvement of particular individuals. Opportunities must be made for patterns to emerge if the hydra is to be properly attacked.

The Taxation Laws Amendment (No.3) Bill of 1989 attempts to improve the position for law enforcement agencies with respect to information in the hands of the Commissioner of Taxation. The Bill provides that such information may be given to the heads of State Police Forces and the Australian Federal Police, the National Companies and Securities Commission and the Corporate Affairs Commissions of the States.

The proposed legislation may have similar faults to those in the Privacy Act. The disclosure of information by the Commissioner of Taxation is dependent upon the Commissioner’s being satisfied that the information is relevant to establish that a serious offence has been or is being committed or that it is relevant to the making, or proposed or possible making, of a proceeds of crime order.

In many instances it would be unproductive for a law enforcement agency to disclose the basis of a request for information to a domestic or revenue department or agency. Indeed, a law enforcement body would ordinarily not be entitled to make such disclosure (and arguably, some, including the Australian Federal Police, are prevented from doing so). Investigations may be impeded by the ability of staff of a department or agency, to make decisions in areas beyond their expertise.

Law enforcement bodies acquire information piece by piece. That is the nature of investigations. Some information held by law enforcement agencies is unverified, unverifiable and possibly incorrect, but may provide a basis for further investigation. Relevance or even accuracy may only be established over a period as a pattern emerges or connections are established. Ascertainment of the identities of those involved in organized crime and the activities of criminal organizations is an incremental exercise, and years may be needed before proof is available.

## **5.2.4 Co-operative Information Exchange Scheme**

A co-ordinated and co-operative exchange of law enforcement information between Government agencies is essential. This is particularly so having regard to Australia’s federal structure. The exchanges need to encompass not only agencies within the State, but also federal agencies and agencies in other states. Otherwise the division and antagonism that already flourishes between the multitude of separate agencies will be further encouraged, with organized crime the winner and society the loser. Government agencies, like ordinary citizens, have a duty to co-operate in the suppression of crime.

Impractical secrecy legislation will cause increased informal swapping of information, including inaccurate information, between law enforcement agencies. These informal arrangements will not have the necessary checks and balances, and will be to the ultimate detriment of individual privacy.

This does not mean that all information should be automatically available to all law enforcement agencies. However, it does mean that consideration needs to be given to the restraints that are now being put in place.



A requirement of showing reasonable necessity seems too strict a test and may be impractical. It is highly questionable whether the agency holding the information should decide questions of access, especially since this would mean briefing agency personnel on detailed law enforcement matters.

The alternative of law enforcement agencies being able to apply to the Judiciary for access must be considered, and may be the preferable course.

Whatever the correct balance between secrecy, privacy and freedom of information, any entitlement by law enforcement agencies to hold inaccurate, incomplete or out of date information must at least be subject to stringent controls on access and dissemination.

Different stringent controls will be appropriate at each of the various stages of information collection, storage, access, use and dissemination by law enforcement agencies.

It is essential that information is securely stored and that access by other Government officials is restricted. One of the reasons it has been unacceptable to extend powers held by police is that information collected in the course of official duties has been available to all or most of the members of the Force, with the concurrent possibility that it could be abused. Information should only be made available to those who have need of it. It should not be made generally available within the Force, or for that matter any Government agency.

Elsewhere in this report, there is a recommendation and a more detailed discussion of a reformed system for information management and criminal intelligence involving an improved “civilianized” police information system and a specialist criminal intelligence unit independent of the police. Methods by which access to information could be controlled and restricted according to its degrees of confidentiality are also discussed.

This scheme would be controlled by an independent body (of which the independent specialist unit would be an organ) answerable to a committee of Parliament. That body could audit information and ensure that it was verified, corrected and destroyed where appropriate.

## **5.3 COERCIVE POWERS**

### **5.3.1 Existing Powers**

Law enforcement bodies have always had wide powers, which to a greater or lesser extent intruded on individual liberties and freedoms. These powers are not just limited to the Police Force. Some other Government agencies, especially those involved in revenue collection, have proved especially adept in persuading Governments that they can be trusted to act responsibly in exercising such wide ranging powers as the authority to demand attendance and access to documents and other materials. Some of these agencies have equivalent or even wider powers than the Police, but are subject to less control.

At present, the staff of law enforcement agencies are empowered in specified circumstances to:

- stop individuals in public and require them to give their names and addresses;
- stop people in vehicles, either at road blocks or individually;
- stop and search individuals or their motor vehicles;
- enter private premises and search them and any receptacles or vehicles;
- seize private property and take it away either for safe keeping or for technical or scientific examination and testing; even if such tests and examinations may damage or destroy the property seized;
- detain individuals and require them to provide bodily specimens, for example, of breath and blood;
- arrest individuals and search their body cavities, take photographs of individuals, take finger, palm, foot or toe prints, take dental impressions, voice prints and samples of handwriting and seize clothing;
- compel individuals to attend before a person or a tribunal and there produce documents or other materials, or to provide explanations or information;

- maintain surveillance over an individual's activities, movements and premises and intercept written and oral communications; and
- use force, including the use of weapons and deadly force, in the exercise of these and other powers.

Some of the powers of investigation have been in use for a long time, such as the searching of private premises and the seizure of private property in relation to some suspected offences and the arrest of persons suspected of offences. Others, for example the power to take bodily samples involuntarily from a person, are of very recent origin.

The level of control and supervision of these powers of investigation varies enormously depending upon the legislation, the agency using the power and the circumstances in which such powers may be used.

Together, the powers and the controls on the powers make up a complex patchwork with little rhyme or reason. Some of the powers are quite intrusive, and the methods of control haphazard.

On the other hand, it is apparent that there has been a rise in crime, and suggestions that existing law enforcement powers ought to be widened to meet it.

### 5.3.2 New Powers

There is a risk that ordinary law abiding people will over-react to the threat of crime and demand excessive measures, instead of the reasoned and limited moves which are necessary.

If law and law enforcement do not keep pace with social needs, there is the possibility that the stresses of the system and public frustration with it will become apparent through unsavory and misguided attempts to redress the balance. There may be pre-trial publicity, evidence may be obtained by illegal means or fabricated and allegations and innuendos may be made and published by politicians and the media.

It is beyond the scope of this Inquiry to recommend the granting of specific powers and to whom and under what circumstances they should be granted. Mechanisms by which those decisions can be better made, by better informed people, are recommended later in this report.

The following is a list of some of the measures which should be considered in any comprehensive review of powers relevant to law enforcement:

- the use of arrest powers (or detention powers) to allow subsequent involuntary interrogation;
- the compulsory production of documents and property;
- the compulsion to require people to answer questions;
- the entry and search of premises;
- the seizure and removal of property;
- the involuntary obtaining of evidence by bodily searches;
- the interception of conversations and communications;
- the forfeiture of assets where there are reasonable grounds for suspecting that they may have been obtained from criminal activity;
- the imposition of an onus upon persons convicted of a specified serious offence to establish that their property was legitimately acquired;
- the freezing of assets pending trial;
- circumscription of the ability of witnesses granted immunity from prosecution to take advantage of that privilege when they have made false allegations or may be guilty of other dishonesty;
- physical and electronic surveillance;
- the collection of intelligence about the movement of criminals from airports and other transport centres;
- the infiltration of criminal groups; and
- the use of informants and indemnities including the provision of lesser charges or penalties for criminals who assist in an investigation.

Many of these additional powers are well known and understood. Only two of them require comment: the provision of lesser penalties or charges to informants and the freezing and forfeiture of assets.

Informants and other minor participants in crime should be encouraged to talk about the major crime figures they support.

The code of silence by which major crime figures are protected must be broken down, and this may be achieved by giving minor participants an incentive to talk and a disincentive to accept any punishment which might be imposed.

It might be appropriate to give street-level drug suppliers, for example, a lesser penalty (and perhaps even charge them with a lesser offence) if they reveal their sources of supply. If they were not willing to do so, they could be made liable to an increased penalty. The same principle could apply to all crimes where lesser figures must know the identity of the next criminal in the hierarchy, just as s.p. bookmakers must know their principals, and brothel managers must know the owners.

If degrees of culpability for such crimes were to be clearly categorized, it may be desirable to make formal legislative arrangements for lesser culprits to be treated as the principals (and therefore get heavier penalties) unless they were prepared to disclose the identity of the true principal.

Recent legislation tackles the question of freezing and forfeiting assets.

The motivation of the organizers of such crimes as drug trafficking, prostitution and paedophilia is monetary gain; particularly in those cases where the crime is committed by people well placed within the economic and social class structure. Such people can make enormous profits from their crimes. Organized crime figures make use of their ill-gotten gains in "legitimate" ventures and investments.

If assets obtained both directly and indirectly from breaches of the law were forfeited to the community, the fear of or the possibility of financial loss may dissuade some people, particularly legitimately wealthy people, such as entrepreneurs, businessmen and professional advisers, from engaging in serious crime.

Getting the proof needed to enable the confiscation of profits is difficult, particularly once the profits have been channeled into "lawful" investments. It may be that the only effective way to confiscate the profits is to shift the onus and to oblige convicted criminals to prove that their assets were obtained by legal means.

The recent legislation should be monitored to see whether the measures taken are effective.

### **5.3.3 Constraints**

At the same time that methods of combatting crime are reviewed, it is imperative that consideration be given to the control of additional powers. Some powers of investigation can be adequately controlled by the supervision of responsible law enforcement officers. Others, such as those powers which intrude on traditional liberties, are better controlled externally so as to minimize the likelihood of misconduct and so that the public can be satisfied that the powers are being used only when justified.

There are a number of powers presently exercised by law enforcement officers which are particularly intrusive. Searches of body cavities and the electronic monitoring and recording of communications are such powers. Wider powers to allow for the detention of persons for the purpose of interrogation and the compulsory production of documents and exhibits and answering of questions are powers that limit traditional individual rights.

If any of these or other similarly intrusive powers are to be had by law enforcement officers, consideration must also be given to ensuring that they are exercised only in limited circumstances. Those circumstances should be delineated in the legislation giving rise to them.

In addition, there should generally be some kind of judicial control over these intrusive powers. The attaining of approval or a warrant from a judicial authority ordinarily should be a necessary prerequisite to their exercise. In those cases the judicial officer should have the power to give approval or a warrant subject to

such conditions, limitations or restrictions as are necessary in the public interest. In some cases it might be desirable for a report to be required on the exercise of the power and condition of the consent or the warrant.

It will be essential in many cases that the external judicial control for more intrusive powers be exercised by a judge of the Supreme or District Courts.

In other cases, it may be sufficient for the control to be exercised by a magistrate or even a justice of the peace. If justices of the peace are used, however, it may be desirable to restrict their authority to authorize the exercise of some powers. Obviously justices in the Police Department should not be used. It may be that the authority to exercise these powers should not be given to all justices of the peace, but restricted to personnel in the Director of Prosecutions office, for instance.

In any event, before any warrants are issued, the applicant should be required to satisfy the judge, magistrate or justice that there are reasonable grounds for suspecting that the person or people concerned may have committed an offence and that the warrants are reasonably necessary.

Proper records should be kept of the applications for exercise of powers. Those records should disclose details of the time of the application for the warrant, copies of all material submitted in support of the application, the name of the applicant, details of the person and/or premises and things which are the subject of the warrant, the suspected offence or offences for which the warrant was issued and, if special authorization is to be given, the basis of that application and the reasons for it being granted. Approvals and warrants should not only be signed legibly, but should bear an official, legible stamp identifying both the office and the name of the person making the approval or issuing the warrant.

The right even to seek such powers from the Judiciary should be restricted to those **who** can be expected to use discrimination. Not all personnel should be able to exercise special powers. In some cases an internal control, such as an investigator seeking the permission of a superior to ask for such powers, should be required even before an application is made.

It is vital that the need for external controls be recognized and observed consistently. Only in this way can the community be satisfied that potentially intrusive powers are being used only to combat major and organized crime, and only when they are needed in the public interest with minimum compromise of the rights of individuals.

The control of special powers must be enforced. The misuse of powers and information should be made offences. Any improperly obtained evidence should not be used in a trial. Putting aside corruption, the purpose of an investigatory zealot's abuse of power is to gain a conviction: depriving an officer of the evidence thus gained removes the motivation.

From time to time, inadvertent or technical breaches of the laws controlling the exercise of investigative powers will occur. Although it may seem unjust for technical breaches to lead to the exclusion of vital evidence, particularly in cases of serious offences, it is vital that the integrity of the controls be seen to be maintained. Unless the prosecution can prove that the breach was inadvertent and minor, and does not unfairly affect the defendant's case, any evidence obtained by a breach of the laws concerning special powers must be excluded. The courts' primary function is to compel observance of the law, which includes the lawful exercise of powers of investigation.

The evidence before and experience of this Inquiry indicates the need for an independent and comprehensive review of all investigative powers, the controls over the exercise of each of those powers and the way such controls are observed.

### **5.3.4 Illegitimate Calls for Power**

This report does not adopt the view that the provision of more powers is the complete answer to proper law enforcement.

Police have repeatedly complained, with little basis, that the criminal law in some areas is inadequate. For example, they have claimed that it is not possible to convict people for keeping and using premises for the purposes of prostitution when the business concerned is an “escort agency” as opposed to a “massage parlour” or an on-premises brothel. They have also claimed that young police officers had to degrade themselves and put themselves in embarrassing situations to arrest prostitutes. The same types of claims have been made about the laws affecting gaming houses.

It is true that there is a mass of antiquated provisions relating to these and similar offences which need to be reviewed and brought together in one Act, in plain English. Wider questions of law reform, including decriminalization of these offences, are discussed elsewhere in this report.

The police perception of supposed difficulties in such areas is largely unjustified. The success of police attached to this Commission, using ordinary powers and techniques, demonstrates as much.

In the experience of the police attached to this Inquiry, investigations using common techniques, including the searching of public records, use of search warrants and seizure of materials and interrogation of prostitutes reveal ample evidence when properly analyzed and presented, to found pertinent charges and to convict those involved in running prostitution.

Rather than merely being given more powers, what police need is better instruction about the present ambit and exercise of their powers. For example, evidence has shown that the Licensing Branch, when questioning prostitutes (mostly by the notorious rotational booking system) failed to ask them who they worked for or who paid them. Of course, prostitutes will often not provide such information, but when they do they can be used as witnesses against the keepers of brothels, or against those who live off their earnings.

## **5.4 PENALIZING THE FAILURE TO REPORT ILLEGAL ACTIVITY**

It should be possible to take action in cases where it is reasonable to infer that an officer must or should have known about illegal activity, even if it cannot be proved that the officer was a participant.

In particular, it should be possible to take action in cases where the evidence shows that a police officer must have been either corrupt or incompetent.

Police officers who should have known about misconduct must not be allowed to evade responsibility because of lack of proof that they were involved. Such an approach helps the guilty and enables those who are not guilty, but who know of the crime, to avoid doing their manifest duty. It should be clearly established that once misconduct is detected, those who ought to have known about it because of the nature of their work and their responsibilities will be dealt with for incompetence if involvement cannot be proved. Financial loss should follow findings of incompetence, so that the attraction of illicit financial reward is set against significant and discouraging potential detriment.

There would have been much less likelihood of corruption in the Queensland Police Licensing Branch if those who were not involved had known that they faced dismissal and loss of benefits if they failed to take action against their corrupt colleagues.

Similarly, it is likely that there would be a sharp reduction in police fabrication of evidence and other illegal practices if it were known that those involved would be prosecuted and their supervisors severely penalized.

The efforts of those not involved in misconduct must be directed against those who engage in it. Police officers must not be permitted to sympathetically condone misconduct or even be neutral.

In a similar vein, an analysis should be undertaken to see whether the licences of hotels and licensed public places such as restaurants and cafes which provide a venue for significant illegal activity, including drug

sales, illegal liquor supply (including underage drinking), s.p. betting, prostitution and transactions in stolen property should be subject to review upon detection of such offences.

Licensees may be more readily persuaded of the privileges which they possess and the responsibilities which those entail if their licences were made more vulnerable. For instance, if there is a succession of illegal offences on licensed premises within a defined time span, guilty knowledge or negligent disinterest by the licensee might be inferred, and the licence forfeited.

## **VI. RESOURCES AND LAW ENFORCEMENT**

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### **6.1 INTRODUCTION**

### **6.2 THE PRESENT PRACTICE**

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#### 6.3.1 Factors

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### **6.4 REGULATORY LAWS**

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### **6.5 REVIEWING NEED**

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(a) **Railways**

(b) **Liquor**

(c) **Traffic**

(d) **Prostitution**

(e) **Pornography**

(f) **S.P. Bookmaking**

(g) **Gambling**

#### 6.5.3 Dangerous Drugs

#### 6.5.4 Self-funding

# CHAPTER VI

## RESOURCES AND LAW ENFORCEMENT

### 6.1 INTRODUCTION

Police manpower and funding have been increased steadily over the last 20 years. At the same time, in the last 10 to 12 years, there has been a disproportionate increase in crime. A graph of the relevant Police Department figures appears below. Figure (6.1).

#### CRIME/RESOURCE GROWTH

PER 10,000 HEAD OF POPULATION

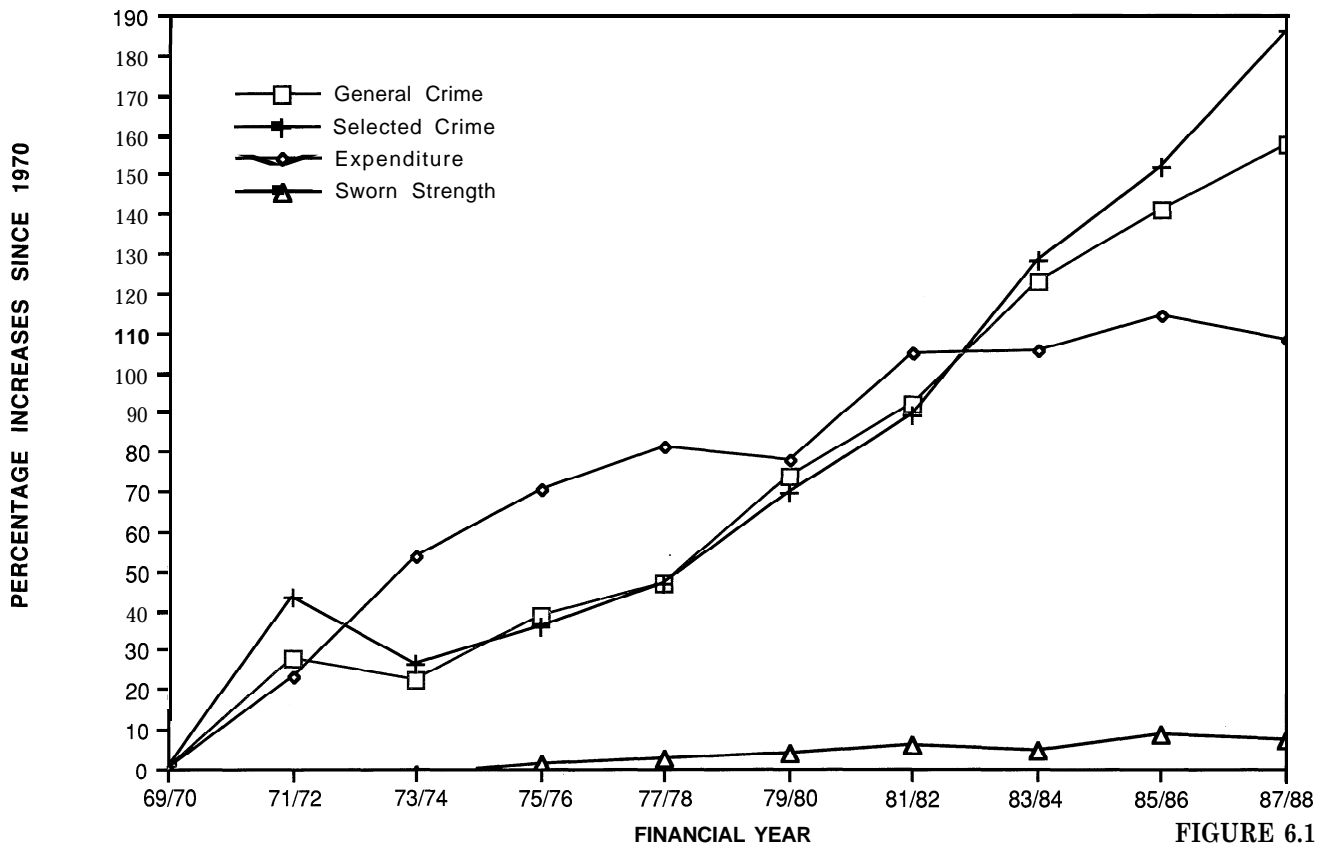


FIGURE 6.1

The situation may be much worse than it appears. It is possible that a lack of police to receive reports of illegal activities and a lack of public confidence in the Police Force and its ability to act effectively are depressing the level of reported crime.

As is discussed elsewhere in this report, a number of steps should be considered to improve the situation, including increased funding and resources and re-organization of the Police Department to commit more of its existing staff to law enforcement. However, the problem cannot be solved solely by increasing law enforcement resources, even if such a course were desirable. Nor is there any possibility of obtaining and financing the huge increase in resources which would be necessary for effective law enforcement in all areas.

The efficient use of the resources which are available is obviously imperative. Various aspects of that need are considered in different segments of this report, including appropriate law enforcement powers and methods. The present discussion is concerned with a re-assessment of the priorities which determine the allocation of law enforcement resources.



## 62 THE PRESENT PRACTICE

The Police Department is funded by an annual allocation of money from the Government's consolidated revenue. The Department's estimates and claims are considered in conjunction with competing requests by other departments and agencies for the limited public funds available. Allocations are determined by reference to overall Government policies, rather than by calculation of the amount needed for effective law enforcement or to achieve any particular level of performance.

The information provided in estimates does not allow for the assessment of crime trends, the financial and social costs of crime, the cost of resources needed to meet specified objectives or the advantages and cost benefits of reducing crime, including savings in associated areas such as Corrective Services.

The capacity of the Force to take on more work is disregarded, while at the same time its role is constantly expanded.

Ordinarily, little or no reference is made to the already inadequate resources in the criminal justice system, especially in the Police Force. There is usually no attention paid to its inability to cope with additional burdens without diverting resources from other tasks, and there is no attempt to allocate priorities. It seems to have been implicitly assumed that a virtually unlimited number of laws could be enacted and left to the Police to enforce and that there was no need to assess the desirability of legislation by reference to other laws or the resources available for their enforcement.

The same process is broadly reflected in the allocation of resources within the Police Force. Available resources are spread more and more thinly across an ever-widening range of activities, with little or no overt policies to establish and implement enforcement priorities. Instead, coincidentally or otherwise, the political delusion that laws are solutions is supported by official police claims of success and efficiency, which mislead the public and encourage the continuation of the process by which the criminal justice system, especially the Police Force and Corrective Services, are increasingly overburdened.

## 63 CRIMINAL LAW REFORM

### 6.3.1 Factors

The failure to give sufficient consideration to the limited resources of the criminal justice system is one manifestation of the deficiencies in the approach to criminal law reform discussed earlier.

There are a number of issues to be considered, for example:

- the reasons for prohibiting particular conduct, which may include demonstrating community disapproval, and discouraging such behaviour;
- whether the prohibition will, if enforced, achieve the desired objective;
- the practicality of enforcing the prohibition;
- the resources needed and the financial cost of doing so;
- the cost effectiveness of using the Police Force as the law enforcement agency;
- the effect on other law enforcement activities caused by the diversion of law enforcement resources;
- the detrimental effects of prohibitions which cannot be effectively enforced;
- the detrimental effects of the Force policing unpopular laws against consensual or "victimless" offences, when the Force is dependent on community support in its role of preventing and investigating major crimes;
- alternatives to criminal sanctions; and
- alternatives to enforcement by the Police Force, including the possibility of specialized, self-funding law enforcement in relation to some prohibited activities.

## 6.3.2 The Need for a Criminal Law

The Criminal Code and other statutes forbid and control many activities in which ordinary people commonly, willingly engage. In some instances a number of different provisions apply to a single activity. Examples of such activities of immediate relevance, broadly categorized, are:

- voluntary sexual behaviour which is regarded as immoral, degrading and anti-social, especially prostitution (Vagrants, Gaming and Other Offences Act 1931-1987, Criminal Code);
- the supply, publication and use of indecent material and ancillary activities (Censorship of Films Act 1947-1988, Objectionable Literature Act 1954-1967, Films Review Act 1974-1988, Picture Theatres and Films Act 1946-1978, Vagrants, Gaming and Other Offences Act 1931-1987, Criminal Code);
- starting price bookmaking (Racing and Betting Act 1980-1989);
- gambling (Art Unions and Amusements Act 1976-1984, Casino Control Act 1982, Suppression of Gambling Act 1895-1964, Vagrants, Gaming and Other Offences Act 1931-1987, Gaming Act 1972-1980, Criminal Code);
- the sale of alcohol (Liquor Act 1912-1989); and
- the sale, supply, possession and use of illegal drugs (Health Act 1937-1987, Drugs Misuse Act 1986, 1989).

It would take an enormous amount of police time and other resources properly to enforce these laws and, at present, it is not adequately done.

Properly enforcing laws which prohibit behaviour which is widespread, difficult to detect and difficult to prove places enormous demands upon law enforcement resources and diminishes the resources available for the enforcement of other laws.

At the same time, restrictive laws which seek to prohibit activities for which there is a substantial demand and which are very profitable encourage the involvement of organized crime and corruption. Organized crime is able to use these large profits to finance other activities, such as trading in narcotics, or arms, or corrupting law enforcement officers.

Laws which are difficult to enforce may also lead to inroads into individual civil liberties as endeavours are made to improve the law enforcement process.

Making activities illegal may inhibit them. On the other hand, legalization may encourage such activities. One of the disadvantages of removing the sanction of law is that many more people might then take part in potentially harmful activities, particularly if they are profitable.

Personal freedom may need to be qualified for the communal benefit, especially if the young, the impressionable and the vulnerable are placed at risk, or if the exercise of freedom results in a serious threat to the safety of the community as a whole.

However, legal sanctions do not necessarily prevent harmful activities. If the law cannot be or is not enforced, its practical effect as a disincentive to misbehaviour is decreased. It is brought into disrespect.

Laws should reflect social need, not moral repugnance. Unless there are pressing reasons to do so, it is futile to try and stop activities which are certain to continue and upon which the community is divided. To do so takes resources away from the policing of other activities which the community considers undoubtedly wrong, such as violence and fraud.

Where the moral issue is one upon which there is room for serious divergent opinions, the legislature should interfere only to the extent necessary to protect the community, or any individuals with special needs. Generally speaking, those who take part voluntarily in activities some consider morally repugnant should not be the concern of the legislature, unless they are so young or defenceless that their involvement is not truly voluntary.

In considering whether or not an activity is harmful to the community, it is necessary to take into account not only any threat involved in the conduct itself, but also any additional, indirect threats such as the involvement of organized crime.

Dealing with and accommodating relatively minor offenders consumes precious resources in the court and the prison systems.

Prisons cannot provide suitable conditions for those who are imprisoned for minor breaches of the law and cannot cope with the additional strain which they place on resources. That in turn leads to, or, at least, greatly contributes to, unsatisfactory conditions in prison and unacceptable systems for release of those convicted of more serious offences and sentenced to lengthier terms of imprisonment.

Terms of imprisonment imposed by the Magistrates Court in respect of simple offences are, in the great majority of such cases, for very short or relatively short periods. It is impossible for the prison system to rehabilitate prisoners sentenced to such short terms. Time alone defeats rehabilitation, quite apart from the lack of will and money. Unless there is an identified, proven deterrent effect, imprisonment is purely punishment.

Some activities can be regulated in ways which do not place demands on resources employed in the enforcement of the criminal law. There are alternative sanctions, which have been proven effective for breaches of law which are not essentially criminal, for example civil pecuniary penalties and cancellation of licences or registration. These can be equally as potent a means of enforcing compliance as fines and imprisonment.

With all this in mind, laws must be designed to meet only those matters of legitimate major concern. Funds and resources must be allocated to the enforcement of those laws, and not dissipated on less important matters.

It is futile to continue to forbid more and more conduct by laws which cannot be enforced either because of their nature or because of cost/resource considerations.

It should be borne in mind that education is better than ineffectual law enforcement as a way to communicate the undesirable nature of some activities. Education helps to prevent individuals from becoming involved in harmful activities, and can help them to extricate themselves. It also produces indirect savings in associated costs, such as those of health care, courts and jails.

When potentially harmful activities are certain to occur, society's main concern must be to implement the most effective methods of regulating them and minimizing the adverse affects.

There is immediate need to consider the disadvantages as well as the advantages of continuing ineffectually to prohibit harmful activities and to compare that course with other possible courses and their respective advantages and disadvantages.

One alternative may be decriminalization. That would reduce demands on valuable resources, allow regulation and control of activities and reduce or eliminate the risk of associated crime. Decriminalization or legalization may also reduce the risk of police corruption.

## **6.4 REGULATORY LAWS**

### **6.4.1 Introduction**

The vast majority of breaches of the law are simple offences. A considerable number of those offences can be described as breaches of regulatory laws.

Regulatory laws are aimed at the regulating or licensing of legal activities. Such regulation is generally aimed at:

- maintaining an orderly market place;

- preventing unfairness or dishonesty;
- maintaining public safety and health standards; and
- making people accountable.

Regulatory laws have to be enforced, but when the activity in which the offenders have engaged is in itself legal, there is no clear need for criminal sanctions.

It is also often counterproductive to make minor breaches of such laws criminal offences. They take up much precious judicial time in the Magistrates Courts.

Where police are responsible for the enforcement of these laws, they are also burdened with assisting the prosecution in the Magistrates Courts: serving summonses, executing warrants, arranging witnesses, serving subpoenas, safekeeping and producing evidence in court and preparing police briefs and doing the paperwork for criminal histories when convictions occur. The paperwork for any simple offence is voluminous.

Sensible legalization and decriminalization of some activities would significantly reduce demands on the Police Force and the criminal justice system.

## **6.4.2 Legalization and Decriminalization**

Legalization and decriminalization are not the same. Legalization means that the activities are made legal and are no longer regulated in any way. Decriminalization means the activities are no longer crimes, and the participants are no longer liable to criminal penalties, but their activities are regulated by law and transgressors can still be penalized.

## **6.4.3 A Regulatory Approach**

Some penalty must be imposed for minor breaches of the law, and some deterrent provided to prevent the law from being breached. It does not follow that that has to be by criminal process.

Pecuniary penalties would be an effective way of punishing minor breaches of law which are not essentially criminal. If not paid, the penalties could be recovered by the normal civil means of seizing the property of the transgressor. Other sanctions could be used for people unable to pay. For example, they could be required to do community service.

If criminal sanctions were not imposed for minor breaches, more appropriate legal procedures could be adopted. A minor breach of the law would not need to be proved beyond reasonable doubt, but rather on the balance of probabilities, having regard to the gravity of the allegation.

Legislation could preserve the rights and defences available to a defendant under Chapters II, III and V of the Criminal Code for breaches of the law which are not offences. Legislation could also provide for investigations and proceedings in relation to such breaches.

The aggregate police resources presently committed to the investigation of and charging of offenders with such simple offences are a significant part of the total resources available. This may well be a misallocation of resources.

Various types of transgressions may more appropriately be dealt with by the Government department or instrumentality which has an interest in the regulation of the conduct, and made the subject of pecuniary penalties as described earlier.

Where appropriate, legislation could cease to be the administrative responsibility of the Police Department and be administered by the department most concerned with the area.

Some examples illustrate the possible approach. The Justice Department presently polices lotteries and art unions. There is no immediate reason why it could not also be responsible for regulating many other areas

of activity, such as the statutes for which the Miscellaneous Licence Section of the Police Force is responsible (Hawkers Act 1984-1985, Hide, Skin and Wool Dealers Act 1958, Pawnbrokers Act 1984-1985 and Secondhand Dealers and Collectors Act 1984-1985). These Acts serve similar purposes to others already administered by the Minister for Justice; for example, the Auctioneers and Agents Act 1971-1988, the Art Unions and Amusements Act 1976-1984 and the Invasion of Privacy Act 1971-1981 (which provides for the licensing of credit reporting agents, private enquiry agents and sub-agents).

Under such a scheme, the Government department with responsibility for enforcing the law could have its own enforcement staff, who would seek police help only when necessary. The laws and methods of regulation would be designed on a self-funding basis.

Each department could determine for itself (subject to disclosure to Parliament) the priority given to enforcing the laws for which it was responsible. This would depend to a large degree on the cost effectiveness of such enforcement. Some laws would probably be enforced only to a very limited extent, while others would be far more rigorously enforced than they are at present, with corresponding public revenue benefits. The need to be self-funding would mean that departments' enforcement of the law would be efficient and in most cases rigorous.

This approach would highlight some laws which are not worth enforcing, in turn an indicator of possible redundancy of laws and an aid in an on-going process of legislative review and reform.

If profits were made from law enforcement, those profits could be used for related activities such as education or preventive health care with perhaps a fixed percentage paid to consolidated revenue to meet any additional costs connected with the court system or any other associated aspect of public administration.

While enforcing the laws for which they are responsible, departmental staff would undoubtedly become aware of other illegal conduct such as firearms offences, drug offences, the possession of stolen property, serious traffic offences and the like. Such matters would be reported to the Police, and any evidence handed over. Information could be given to the Intelligence Division discussed later in this report. In some cases it may be necessary for departmental enforcement officers to have the power to seize evidence and detain or arrest people.

Enforcement staff could be recruited by the respective departments, subject to standards and guidelines set by the proposed Criminal Justice Commission, which could also co-ordinate training. After training, the enforcement staff would be under the control of their respective departments. They would have the usual opportunities for transfer as public servants.

Such an approach may cost more at first, but in the long term would promote more efficient administration of criminal justice. The Police would be freed to attend to more serious breaches of the law, whilst the enforcement of regulatory laws could be made self-funding and even profitable.

## **6.5 REVIEWING NEED**

### **6.5.1 Research**

Many people expect this Commission to make recommendations as to whether or not specific criminal laws should be changed. Such recommendations would be within the Commission's terms of reference and have been the subject of many, differing submissions. However, no such recommendations are made.

The Commission has carefully considered whether it is able to make a recommendation in respect of any particular criminal law or laws. It is not. It may be thought convenient that the Commission express its opinion in terms of recommendations, having done that research. But when that research does not allow a confident conclusion, it would be folly to make recommendations simply on the basis of convenience.

This Commission's research stocks can be passed to the proposed Criminal Justice Commission for use by it through its Research and Co-ordination Division.

The issue of any necessary decriminalization or legalization is complex and delicate; to be resolved by a detailed and full examination of all competing options and the worth of each such option in the administration of criminal justice.

The limitations on this Commission's ability to make recommendations has been discussed generally before. Issues of legalization and decriminalization are particularly important in the context of the administration of criminal justice. There is a need for a correct response to these issues in respect of any specific law. The Commission is unable in the time available, and with its other concerns, to undertake a full examination of all the competing factors in respect of a wide range of criminal laws, including the need to consider the contributions of a wide range of potentially interested people, groups and institutions. This Commission therefore cannot meet and should not attempt to meet the popular expectation that it recommend detailed changes to particular criminal laws, including by decriminalization or legalization.

In some cases it is relatively easy to assess whether a criminal law is necessary to reflect an objectively identifiable social need, or whether or not a given activity should be against the law at all. In other instances, each of those assessments is a complex and delicate exercise.

The extent and nature of the involvement or potential involvement of organized crime in the activities examined by the Commission is unknown. So are the type, availability and costs of the law enforcement resources which would be necessary effectively to police criminal laws against such activities.

A review of the criminal laws, particularly those affecting prostitution and s.p. bookmaking, needs more information if it is to make decisions with reasonable confidence that it is not simply creating more problems. At present, that information is not available to this Commission, or to the Government, or indeed to any law enforcement body, Commission or Government in the country.

Later in this report, recommendations are made for the setting up of a body which can carry out the necessary considered review of the criminal law, informed by research and investigations. That is vital. Only then can decisions be made confidently.

The scope of the exercise involved in reviewing the criminal law with a view to conserving resources by legalizing or decriminalizing activities is illustrated in the next sub-chapter by reference to examples. Some comments are then made. The examples relating to particular areas of law are not to be construed as a pointer or provisional view and the comments are not to be taken as determining anything. The references are used simply because the topics afford good examples.

Policing voluntary sexual or sex-related behaviour, s.p. bookmaking and gambling were the subject of, or underlay much of the evidence to the Commission. The Commission's inability to make recommendations on particular criminal laws can be conveniently illustrated by reference to those topics.

## 6.5.2 The Scope of the Review

### (a) Railways

There is a Police Railway Squad dedicated to providing security to the Railway Department.

This role of permanent security work may not need to be performed by fully trained police officers. Security on railways could be provided by guards employed and trained by the Railway Department. Any outbreak of recurrent, specific offences, for example, juvenile vandalism, could be made the subject of a general policing policy or a police task force.

### (b) Liquor

It is not apparent that enforcement of the Liquor Act 19 124989 needs to be by police. In fact their involvement causes rather than prevents problems.

Police action has virtually no effect on the most common current offences; the supply of alcohol to minors and trading out of hours. It is also to be greatly doubted whether the

Police Force is or ever has been committed to enforcing the Liquor Act 1912-1 989. That lack of commitment in itself presents police with considerable temptations.

The Licensing Commission is generally responsible for administration of the Liquor Act and derives considerable revenue from it. Most offences presently prescribed under the legislation could be decriminalized and made the subject of pecuniary penalties.

It might then be more sensible for the Licensing Commission to assume full responsibility for the enforcement of the law in this area and to appoint, train, direct and supervise its own enforcement staff. The enforcement could be substantially self-funding.

Pecuniary penalties (or fines, if retained) for breaches, such as, the supply of alcohol to minors, could be payable to the Licensing Commission and used by it to pay its enforcement personnel, with any excess available for other associated purposes.

The Licensing Commission would have a strong reason to enforce the Liquor Act 1912-1989, and some police would be released for more important work.

More rigorous enforcement of the Liquor Act 19 12-1989 would probably lead to a decrease in breaches. At present, it seems that offenders have little to dissuade them from breaking the law, since it is not enforced. Breaches could be further decreased by the Licensing Commission's suspending, cancelling or not renewing licences granted under the Act in cases where persistent, deliberate or wanton breaches of the law occur.

### **(c) Traffic**

Traffic policing is a heavy burden on the Police Force, which is solely responsible for the enforcement of the Traffic Act 1949-1 988.

Enormous personal loss is caused to individuals and an enormous social and financial burden is placed on the community by the use and misuse of motor vehicles.

Some misuses of motor vehicles, for example dangerous driving, will remain regarded as criminal. There are, however, many other, lesser traffic offences such as speeding, driving without due care and attention, failure to obey traffic signals and drink-driving which are now summary offences.

Whether all breaches of the Traffic Act 1949-1 988 should remain criminal offences is an open question. Whatever the answer to that, who should enforce breaches of it is an important consideration in conserving law enforcement resources.

The drain on police resources caused by the enforcement of all traffic laws is a matter for concern. Throughout the State and particularly in the south-east, a large number of police officers, police vehicles, stores and facilities are used solely to police traffic.

Routine patrols are maintained on highways and major roads and at intersections and danger spots. Police operate radar and communications installations and detect and apprehend speeding and drink-drivers.

The great majority of traffic offenders are dealt with by on-the-spot fines. Some offenders are summonsed for more serious, but still summary offences, or upon non-payment of traffic offence notices. Apart from drink-drivers, very few traffic offenders are ever arrested and almost all such arrests are for some related criminal conduct, not for the traffic offence itself. Drink-drivers are usually arrested after having been breathalysed, but the arrest is a formal procedure to save issuing a summons.

The involvement of police in traffic duties results in senior police being tied up in the Traffic Adjudication Section, which is really prosecution work. A whole section of the Prosecution Corps is occupied prosecuting traffic matters. As mentioned later, prosecutions should not generally be carried out by police.

Much of the work involved in enforcing the Traffic Act 1949-1988 may not need to be done by police. Tasks such as breathalyser and radar operation, routine traffic patrols, road safety

education, driver training and examination, traffic research, traffic engineering and so on do not necessarily have to be performed by fully trained police.

Moreover, the Police Force has not had enough resources to implement road safety strategies devised by the Traffic Advisory Committee.

Breach of the traffic laws may be associated with other criminal conduct, for example, speeding associated with “joy riding” in stolen cars. Therefore police should retain their full powers with respect to the Traffic Act 1949-1 988 (subject to decriminalization as may be found appropriate) but perhaps could be relieved from primary obligation to enforce that law.

Models exist elsewhere for the routine enforcement of traffic laws by a separate trained body under the auspices of the department having primary responsibility for traffic laws. Those enforcement personnel can, if thought necessary, have powers of arrest under appropriate controls and guidelines.

The authority charged with responsibility for administering road safety might be more likely to succeed if it controlled the revenue raised from enforcement and could use it to fund accident prevention programmes and more law enforcement.

#### **(d) Prostitution**

Prostitution is ages old and its existence and the consequences of its existence contentious. A prostitute’s work is considered by most people to be degrading and demeaning. The prostitute risks exposure to a range of serious infections, blackmail and physical injury.

Those who organize prostitutes make great profits from them. Many such organizers regard prostitutes as their property and unhesitatingly resort to violence or blackmail to keep “valuable” prostitutes employed and biddable.

Despite the loud denials from those concerned, there is every indication that some, and maybe many prostitutes use and are addicted to dangerous drugs. There are also indications that the operators of prostitution supply addictive drugs both as payment of prostitutes and as a means of forcing their continued involvement.

Brothel customers include drunk and unruly people, who come and go at all hours, disrupting the neighbourhood of the brothel and posing a nuisance and a hazard to residents.

Prostitution is often associated with other crime. Competitors resort to violence for territorial or financial gain, whereas “clients” in positions of influence are ripe targets for blackmail and extortion. Prostitutes and their operators rarely pay tax and prostitutes are used to distribute addictive drugs.

Some prostitutes may not consider their work demeaning: some may even be satisfied with it. However, prostitutes generally dislike their work and are frightened both of those who employ them and of their customers. They are conscious that they are held in low esteem by society, and they often lack self esteem. Most are ill-educated and disadvantaged.

The most common reasons for becoming a prostitute are: lack of employment prospects (usually because of the lack of skills), lack of affordable housing and the need to support dependents or pay debts.

For people who need money and have no skills, particularly young people, the lure of big money is great. Some prostitutes join the industry for a limited period or for a specific purpose, for example, to earn money to pay for expensive consumer goods, pay a debt, meet an extraordinary expense caused by misfortune or illness or to pay for luxuries.

From the evidence given to this Commission, it is clear that women entering the industry were prepared to overlook health risks. The money was more important.

The depressing facts about prostitution do not necessarily mean that prohibition of it and other sex related activities are the best ways of meeting social need. It is safe to assume that



prostitution will continue to exist, whether or not it is illegal, so long as people are willing to buy and sell sex.

It may be better to control and regulate prostitution, not just prohibit it, for the overall benefit of the community.

It is difficult to protect vulnerable people when the activities in which they are engaged are illegal. It is virtually impossible, for example, to protect illegal immigrants or those **exploited** or coerced within an ethnic or local community from which police are excluded by private rules and practices. Those in need of special protection are possibly less at risk if activities are lawful and controlled than if those activities are conducted “underground”.

As well, public health considerations are probably better served by legal, controlled prostitution where women can be urged or forced to go for health checks, or at least feel free to do so without the fear of prosecution. Safe sex practices might also be able to be enforced as part of a regulated system of prostitution, and education of clients and prostitutes would be easier. Licensed brothels could even be required to hand out literature on the risks of sexually transmitted diseases.

These matters are of particular concern because of the current worldwide major health problems associated with sexual activity, including Acquired Immune Deficiency Syndrome (AIDS).

The concern about exploitation of women might best be met by laws which prohibit coercion, but not by laws which assume that all men who get money from prostitution are at fault. Care is also needed in deciding what constitutes exploitation. Prostitutes may benefit from relationships with men who protect them from violent clients. They should have the same rights to enter into voluntary relationships as do other citizens.

If prostitution were decriminalized or legalized, there would still be a risk that violence, intimidation and coercion would continue to occur. However, serious criminal misconduct can and does occur in hotels, restaurants, public sport facilities and at other public meeting places and is dealt with by the normal laws.

A regulated system of prostitution could still include some matters which could be subject to criminal penalties. For example:

- soliciting in a public place;
- advertising prostitution or for the recruitment of prostitutes; and
- agglomeration of business interests in organizing prostitutes.

Other offences, such as sexual exploitation of minors, intimidation, procuring, blackmail and assault of prostitutes are dealt with by the present laws and should remain criminal matters. What is needed is an avenue of recourse for the prostitute who is being abused.

Leaving aside the influence of organized crime, a regulated system of prostitution could eliminate many of the problems associated with the industry. Any such system should have appropriate controls and a strong emphasis on education of prostitutes about private and public health considerations. Such a system would reduce prostitutes’ present vulnerability to pressure for unsafe sexual practice and inability to seek help when they are being abused.

### **(e) Pornography**

Pornography is a lucrative trade somewhat akin to prostitution in that it generally degrades people and generates big profits.

It is said that the distribution of obscene material might lead to an increase in sexual offences, and that violent publications might lead to more violence.

The correctness or otherwise of this view, however, is not affected by the law when those laws are not or cannot be enforced. Pornography involves enormous sums of money, which are freely available to corrupt police. Whether or not they yield to temptation, police who

are engaged in enforcement are employed on unpopular and often sordid investigations. Even if they are successful and convictions are obtained, their work has little impact and no lasting effect.

Child pornography stands in a different position, as it necessarily involves incitement to actions that are criminal, and it should remain a serious offence.

#### **(f) S.P. Bookmaking**

There is a battery of enforceable specific charges comprised in sections 214, 216 and 217 of the Racing and Betting Act 1980-1989 addressing a wide variety of conduct and activities related to s.p. bookmaking.

Machinations in the legislative purpose with respect to s.p. bookmaking since 1980, particularly in and through 1981-83, have resulted in the erection of a facade while demolishing the worth of the prescription. The essential problem is not the prescription of offences. The problem is the lack of real coercion because of inability properly to punish.

The apparently severe penalties prescribed, fines of not less than \$15,000 for the first offence, \$20,000 the second, and \$30,000 the third and following are of little terror to organized bookmakers who well know the order of profit to be made and, skillfully advised, have little difficulty in organizing their affairs so as to avoid the brunt of any such penalties.

There is, however, not much brunt to be borne. Any success in the collection of penalties depends upon a bookmaker still having assets in his own right.

Bureaucratic delay further reduces effectiveness. The procedure is criminal prosecution, certification of non-payment of the fine in due course by the trial judge, followed by entry of judgment by the Attorney-General in a civil court.

Although that process sounds easy enough to perform promptly after conviction (and it should be), the reality is that, as demonstrated before this Inquiry, inordinate bureaucratic delay and the inefficient and ineffectual pursuit of the civil execution process effectively neuters the effectiveness of the above process.

The effect of high fines is further diluted by the residual discretion given to the trial judge, who can impose a penalty less than the prescribed minimum. There are good reasons of justice and commonsense why such a discretion should be conferred, but its use alongside the theoretically extremely high fines is a good illustration of the defects of the present system.

Mention is made elsewhere of the approach to punishments in respect of major organized crime, which should be calculated to coerce obedience to the law.

Given the level of organized criminal activity in s.p. bookmaking, there is every reason to suppose the operation of it provides a financial foundation and bankroll for large criminal organizations.

Sometimes, of course, an offender, for example a seemingly down-trodden pensioner who takes bets in the public bar of his local hotel as harmless recreation, is but a front for a sophisticated operation which, through him and those like him, makes very large sums of money.

On the other hand, genuine small-scale individual operators, whose offences may be minor and sporadic, should not be subjected to the very substantial fines which are aimed at protecting revenue from depredation by organised crime.

Starting price bookmaking attracts many customers, makes huge profits and would be enormously difficult to wipe out even if the laws prohibiting it were properly policed. It is banned largely because of concerns about revenue.

It is interesting to note that in its submission to this Inquiry, the TAB estimated that s.p. bookmaking had cost the public revenue a total of \$200 million. The budget for the entire

Queensland Police Force in 1987/8 was just over \$281 million. If responsibility for policing of s.p. bookmaking was given to the TAB, in accord with “self-funding” principles, it **would** obviously be worth its while to employ large numbers of enforcement staff, and as a result, the law would be far more rigorously policed than at present and the public revenue **would** benefit.

If it is determined that resources ought to be applied to eliminate s.p. bookmaking **or** suppress it as much as possible, the application of such resources will be wasted unless appropriate provisions are made to detect the activity, to penalize s.p. bookmakers, to induce “small fry” to provide information and to deprive the organizers of the profits.

A campaign against s.p. bookmaking will only be made truly effective by co-operative legislation involving the states and the Commonwealth Government. Otherwise it will be defeated by the fragmentation of jurisdictions under the federal system, notwithstanding the attempt to enlarge the extra-territorial application of Queensland Criminal Laws by Section 12 of the Criminal Code.

Powers used to obtain evidence are particularly necessary for effective policing of s.p. bookmaking. Such powers are discussed elsewhere, but obviously the telephone network is of crucial importance.

The most effective means of detection in the past has been by reliable informants. Such informants are both of honest and criminal bent. Those involved in the racing industry will inevitably come to hear information which helps to target suspects. Others may have closer knowledge. Staff and patrons of the TAB are also potential sources of such intelligence. Whatever the background or relative worth of the informants, they should be encouraged.

Elsewhere in this report, a system for the management of informants is outlined. Such a system should be used whether the policing is done by the Police Force, the TAB or some other agency.

Punishment should include substantial jail terms, imprisonment in default of payment of fines where fines are judged to be the appropriate first penalty, forfeiture of the proceeds of crime with machinery to make that an effective coercion as discussed generally elsewhere, or perhaps forfeiture of assets generally.

## (g) **Gambling**

Similar considerations affect other forms of illegal gambling, such as illegal casinos, illegal use of amusement machines and so on.

Illegal gambling poses a particular problem, in that it is a major method of laundering money obtained from crime. Opportunities already exist for such laundering and it may be that the introduction of small, legal operations would not significantly affect this.

All gambling establishments, legal and illegal, need to be stringently controlled. This might be easier if they are legal and regulated rather than covert and illegal.

Some forms of gambling have been made illegal partly because of moral judgment, and partly to protect the revenue earned from legal gambling.

Gambling can certainly harm individuals and the community, but that is of no relevance to the decriminalization debate, since there are many legal ways for inveterate gamblers to indulge their whims.

Law reform in respect of gambling needs to be approached in a comprehensive, considered way. It is inherently difficult. Until a comprehensive review is undertaken, narrowly focussed piecemeal action including expanding the legal means of gambling, is inadvisable.

### **6.5.3 Dangerous Drugs**

The issue of possible legalization or decriminalization of illegal drugs is complex and of enormous importance, especially with respect to addictive drugs. Even the effect of such drugs is highly contentious.

The drug trade's high prices, huge profits, large number of organized criminal suppliers, and the lure of the forbidden fruit are notorious. Addicts commit other offences to get money to buy drugs. Young people are increasingly familiar with drugs, and developments such as "social usage" and "designer" drugs make the problem worse.

Attempts to stamp out the illegal drug trade have failed all over the world, and have consumed more and more resources. Wider powers have been granted to police, customs officers and other law enforcers. More jails have been built and more people jailed. As well, drugs have caused more incursions on the civil liberties of ordinary people, more corruption and more interference in normal life than almost anything else.

There is no benefit in blinkered thinking. The starting point must be an acceptance that illegal drugs are established in the community and that prohibition has not worked. Orthodox policing is quite unable to enforce the law. The limited budget available for criminal law enforcement falls far short of the minimum needed if the present anti-drug laws are seriously to be enforced.

Priorities must be established for the use of the available resources. The need for and social will to provide more resources must be identified. When available, the resources must be allocated so as to give affect to the priorities. One thing is certain: the conventional method of giving the job to the Police, on top of all their other responsibilities, has failed all over the world, and a new approach is needed.

This report cannot adequately deal with the issue of drugs, and does not pretend to do so, but it is important that the State Government press the Commonwealth Government and the Governments of other states to join in an urgent search for the most satisfactory solution to the issue.

Such a search must be conducted objectively in the public interest and focus on social need in the use of resources, totally free from political considerations. Various options must be assessed, including the question of whether money should be spent on enforcing the law against a wide variety of drugs which are commonly used, or whether enforcement should focus on some drugs. The need for effective programmes to encourage and help addicts to break the drug-habit must also be addressed along with anti-drug education programmes.

### **6.5.4 Self-funding**

There has been a passive and resigned acceptance by the community of the cost of criminal depredation. Insurance premiums in respect of cars and private homes, businesses, stock and personal injuries continue to spiral, passing on the costs of theft and fraud to the community. The Public Health and Social Security systems have often received the burden of those injured by violent crime and the cost of consumer goods rise, to pass on losses through pilfering and shoplifting.

Little attention has been given to a positive approach of raising funds from the sectors concerned to provide more or better resources for law enforcement to reduce or at least prevent the further increase in the crime which affects them.

Law enforcement resourcing should be reviewed. This review should consider alternate funding strategies. This report does not catalogue all such options, but consideration should be given to some of the following initiatives.

Significant results have been achieved in the United States by channelling the confiscated proceeds of crime to law enforcement agencies. This should be pursued in co-ordination, where appropriate, with the Commonwealth and other states.

Stamp duty could be increased on all motor vehicle insurance policies (with the increase being designated) and the funds so raised made available for use in combatting motor vehicle theft. Similarly, stamp duty could be increased on household and business insurance policies. Motor vehicle registration fees and third

party insurance policies could likewise each bear incremental increases to fund efforts to combat **motor** vehicle theft and institutional insurance fraud.

**Banking** and financial institutions could be asked to contribute to the cost of external programmes reducing fraud, and receive concessions for funding internal programmes and reviews of procedures to minimize fraud.

Costs and premiums may rise in the short term, but with greater resources and greater police effectiveness, the incidence of crime may, in the longer term, be stabilized or, hopefully, reduced. The increased contribution by property holders, motor vehicle owners and drivers, members of health funds or subscribers to insurance may ultimately benefit the members of those groups, by preventing increase in or reducing the flow-on of the losses and costs caused by crime.

The immediately increased costs may be politically unpopular, but that may be addressed by informing and educating the public and the interest groups in question about the present large and escalating cost of crime. Refusal to impose such costs only for political reasons would not only be a false economy, but a failure adequately to address an important option in the community's ability to provide resources to meet crime.

That education process can be itself the subject of financial incentives to attract the participation of interest groups. The involvement of health insurance, general insurance, workers' compensation and financial institutions in education and prevention programmes should be encouraged and the direct and indirect benefits of that recognized as a further resource in combatting crime. How and on what terms such activity can be integrated into the actions of the proposed Criminal Justice Commission can and should be included in the general review of criminal justice administration.

## **VII. POLICE CULTURE**

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# CHAPTER VII

## POLICE CULTURE

### 7.1 THE IMPORTANCE OF POLICE CULTURE

The institutional culture of a police force is of vital importance to a community. A police force is numerically strong, politically influential, physically powerful, and armed. It stands at the threshold of the criminal justice system and is in effective control of the enforcement of the criminal law. Each police officer has extensive authority over all other citizens, however powerful, coupled with wide discretions concerning its exercise. Subsequent stages in the criminal justice process, including courts and prisons, are largely dependent on the activities of the Police Force, and will inevitably be affected by its deficiencies, especially any which are cultural and therefore widespread.

In their civilian lives, most members of a police force share the same diverse interests, pleasures, standards, aspirations, problems and faults as the bulk of the community and are basically indistinguishable from their fellow citizens of similar background and education who work in relatively unattractive conditions for modest remuneration.

Nonetheless, police officers collectively form a strongly-bonded separate social group which has a unique culture.

Since a police force is drawn from the community, (and from some sections of the community more than others), it is likely to reflect the general social culture, including its weaknesses (for example materialism), and also to include a roughly representative proportion of individuals who break the law.

Criminal members of a police force merely echo the society generally. They assume increased significance only because of their role and authority. However, a completely new dimension is added if a police culture exhibits features which do not accord with the general social culture, especially involving contravention of the law. The effect is worse. If the culture also incorporates a code which provides for a different approach to the enforcement of the law in relation to police officers, and insists that, in conflicts between the law and the code, the code prevails. The practical exercise of police authority, in adherence to such a code, effectively places police officers beyond the law.

Both the community and the Police Force pay a heavy price as the effects of a culture of misconduct spread and sap the moral vigour of the entire Police Force.

### 7.2 QUEENSLAND POLICE CULTURE

The Queensland Police Force is debilitated by misconduct, inefficiency, incompetence, and deficient leadership. The situation is compounded by poor organization and administration, inadequate resources, and insufficiently developed techniques and skills for the task of law enforcement in a modern complex society. Lack of discipline, cynicism, disinterest, frustration, anger and low esteem are the result. The culture which shares responsibility for and is supported by this grossly unsatisfactory situation includes contempt for the criminal justice system, disdain for the law and rejection of its application to police, disregard for the truth, and abuse of authority.

Not all police officers are responsible for the nature of the police culture. Many officers retain their integrity and provide meritorious and usually unrecognized service. Most do not participate fully, especially in the various forms of misconduct which form part of the culture, but many acquiesce.

Particular responsibility and enthusiasm for the police culture is to be found amongst some members of an elite within the Force, including senior officers, union officials and those with special appointments and functions, particularly detectives and other non-uniformed police. Members of the elite have been the major beneficiaries of the culture which they promote and exploit.

The basic tactics of those involved in major police misconduct are crude and simple but effective, and, while not necessarily of local origin, have been developed, refined and hardened in Queensland over many years. Many of those involved are cunning and ruthless, with an intuitive capacity to assess and take advantage of human weaknesses and motivation which has been honed by experience and an uninhibited willingness to misuse authority and to lie.

Skilled police are acutely conscious of how laws can be circumvented or broken without penalty. The better they are at their job, the more they learn. It is no accident that the police officers most admired for their skill by colleagues include some who become corrupt.

Some of those who have exerted authority and influence in the Police Force in the last decade have practised and been protected by the police culture for up to 40 years. Most police are recruited as school leavers. Recruits are therefore young, often immature and with little experience of work or the broader society.

When they join the Force, they enter an insular environment where they work and socialize almost exclusively with their colleagues. Their experience of the broader society is therefore not widened greatly. Contact with members of the public tends to be in situations of distress, conflict and hostility.

Police therefore tend to retain the view and attitudes they brought into the Force, in so far as these are compatible with (or reinforced by) police culture. As recruits rise through the ranks to positions of influence, their views are perpetuated. When they reach senior positions eventually, their well preserved views, nurtured in the culture, are inflexible and outdated.

This means, in effect, that the Force's culture reflects values up to two generations old. The culture has withstood all challenges, particularly those of the last quarter of a century, commencing with the National Hotel Royal Commission and including the years of the Whitrod administration.

The Police Force was already in serious difficulties when Raymond Wells Whitrod arrived in 1970. During the period of over a decade in which Frank Erich Bischof (and briefly Norwin William Bauer) had been Commissioner, the Government had passively allowed, rather than actively encouraged, police misconduct. Perhaps it was largely ignorant of the nature and extent of the problem. The situation was not worse largely because the general community was relatively small, unsophisticated, conservative, and only moderately affluent and had not attracted any serious incursion of organized crime.

Whitrod could not have succeeded unless he changed the culture of the Police Force, but it is doubtful whether he attempted or even intended to do more than remove what he considered to be the worst features of police misconduct. With hindsight at least, it can be seen that the various elements in the culture were interwoven and supported each other, and, leaving aside inadequate resources and political interference, Whitrod was doomed to fail.

Thereafter, the deterioration accelerated.

The relationship between Sir Johannes Bjelke-Petersen and Sir Terence Lewis provided a decade during which the police culture was encouraged and expanded, positions of power and influence were allocated to many of the wrong people, and the attitudes and practices of ordinary police, which under different circumstances would have developed more positively, instead degenerated.

Probably at least in part through ignorance, the police culture was officially tolerated for political advantage, including police support in controversial political issues.

There was a general policy of official encouragement for the Police which has conveyed a message of approval for their attitudes and practices. For example, although resources and other requirements of the Police Force have been neglected, police officers have been granted more favourable employment conditions, especially in relation to retirement and superannuation.

More obviously, there was a consistent pattern of praise for the Police and their activities. Any criticism of the Police Force was rejected, and the critic trenchantly attacked, often under Parliamentary privilege, sometimes with false information provided by the Police.



**The** main features of police culture which are material for present purposes are explicable by reference to circumstances which produced them. The basis of the unacceptable aspect of the police code upon which **the** misconduct which is woven into the culture depends can be traced to the distortion of acceptable traits. **The** strength and extent of the culture, including the police code, are attributable to the influence of the **police** elite and the methods by which it exerts its influence, including the systems and structures by which police officers are introduced into the Force, and its leadership is selected.

### 7.3 THE POLICE CODE

**The** unwritten police code is an integral element of police culture and has been a critical factor in the deterioration of the Police Force. It has allowed two main types of misconduct to flourish. A practical effect **of the** code is to reduce, if not almost to eliminate, concern at possible apprehension and punishment as a deterrent to police misconduct. The code exaggerates the need for, and the benefits derived from, mutual loyalty and support. The natural attraction of those characteristics for other members of the group has been exploited by the elite to its own advantage.

**Under** the code it is impermissible to criticize other police. Such criticism is viewed as particularly reprehensible if it is made to outsiders. Any criticism which does occur is kept under the control of those **who** have authority and influence within the Force. Any dissidents are able to be dealt with for a breach of **the** code, with the approval of other police.

**One** example of the ludicrous consequences of the code in practice occurred during the course of the Inquiry **early** in 1988.

A senior officer recommended that a Police Sergeant's notice of resignation should not be left to become **effective** automatically after a month in accordance with then current legislation but that the period should be shortened by 10 days. There was no discernible legitimate reason for such a step. The Government had **publicly** announced that it intended to legislate during that 10 day period in order to impede police who **had** been involved in misconduct from resigning and receiving benefits. In any event, the application to **resign**, which had been completed by the Sergeant, did not state any reasons for his resignation. In fact he **had** been committed for trial in connection with serious criminal offences of dishonesty associated with his **police** duties, and was subsequently convicted and imprisoned. A section of the form recording his application **to** resign called for his senior officer to state the general basis for the resignation and to add his assessment of the intending resignee's work performance and conduct. The section of the form signed by the applicant's superior officer on this occasion was in turn effectively endorsed by his senior officer's recommendation which read:

- “1. The Sergeant has been committed for trial on criminal charges.
  2. Through his general appearance, punctuality and attention to his duties the Sergeant set an example for junior staff as well as other N.C.O.'s.
- His attitude and enthusiasm both as an officer performing general duties, and as a beat sergeant directing, advising and supervising subordinates, was without fault.”

Few will have trouble discerning a contradiction between 1 and 2.

To the obvious benefit of those with something to hide, the police code also ensures that critical activities of police officers are largely immune from scrutiny. The police code effectively requires that it be assumed that whatsoever is done by a police officer legitimately occurs in the course of his duty. It is patent how absurd that is, and what the consequences are certain to be, given the nature of police work and the nature and extent of each police officer's authority and discretion.

Police, especially detectives, have to mix with criminals, including informants whom they cultivate as part of their duties. Such contacts are a primary source of police misconduct. Skilled experienced police are usually the ones exposed to the hardened criminals with most to lose and most to offer, and are therefore exposed to maximum temptation.

Police claim that total secrecy concerning informants is necessary. It is said that a police officer should not be called upon to name his informants in any circumstances: to do so would impair the relationship, make it more difficult to obtain information, and even imperil the informant.

It is asserted that there must be no supervision of contacts and arrangements between police and informants (or criminals who conceivably might be informants), including payments which are exchanged and other benefits which are granted (including discretions which are exercised in relation to proceedings against informants): police work, so it is said, would be inhibited if such contacts and arrangements were monitored.

Some police are also in regular contact not only with criminals but others (like publicans) whose activities, while lawful, are regulated and who are therefore at risk of police action if breaches occur. Such breaches and some other illegal conduct (such as s.p. bookmaking) attract little, if any, general social disapproval.

Misconduct is again facilitated and protected by the degree of autonomy enjoyed by police and by the insistence that police activities need not be scrutinized.

In a letter during the course of the Inquiry, long after major corruption had been exposed, a senior officer of the Bureau of Criminal Intelligence informed his superiors that covert surveillance had been carried out on a suspected cocaine dealer. The suspected cocaine dealer had been seen in the company of a detective. That incident was not immediately referred to the Deputy Commissioner or Internal Investigations and the observation was not recorded. The letter said why:

“These instances had not been logged. (By agreement BCIQ do not work on police). ”

The detective in question had no legitimate reason for associating with that suspected cocaine dealer, but had telephoned the BCIQ to ascertain what information any of the BCIQ, the Australian Federal Police or the National Crime Authority held on that suspected cocaine dealer. The BCIQ was aware that the Australian Federal Police had similar information on the suspected cocaine dealer to that held by them.

There were other clear signs that the detective had tipped off the suspected cocaine dealer that he was under surveillance. BCIQ personnel had not made a record of the detective's telephoning the Bureau without any apparent legitimate reason to enquire what the Bureau knew of the suspected cocaine dealer. Finally a report was received by Internal Investigations, but the man reporting those observations also understood that by agreement the BCIQ did not work on other police. It becomes worse.

The letter went on to say that no inquiries had been conducted about the relationship of the police officer with the suspected cocaine dealer but:

“although it is a matter of concern if [the officer] is associated unnecessarily with the BCIQ targets . . . no evidence of any criminal activity by [the officer] has been uncovered by this bureau.”

Clearly, any such activity was unlikely to be detected, and in any case would not have been “logged”, let alone investigated.

The police code also requires that police not enforce the law against other police, nor co-operate in any attempt to do so, and perhaps even obstruct any such attempt. Obviously, from what has already been stated, it is unlikely that there will be many instances where police work creates the need to resort to this principle, but it also applies in relation to complaints of police misconduct. Since the Police Force is responsible for the enforcement of the criminal law and police misconduct must be dealt with internally, the practical result of a failure by police to investigate allegations against police is an ineffectual Internal Investigations Section of the Police Force.

The ostensible justification for the code's requirement that police not enforce the law against other police is that police are particularly vulnerable to false allegations by criminals and others motivated by revenge or dislike. This is sought to be supported by, the claim that police need to trust each other, and could not do so if they were susceptible to investigation by police.

A concern with the real but vastly exaggerated prospect of false allegations is effectively taken to the point that all allegations against police are assumed to be false and malicious.

The phrase “no work-no trouble” is used to explain the position of those who are the subject of a number of allegations on the basis that they attract resentment because they are hard workers.

Some (but not all) of those who are the subject of numerous complaints are hard workers and sometimes the most successful investigators. The police code is inconsistent with the enforcement of the law only against police (not others), and the energetic and aggressive enforcement (and misuse) of the law against others is compatible with the code and may be of considerable benefit to police engaged in misconduct. Such an approach appears to outsiders to make involvement in misconduct less likely, assists in intimidating those with whom improper dealings occur, is likely to win an increased degree of latitude and perhaps even special privileges from superiors, and almost certainly wins respect, admiration and support from other police and their unions.

Practical considerations both inhibit complaints against police and help to ensure the observance of the code. Both honest police and civilians who report police misconduct risk serious detriment with little prospect of appropriate action.

Allegations against police are brought to their attention at an early stage, inadequately investigated, and virtually never sustained.

At the same time, police officers are in a position to harm other citizens, especially-but by no means only-those who are most likely to have information concerning police misconduct; including criminals and others who have had contact with police.

Police have access to information which is able to be used to harass, discredit or embarrass those who incur their disfavour.

Any person, who accuses or criticises a police officer also faces other, graver risks, ranging from trumped-up charges, perhaps involving “planted” or fabricated evidence, to violence.

Detective Constable James George Slade told the Inquiry that, after he made corruption allegations against Sergeant Alan Frederick Barnes, he was shunned by fellow police and got anonymous telephone calls in the early hours of the morning. He was so concerned he slept with a gun under his bed.

A former Licensing Branch constable, Nigel Donald Powell, claimed he was persecuted for his stand against misconduct.

Sergeant Eric Gregory Deveney, a former head of the Gold Coast Consorting Squad, wept before the Commission as he told how, after he reported an alleged bribe attempt, dog droppings were left on his desk, the word “dog” was written across his note pad and fellow officers barked at him. Asked what the word “dog” meant in police parlance, Deveney said it meant: “Being a crawler and running to the bosses”.

Slade, Powell, Deveney and other police who gave evidence before the Inquiry, such as Sergeant Colin Dillon and Constable Salvatore Di Carlo, all claimed to have feared for their lives as a result of their failure to fall in with and silently condone misconduct.

Deveney said:

“It reached the stage where I was camping on the front landing at night. I could identify cars coming into the street. If my dog barked viciously I would investigate it at all hours of the night, hiding in the shadows. I was frightened my house might be torched.”

For a long time in the Queensland Police Force, speaking out achieved nothing but hardship, loneliness and fear. Those involved in misconduct were not punished. Those who reported it were.

Lies, including perjury, are used, both by way of false denials and to attack those who are regarded as a threat. For example, both the members of Whitrod's Criminal Intelligence Unit and those police who attempted to straighten out the Licensing Branch in the late 1970's were vilified and persecuted.

Police observance of the code is substantially increased by the extent of the power which is held over ordinary police by the elite and the ruthlessness with which it has been exercised on those occasions when it has been considered necessary to do so.

There was throughout the evidence at this Inquiry a refrain that honest police did nothing because they did not know where to turn. Statements were even made that information and co-operation were withheld from previous inquiries because of a lack of confidence and trust either in those responsible for providing assistance to the tribunals or in the capacity of the tribunals to discover and expose the truth and have their reports implemented. For example, retired Chief Superintendent Louis James Voigt, who subsequently became the first to head the Crime Intelligence Unit, could have but did not assist the National Hotel Royal Commission, and even Whitrod did not give evidence to the Lucas Committee of Inquiry.

Whitrod and his supporters, and others who had tried to interfere in the late 1970's and early 1980's, had been defeated and victimized. Lewis, despite his reputation, was elevated without justification or explanation over a large number of more senior officers, and appointed Assistant Commissioner, then, Commissioner of Police. While he was Commissioner, senior officers, including those whom police officers generally accepted were engaged in misconduct, not only had the authority of their positions but the political support of the Premier at the time, who was seen as a personal friend of Lewis.

It was thought that any criticism or opposition would be at best futile and quite likely personally disadvantageous. It was thought politicians, senior police and police union officials would react in resentment. The risks included the possibility of internal disciplinary action, diminished prospects for promotions, appointments and other opportunities, disadvantageous transfers, and ostracism and contempt.

An instinct for survival and advancement in an institution and administration in which it was impossible to tell who could be trusted and who could be told made it imprudent, to say the least, to speak out. It was safer and easier and more consistent with responsibilities to family and self to say and do nothing despite a pledge to uphold the law.

The police code not only directly protects police engaged in misconduct but, in a society committed to the rights of individuals, ensures that they are not disadvantaged in any way irrespective of the consequences to the Police Force or to the general community.

Some police officers who are suspected of misconduct or even unsuccessfully prosecuted rise through the ranks no matter how strong the case against them.

Perhaps in theory that is as it should be. However, the theory assumes that the criminal justice system will operate as is intended, and takes no account of the police code.

One of the many examples which emerged during the course of the inquiry showed the system in action.

Two police officers attached to the Gold Coast CIB in the early 1980's were the subject of allegations. One has been unsuccessfully prosecuted. The other was one of Herbert's associates, according to his testimony. There was a body of evidence that at least the former had demanded money and sexual favours from prostitutes, and that a brothel keeper had paid him. The brothel keeper signed a statement to that effect, and there was evidence available from prostitutes, some of whom expressed a fear of reprisals.

Despite the acceptance by his supervisor that the police officer had committed the crimes alleged, the Police Department decided against charges on the basis that the credibility of the available witnesses would be attacked. The police officer was simply transferred to the Brisbane CIB.

One of the most obvious and distressing manifestations of the strength of the code is that, even now, there is no indication of widespread remorse, and no public indication that police generally have the willingness to recognize and remedy cultural aberrations. The attitudes of many remain entrenched and instead of seeking change, those police continue to flail at all who disagree with and oppose them. Even those who have brought the whole force into public disrepute in recent months are still being protected by their colleagues.

## 7.4 POLICE MISCONDUCT

### (a) “Verballing”

Perhaps the more widespread of the two main types of police misconduct which have been allowed to flourish by the police code is based upon the refusal by police to comply with the law and allow the criminal justice system to operate as is intended by the general community because of police dissatisfaction with the results. There is no direct personal benefit to police except where investigations or proceedings against police for misconduct are involved. Activities available to police officers because of their role in the criminal justice process include:

- (i) manufacture or falsification of evidence;
- (ii) interference with evidence and other material, including loss and destruction of records;
- (iii) intimidation and suborning of witnesses;
- (iv) obtaining admissions by threats or inducements; and
- (v) obstruction of investigations.

The criminal justice system is zealous in its concern for the rights of accused, but the rights and protections which are accorded to accused are obstacles which impede the conviction and punishment of those who are considered guilty, make the work of police more difficult and reduce their chances of a successful prosecution. Police see successful prosecutions as one of the few positive aspects of their work. Some accused persons and their associates (and sometimes their lawyers) engage in improper conduct, which exacerbates the difficulties and frustration of the police. Perhaps because the problems are too difficult or the implications too horrendous, the community has simply turned away from what, on reflection, is readily obvious.

A group of individuals is exposed to the brutalizing effect of law enforcement, including exposure to criminals and tragedies, without the benefit of any significant education or counselling. They are then entered as combatants in unequal adversarial proceedings armed with authorities, discretions and opportunities which can be abused.

Steps to redress what is perceived to be an unequal contest are readily open to police officers. Evidence of guilt which is manufactured or falsified or improperly obtained diminishes the effect of the presumption of innocence and such requirements as proof beyond reasonable doubt and unanimous verdicts, and greatly decreases the prospects of acquittal for those whom the police decide are guilty.

The verbal “confession” has long been a feature of Queensland criminal trials, with modifications and refinements over the last quarter of a century in order to boost its flagging appeal; for example, unsigned records of interview have been used to disguise the inherent improbability and proven defects of mere memory recall, and admissions to police have been supported by, or in some cases been replaced by, “confessions” by penitent criminals who have felt the need to share the burden on their consciences while awaiting trial to fellow prisoners who, improbably, have in turn felt obliged out of a sense of civic duty to pass on their information to police officers, often those with whom the confessors have some other relationship.

Herbert said that although some police would not verbal, there was usually no need to sound out an unknown police officer to see whether he would give false evidence. It was just accepted. When a person was arrested police would sit down at the typewriter and “You would make the story up as you went along”.

One of Herbert’s first verbals, according to his evidence, involved a man arrested for being in a public place for the purpose of betting. Herbert said they could not “quite” get the evidence on him. The decision was made to “drop one on him” or “brick” him. The story worked out involved evidence that, while they had been questioning the suspect, a person had approached him and said “give me 15 shillings each way on Harlequin,” to which,

according to the story, the suspect had said “Go away. You wouldn’t wake up if the town hall fell on you”.

The charge against the suspect was dismissed, but the Full Court found in favour of the police on appeal, holding that the suspect’s statement about the town hall falling on his customer had been an admission. Herbert told that he recalled quite well one of the judges saying by way of comment on the evidence of the reference to the town hall falling, “What-brick by brick?”.

There is virtually no risk involved for police in misconduct such as verballing and the chances of success are excellent. Ordinarily, any issue relating to disputed evidence involves a contest between an accused, whose credibility will usually be questionable and who most often will prefer not to enter the witness box, and police officers who support and corroborate each other. Even in blatant cases where lies have been exposed action has seldom been taken against the police concerned.

Interference in the proper administration of justice has grave consequences other than the terrible plight of individual accused whose trials are influenced by what occurs.

For the young police officer, the significance of taking part in verballing is enormous. The pressure can prove irresistible, coming as it does from more experienced police. Failure to participate will mean the possible failure of the prosecution and certain anger, resentment and ostracism from the people the young police officer has come to rely on.

The police officer is human. Inevitably some yield to the pressure, perhaps without even thinking much about what they are doing or the consequences. Yet, having crossed the threshold, and demonstrated acceptance of the police culture, it is then a great deal easier to take the next step of manipulating and falsifying evidence, not only in the interests of what they believe to be justice, but also to attack enemies and defend friends. The rules of society have become subservient to the police culture.

As part of that culture, many police are routinely involved in misconduct, in rejecting the applicability of the law to police, in improperly influencing the outcome of court proceedings, and in lying under oath as well as breaching their oath to enforce the law. Their consciences are burdened and toughened. The police bond is strengthened and applied to police misconduct, while the relationship between the police and the community is damaged. All who are compromised lose both the incentive and the capacity to act against, or even disapprove, misconduct by their colleagues, of whatever kind. Such verballing involves a rejection of fundamental standards.

## (b) Corruption

The other major type of police misconduct which is protected by the police code involves much more diverse behaviour and degrees of culpability as police take advantage of opportunities which arise in the course of their duties to obtain personal benefits. Opportunities so afforded include:

- (i) theft of seized or forfeited property, evidence, or funds intended to be used to pay for assistance rendered to police;
- (ii) acquisition of seized or forfeited property at an undervalue upon its official disposal;
- (iii) use of informants and other criminal associates to dispose of illegally acquired property; and
- (iv) acceptance of money, property and sexual favours in connection with the benefits which police are able to provide such as information and warnings in relation to law enforcement activities, information in relation to criminal opportunities, and licences and the like for which police have responsibility (in false names where appropriate), the prosecution and falsification of evidence against rivals of protected criminals, and the favourable exercise of the wide discretions which, in practice, arise at various stages of the criminal process: for example, in relation to charging (both in whether a charge is laid and, if so, what charge, which is relevant not only to the likely success or failure

of the charge brought and potential punishment if the charge proceeds but also to whether a conviction can be avoided by forfeiture of bail and to whether forfeiture of property can be avoided), charging “nominees” to avoid the consequences for those in fact responsible, applications for bail, modification of charges, and prosecution.

There is no single “rotten apple” or small number of “rotten apples” in the Police Force, and its problems are not confined to specific sections, although there are major concentrations of misconduct in some areas of police activity.

Notwithstanding that both are spawned, encouraged and supported by the institutional culture of the Police Force, a broad distinction can be drawn between major police misconduct and local police misconduct, although there is serious local misconduct by police in some places such as those where tourism is a major industry or the climate and other conditions are suitable for the cultivation of drugs.

Most police come in contact with local police misconduct throughout their careers, although many have no direct exposure to major police misconduct. Once misconduct is no longer confined to a geographic area or a particular area of law enforcement, it assumes totally different dimensions. Local misconduct is constrained by a greater risk of exposure, a relative lack of authority, and periodic dislocation caused by transfers, appointments and promotions. Those constraints all vanish and the opportunities for expansion of criminal activities spread as the police involved gain seniority, influence and the ability to protect themselves. The rewards keep pace.

The lack of any clear definition of what is permissible and ambivalent community attitudes have the general effect of blurring the distinction between proper and improper conduct for police in relation to some activities. Some matters are relatively easy to cloak in self-justification in various circumstances; for example, the acceptance of gifts or discounts can be rationalized on bases which, in theory, create no obligations upon the recipient police. Other conduct engaged in by police is blatantly improper. Participation is made easier by involvement in more ambiguous activities, the example of colleagues, and sometimes the delusion that corruption is acceptable because particular laws lack universal community support or the offences are consensual and “victimless”.

Police are exposed to enormous temptations, while knowing that they are protected by the police code. The insurance which it provides against detection and punishment is certainly a major factor which causes many who would not otherwise do so to succumb to that temptation, particularly when the alternative may be ostracism or even persecution.

## **75 REJECTION OF EXTERNAL SUPERVISION**

It is an integral part of the police culture that all supervision and control of police activities must be retained within the Police Force. It is obvious that the effectiveness of the police code to protect police misconduct could be diminished by outside scrutiny or intervention.

Deceit, rumours and misinformation are used, often intermingled with orthodox industrial or bureaucratic propaganda or cleverly related to the distortion of valid considerations. Sometimes the same contentions are urged sincerely by some for legitimate purposes and deceptively by others for their own, less altruistic motives.

Fictions were unabashedly sworn to in the course of the Inquiry, for example:

- z there are no illegal drugs in brothels;
- z prostitutes are a fertile source of information with respect to criminals and their activities;
- z/z prostitutes will only provide their information to Licensing Branch personnel (with whom they are familiar in more ways than one); and
- z for that and other reasons, including the inexperience and lack of expertise of other police, a specialist squad of police is needed to police vice activities.

All those assertions were known to be false when they were sworn to by senior police, who were all fully aware that the Licensing Branch was riddled with corruption.

Documentation obtained by this Inquiry starkly revealed how casually deception is practised; for example, reports in relation to the nature and extent of vice and associated police activities which were provided to the Government were deliberately false, as was known to senior officers through whom the material was channelled.

Perhaps it was not surprising in the circumstances that some of the material initially presented to the Inquiry by the Police Force, for example details of Licensing Branch personnel, was inaccurate and omitted potentially significant information.

Regular themes are that the Police Force is competent and efficient, with claims of police accomplishments supported by statistical manipulation, and that whatever problems exist are the fault of others or unavoidable circumstances and are under control. One result is to render it quite impossible to assess and support needs, to plan, and to establish satisfactory policies, procedures and systems while in pursuit of a "good news" exercise of self-praise and assurances that all is well.

It has also been asserted that misconduct in the Police Force is minimal and any suggestion to the contrary will gravely injure police morale and otherwise be against the public interest.

It may be that some who advance such claims minimize patent problems in a genuine desire to defend the image of the Police Force in the interests of its members and the general community. But the short-term benefits of glib untruths, however well-motivated, are disproportionate to the damage caused in the longer-term by postponement of the day of reckoning. Misconduct which is denied expands. Corrupt police take comfort, and the honest become disenchanted, unsure of whether or not those denying the existence of corruption are themselves involved.

Police reluctance to investigate other police is reinforced, and hostility towards those who do not conform increases. Effective leadership becomes impossible, and reform is obstructed, especially reform from those perceived as outsiders, as Whitrod discovered only too clearly. Attacks upon misconduct are portrayed as an antipathy toward police officers generally, with the result that the leadership which is essential to provide support to honest police officers is rejected by those whom it seeks to assist.

Other standard tactics, reflected with monotonous regularity in news reports, include constant complaints in relation to industrial and other issues, with blame widely distributed on all who are not seen as helpful to the maintenance of the police culture, and, wherever remotely possible, personal attacks on those in disfavour. The media campaigns waged against this Commission and the Police Minister who deserves credit for its initiation, the Honourable William Angus Manson Gunn, M.L.A., are a modern echo of the orchestrated attempts which successfully destroyed Whitrod and his supporters in the 1970's.

The lies which are told serve a number of objectives simultaneously. The community is duped, but so are ordinary police officers, whose dissatisfaction with their lot has been exacerbated and their "morale" damaged at the same time as they have been increasingly persuaded to accept the elite's perverted version of loyalty and interdependence.

## **7.6 THE ALIENATION OF THE POLICE FORCE**

The natural tension which exists between the community and any powerful group or institution is exacerbated by the nature of police work. It is also aggravated by the unacceptable aspects of police culture, which at the same time are magnified by negative community attitudes. Each feeds upon the other, and there is no purpose in searching for cause and effect. The apportionment of fault between the community and the Police Force (other than its elite) is likely to be counter-productive, although certainly the police elite must bear the preponderance of the blame.

Police relationships with fellow citizens in the course of their duty are often unpleasant, and associated with the exercise of authority in circumstances of tragedy or distress.



There has been an abject failure to adapt the Police Force to a radically altered and fast-changing environment and it is ill-equipped to deal with the extensive criminality in the community. There is a community reluctance to grant police demands for increased powers or resources because of the reputation of the Police Force and because the community has been misled by its public relations campaigns, which have underestimated the extent of crime and overestimated the capacity of the Police Force to cope with its existing powers and resources.

For its part, the community has unfavourable perceptions of police behaviour, attitudes, efficiency and competence.

For their part, police are frustrated at the inability of the Police Force to enforce the law effectively, which they attribute to inadequate police powers and resources and defects in the criminal justice system.

Although some police work is interesting and challenging, much of it is boring, sometimes it is unpleasant, and occasionally it is dangerous. Many police officers are unqualified and unsuited for many of the tasks which they are called on to perform, and almost all members of the Police Force are unqualified or unsuited for some of those tasks. The Police Force itself is grossly understaffed and under-resourced.

Police are angry and resentful at their status, remuneration and working conditions, which are seen as one indication of society's attitude toward the Police Force, and the low esteem in which the Police Force is held by the community and are cynical of community standards. Police observe the affluence of some sections of the community, and the material wealth of some whom they believe have prospered by breaking the law.

Typically, a senior officer will gain 30 or 40 years of experience in the Force, but have experience of nothing else. He will be loyal to and silent on behalf of his colleagues and cautious and cynical with outsiders. He will resist all attempts at outside scrutiny of the Force and be resentful and indignant if it is suggested the Force is doing less than a good job. His powers of rationalization and pretence will be honed to such an extent that it will no longer be possible to tell whether he is deceived or deceiving.

His loyalty to the Police Force and the people in it will have come to outweigh what was only ever a vague and abstract loyalty to the community. In important respects, he will have rejected the values of the outside community, and be prepared to go to extraordinary and sometimes illegal lengths to protect what he believes to be the interests of the Police Force and of his police brothers. Loyalty to the Force has become the purpose, rather than the means, of fulfilling his duty.

Sir Terence Lewis serves as a good example. In spite of indisputable evidence proving that he had presided over a Police Force debilitated by corruption, incompetence and inefficiency, he was able to tell this Commission that he believed he had done his job well, that he had no regrets and that he could not think of anything specific that he would have done differently if he had his time again!

Police work almost exclusively, and socialize extensively, with other police and, with increasing numbers of females in the Police Force, more regularly marry police. As in other occupations, children of police officers follow their parents into the "job".

Faced with public indifference, mistrust, hostility and resentment, police come to depend on their fellows for physical security, friendship, sympathy, emotional support and a feeling of self-worth. In difficult times, police officers naturally turn to the people who have become their closest friends, and the mechanisms are there to make sure they have support.

In the result, the Police Force has increasingly turned in on itself and away from the community apart from superficial campaigns to allay community concerns and win recognition despite its adherence to its culture. Not surprisingly, the alienation has progressed to a major crisis point.

## 7.7 THE PERPETUATION OF THE CULTURE

As a group, police officers:

- z are recruited at the lowest level of the Police Force for unchallenging work: almost without exception, lateral entry to the Police Force is impossible and every police officer is sworn in as the most junior constable;
- are drawn from the lower to middle socio-economic sections of the community;
- z have no more than average intelligence and education;
- have little experience or knowledge of activities unrelated to police work;
- join the Police Force when they are young and impressionable;
- z receive inadequate instruction in public ethics and proper relationships within the Police Force and with the government and the community, with training substantially carried out by older police at least some of whom are officers imbued with the police culture;
- z are provided with virtually no exposure to role models except other members of the Police Force;
- are extremely susceptible to the influences of their early postings, particularly because of the hierarchical structure of the Police Force and the strong rank-consciousness which exists;
- observe the influence of the police elite, their commitment to that culture and their exploitation of it, and the rejection and condemnation of those who do not conform; and
- initially lack the confidence or authority to act inconsistently with the police culture, and later become immersed in that culture and compromised either by their behaviour or by acquiescence or inaction, whereupon the incentive and the ability to act are diminished.

Police are subject, from the first day and for the rest of their police careers, to rules and regulations which set them apart from the rest of the community, even when they are not working, and even though the rules are not enforced.

The police officer is forbidden to join any association except those authorized by law or approved by the Police Minister. Officers are not allowed to take any other job, even when on long service leave and are required to serve in any part of the state and to live where ordered. Police officers must notify the Commissioner of intention to marry. Officers are in theory never off duty. In theory, they must remain sober. They are not allowed to have any interest in a racehorse or coursing dog, and must not smoke in uniform while in a public place. A police officer who fathers an “illegitimate” child is guilty of misconduct and can be dismissed. A male police officer who separates from his wife must report that matter to his district officer for communication to the Commissioner.

Naturally, after a very short time in the Police Force, young people lose any sense of perspective on the culture of which they have become part. Fellow police and police work define their self-image, their attitude to society and their place within it. Peer pressure becomes overwhelming and is supported by other factors.

The Police Force is to all intents and purposes totally unionized, and other aspects of the police culture are intermingled with orthodox industrial considerations and backed by the community’s dependence upon the Police Force to enforce the law.

No person who is not an “employee” of a single organization, the Police Force, is a member of either of the unions to which police officers belong.

With few exceptions other than the Commissioner, Deputy Commissioner and Assistant Commissioners of Police, every member of the Police Force is a member of either the Queensland Police Officers’ Union of Employees or the Queensland Police Union of Employees.

The commissioned officers who are the members of the Police Officers’ Union have all previously been members of the numerically superior Police Union.

Office-bearers and other influential persons in the Police Union regularly become commissioned officers in the Police Force, and sometimes office-bearers or otherwise influential in the Police Officers' Union.

It is not uncommon for influential union figures to rise to the rank of Assistant Commissioner and above in the Police Force.

Influence within the unions has in the past been associated with support for and promotion of the police culture of the Police Force, including the police code, and upon opposition to any significant reform.

The unions not only control general financial and industrial issues but are also the source of individual assistance to police officers, including personal financial aid.

Perhaps the most important subject of individual help provided by the unions relates to the legal assistance which is commonly given to any police officers who face allegations of misconduct. The result is to rally union support to a police officer who is charged or sued, and to give all other police officers, who are almost invariably potential witnesses in any proceedings involving a colleague, an indirect interest in the outcome of proceedings which are being paid for from a fund derived from their contributions.

Leadership and management within the Police Force are wholly derived from within the ranks of the Police, and the standard is generally much lower than what is required. While it may be commendable in an egalitarian society that an office-boy has the chance to become managing director, it is not obviously desirable that no person can be appointed to management and leadership positions who has not been a junior constable. Apart from Whitrod and one principal of the Police Academy every commissioned officer in the Police Force in the last 20 years, from the Commissioner down, has risen through the ranks of the Police Force (and been a member of the unions).

The elite have control of the instruction and training of recruits and candidates for promotion, all of which is effectively designed and controlled by police officers and occurs substantially in isolation from other educational facilities, and in relation to discipline, promotions, transfers and appointments, subject to periodical political intervention.

With the passage of time, the Queensland Police Force has become an organization in which the corrosive effects of its culture are almost totally unameliorated by outside influences, with the consequences which are now apparent.

The existing culture will not be rejected by the current elite or others who are amongst its central adherents, whose influence must be reduced and finally excluded. The commitment of peripheral adherents must be reversed, new recruits must be protected from absorption into the culture, and fresh leadership must be found to educate and persuade the Police Force to modify its attitudes and practices and build up a mutually supportive relationship with the general community.

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# CHAPTER VIII

## THE POLICE FORCE

### 81 INTRODUCTION

In a modern society, diverse and often competing demands are made of the Police Force. Not only is the Force seen as a professional defence against crime and disorder, it is also perceived as a community service, to be called upon for help in circumstances of danger, threat and uncertainty.

Policing is one of the most demanding jobs in society and requires intelligent, educated, uniquely suited and dedicated people. Successful policing also requires the active support and confidence of the public.

In Queensland there is a lack of public confidence in the Police Force, partly caused by instances of misconduct and inefficiency. However, individual behaviour is not entirely to blame. The Police Department's organization and practices have also contributed.

The functions of the Police Force have been over-extended and over-specialized. The structure of management and decision-making systems within the organization have become unwieldy. Methods of recruiting, training and managing staff need reform.

This review is necessarily limited, and is based upon submissions received by this Commission, together with material provided, at the request of the Commission, by the Police Department.

The reforms recommended in this chapter are designed to provide a basis for rebuilding public confidence and support for the Police by improving the performance of the Police Department within the context of the criminal justice system.

### 8.2 THE FORCE

#### 8.2.1 Role and Functions

The purpose of a police force is to preserve order, prevent crime and detect and apprehend offenders against order and criminal laws. Its role traditionally encompasses the protection of life and property, not only from criminals, but in natural disasters and other emergencies.

Apart from being responsible for the enforcement of criminal laws enacted under the Criminal Code and the Vagrants, Gaming and Other Offences Act, police also have law enforcement responsibilities and administrative duties under many other criminal and quasi-criminal laws. Lists of that Legislation and other duties taken from the 1988 Annual Report of the Police Department appear as Figures 8.1 and 8.2.

#### 8.2.2 Structure

##### (a) The Hierarchy

The Police Department is a large centralized organization with the Commissioner, Deputy Commissioner and six Assistant Commissioners responsible for all police activity, including both specialized and general work.

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# LEGISLATION

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Set out below is a list of Acts of Parliament which are commonly used by police in the performance of their duties.

Acts Interpretation Act  
Age of Majority Act  
Animals Protection Act  
Art Union and Amusements Act  
Auctioneers and Agents Act  
Bail Act  
Brands Act  
Carriage of Dangerous Goods by Road Act  
Casino Control Act  
Censorship of Films Act  
Charitable Funds Act  
Children's Services Act  
Collections Act  
Construction Safety Act  
Coroners Act  
Criminal Code  
Criminal Law (Sexual Offences) Act  
Decentralization of Magistrates Courts Act  
Director of Prosecutions Act  
Disposal of Uncollected Goods Act  
Drugs Misuse Act  
Education Act  
Elections Act  
Electricity Act  
Evidence Act  
Explosives Act  
Family Services Act  
Fauna Conservation Act  
Firearms and Offensive Weapons Act  
Fisheries Act  
Forestry Act  
Gaming Act  
Hawkers Act  
Health Act  
Hide, Skin and Wool Dealers Act  
Inclosed Lands Act  
Invasion of Privacy Act  
Jury Act  
Justices Act  
Juvenile Smoking Suppression Act  
Law Courts and State Buildings Protective Security Act  
Liquor Act  
Litter Act  
Local Government Act  
Local Government (Queen Street Mall Act)  
Magistrates Courts Act  
Main Roads Act  
Meat Industry Act  
Mental Health Services Act  
Motor Vehicles (Control) Act  
National Parks and Wildlife Act  
Noise Abatement Act  
Oaths Act  
Objectionable Literature Acts  
Offenders Probation and Parole Act  
Pawnbrokers Act  
Peace and Good Behaviour Act  
Police Act  
Police Dogs Act  
Police (Photographs) Act  
Prisoners (Interstate Transfers) Act  
Prisons Act

Public Safety Preservation Act  
Queensland Marine Act  
Racing and Betting Act  
Railways Act  
Regulatory Offences Act  
Rural Fires Act  
Rural Lands Protection Act  
Sale of Goods Act  
Second-hand Dealers and Collectors Act  
State Counter-Disaster Organisation Act  
State Transport Act  
Stock Act  
Suppression of Gambling Acts  
Tow-Truck Act  
Traffic Act  
Unordered Goods and Services Act  
Vagrants, Gaming, and Other Offences Act  
Young Offenders (Interstate Transfer) Act

Set out below is a further list of Acts which may require police attention. This list is by no means exhaustive.

Aboriginal Relics Preservation Act  
Air Navigation Act  
Beach Protection Act  
Brisbane Forest Park Act  
Cemetery Act  
Companies Act  
Driving Training Centre Act  
Films Review Act  
Fire Safety Act  
Fire Brigades Act  
Frazer Island Public Access Act  
Fugitive Offenders Act  
Gateway Bridge Agreement Act  
Guide Dogs Act  
Hire-Purchase Act  
Inebriates Institutions Act  
Inspection of Machinery Act  
Intellectually Handicapped Citizens Act  
Justices of the Peace Act  
Land Act  
Law Courts and State Buildings Protective Security Act  
Mining Act  
Mock Auctions Act  
National Crime Authority (State Provisions) Act  
Native Plants Protection Act  
Police Complaints Tribunal Act  
Police Superannuation Act  
Picture Theatres and Films Act  
Public Entertainment (Licensing) Act  
Pyramid Selling Schemes (Elimination) Act  
Queensland Police Welfare Club Act  
Radioactive Substances Act  
Regulatory Reform Act  
Trust Accounts Act  
Vexatious Litigants Act  
Warehousemen's Liens Act

In addition, Queensland Police are directly affected by Commonwealth legislation such as the Crimes Act, the Postal Services Act and numerous others as well as a number of Imperial Acts which are still valid in Queensland.

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## OTHER DUTIES PERFORMED

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Police officers attend to duties carried **out** principally on behalf of other government departments.

There are two categories affecting police officers-those required by the appointment of a police officer to an office for another department and those which are performed by all police officers to meet requirements of other departments.

The principal offices to which a police officer may be appointed are:

Acting Clerk of the Court-Department of Justice;  
Acting Inspector of Stock-Department of Primary Industries;  
Flood Warning Officer-Bureau of Meteorology (Commonwealth);  
Ration Issuing Officer-Department of Family Services;  
Fire Warden-Rural Fires Board;  
Assistant Mining Registrar-Department of Mines;  
Explosives Officer-Department of Mines;  
Inspector of Stamp Duties-Treasury Department;  
Main Roads Collector-Department of Main Roads;  
District Officer-Department of Community Services;  
Acting Land Agent- Land Administration Commission;  
Commonwealth Electoral Officer-Australian Electoral Office (Commonwealth);  
Receiver of Social Services-Department of Social Security (Commonwealth);  
Gauge Observer Bureau of Meteorology (Commonwealth);  
Acting Harbour Master-Department of Harbours and Marine;  
Acting Shipping Inspector-Department of Harbours and Marine;  
Agent-Suncorp  
Authorised Customs Officer-Australian Customs Service (Commonwealth);

In addition, police officers hold some appointments as designated by various State Acts, the more important being:

Honorary Inspector of Stock-*stock Act*;  
Disaster District Co-Ordinator--*State Counter-Disaster Organisation Act*;  
Fisheries Inspector-*Fisheries Act*;  
Fauna Officer-*Fauna Conservation Act*;  
Officer-*Animal Protection Act*;  
Licensing Inspector-*Liquor Act*;  
Officer and Authorised Officer-*Migration Act*;  
Inspector-*Brands Act*;  
Shipping Inspector-*Queensland iMarine Act*.

The following list sets out the work regularly performed for other departments such as the supply of information, service of summonses, inquiries, etc:

Department of Primary Industries-Inquiries about the collection of fees and returns;  
Department of Justice- Inquiries about the collection of monies under the various Acts of Parliament, charitable collection organisations and outstanding returns;

Department of Education-Inquiries about non-attendance at schools, break and enter of schools, etc;  
Department of Health-Inquiries about people requiring free rail passes for medical treatment, outstanding repayments, escort of mentally sick patients, location of people required to report for treatment of social diseases;  
Department of Main Roads-Tracing of people and collection of outstanding fees, registration and inspection of vehicles;  
Department of Community Services-Honorary Wardens under the *Aboriginal Relics Preservation Act*;  
Public Trust Office-Inquiries about estates, wages due, etc;  
Licensing Commission Collection of fees, inspection of premises and transfer of licences;  
Road Safety Council-Inquiries about safe driving awards;  
Railway Department-Inquiries about various matters;  
Department of Family Services-Inquiries about departmental matters and family assistance, escort of children committed to the care of the Director of Children's Services;  
Department of Transport-Inquiries about outstanding fees, applicants for licences, renewal of licences;  
Rural Fires Board-Issue of permits, investigation of offences under the Act;  
Fisheries Service-Service of summonses;  
Australian and State Electoral Offices-Enrolment and changes of enrolment;  
Taxation Department- Service of notices and general inquiries;  
Brisbane City Council-Service of summonses;  
Local Authorities-Service of summonses;  
Australian Post/Telecom-Service of summonses;  
Immigration and Ethnic Affairs Department-Inquiries about citizenship and re-entry permits, reports of convictions on people coming within the scope of the *Migration Act*;  
Nominal Defendant-Inquiries about traffic accidents;

The authority of all managerial and supervisory ranks below Deputy Commissioner and Assistant Commissioner is subject to the control and authority of the Commissioner, while each constable, technical, and scientific officer is under the direction of his superior officer.

Responsibility for the performance of any duty falls upon the most senior member of the Force present, however the Commissioner or a commissioned officer may give any member of the Force authority and responsibility for the performance of any duty.

There are seventeen ranks for police officers, and ten for both technical and scientific officers. These ranks are listed in Figure 8.3.

<b>POLICE FORCE RANKS &amp; GRADES</b>	<b>POLICE FORCE RANKS &amp; GRADES</b>
<b>Police Ranks</b>	<b>Technical &amp; Scientific Officer Ranks</b>
Commissioner of Police	Chief Scientific and Technical Officer
Deputy Commissioner of Police	Principal Scientific and Technical Officer-
Assistant Commissioner of Police	Grade III
Chief Superintendent	Grade II
Superintendent, Grade 1	Grade I
Grade 2	
Grade 3	Senior Scientific and Technical Officer-
Inspector, Grade 1	Grade III
Grade 2	Grade II
Grade 3	Grade I
Senior Sergeant (including Detective or Plain Clothes)	Scientific and Technical Officer-
Sergeant 1st Class (including Detective or Plain Clothes)	Grade III
2nd Class (including Detective or Plain Clothes)	Grade II
3rd Class (including Detective or Plain Clothes)	Grade I
Senior Constable (including Detective or Plain Clothes)	
Constable, 1st Class (including Detective or Plain Clothes)	
Constable (including Detective or Plain Clothes)	

**FIGURE 8.3**

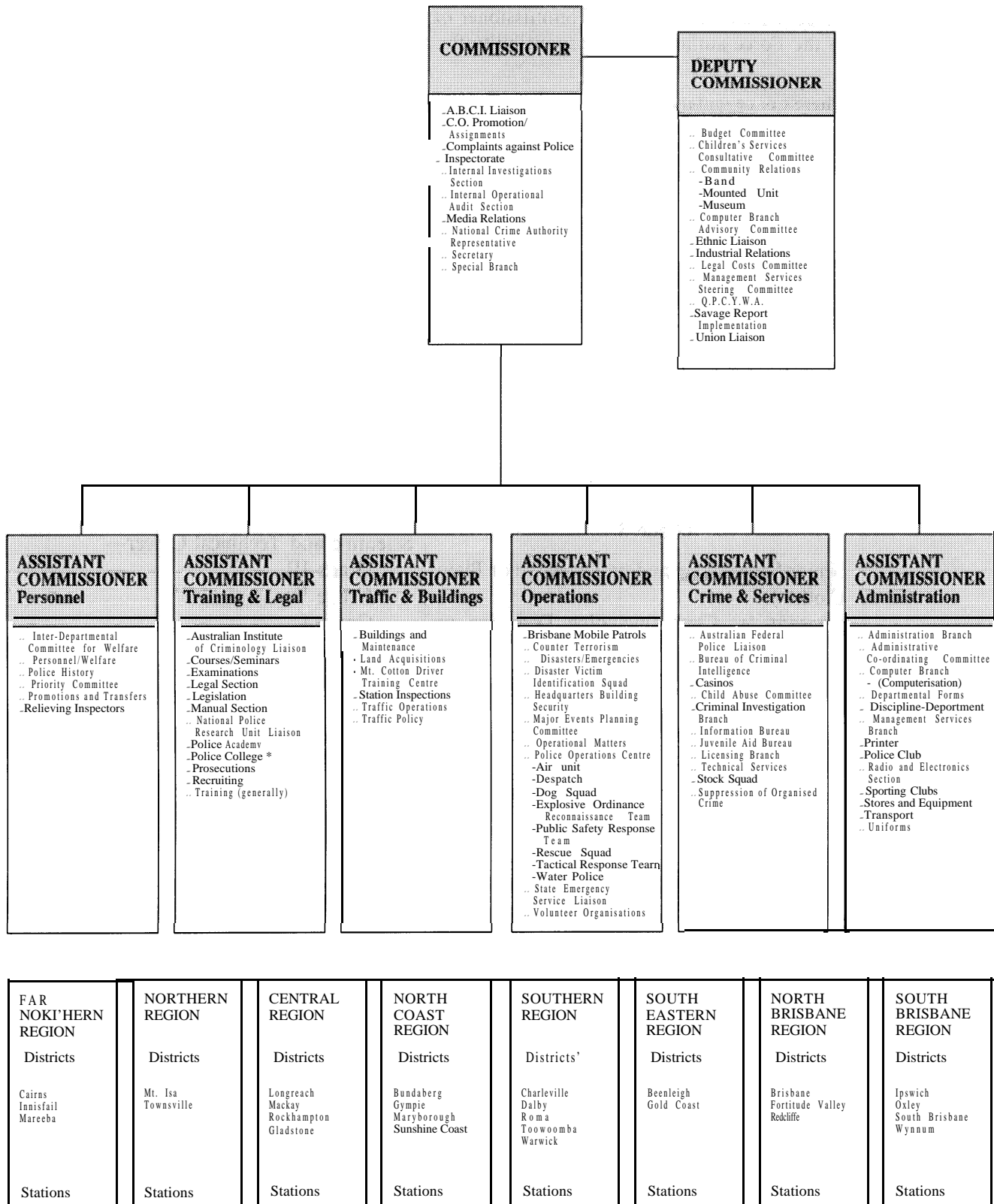
Public service administrative and support staff, within head office, report to the Secretary, Assistant Commissioner Administration or Commissioner.

### **(b) The Basis of Organization**

The organization of the Police Force is based on three overlapping factors: geographic, type of function performed, and classification of the personnel employed in a given unit.

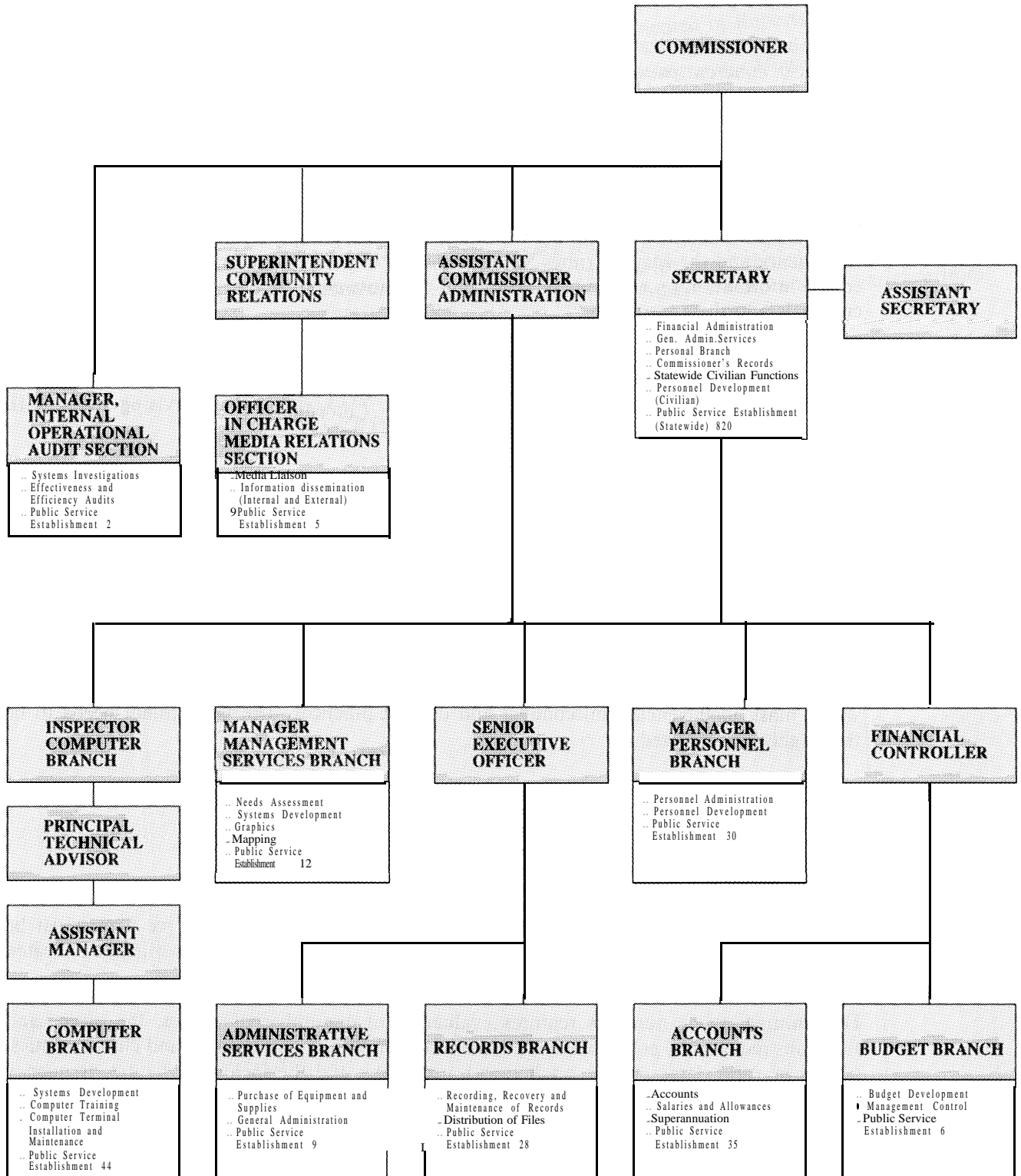
The Police structure and the Public Service structure are shown in Figures 8.4 and 8.5.

# CURRENT POLICE HEADQUARTERS & REGIONAL ADMINISTRATION



# CURRENT PUBLIC SERVICE HEADQUARTERS ADMINISTRATION

Queensland Police Department  
Principal Public Servants and their responsibilities



From: Queensland Police Department  
1988 Annual Report

FIGURE 8.5

Geographically, the organization comprises eight police regions, including North Brisbane and South Brisbane, each under the control of a regional superintendent or inspector. Each region is divided into police districts, each of which is further subdivided into police establishments, of varying sizes and types. There are over 320 police establishments throughout the State.

Members of the Police Force are broadly subclassified into uniformed police, detectives, plain-clothes police, scientific and technical officers.

The functional organization of the Police Force (and of the Police Department) is complex and lacks coherent pattern and logic.

There are divisions between operational, operational support, prosecution, administrative and personnel related functions, but the boundaries of those divisions are often blurred because of functional overlap between them.

A central feature of the operational structure is a multitude of supposedly specialist squads. There is also functional overlap between these specialist groups. Both the Bureau of Criminal Intelligence and the Major Crimes Squad (formerly termed "Consorting Squad") obtain and collate information on all forms of crime and the movements and activities of known major criminals and their associates.

The Criminal Investigation Branch is the largest specialized group. It has its headquarters in Brisbane and maintains offices in each police region. A number of regions also have Detective Inspectors who act as Regional Crime Co-ordinators, supervising major CIB activities.

Some of the specialized groups in the Criminal Investigation Branch are further compartmentalized into groups with responsibility for particular aspects of illegal conduct.

The Licensing Branch is one such group. It officially exists to police gaming, liquor and prostitution. It is internally subdivided into squads for 'operational efficiency', each led by a Detective Sergeant. Those have included squads for escorts, parlours, s.p. (bookmaking), pornography and liquor. It liaises with the Licensing Commission and the Registrar of the Video and Film Registration Board.

In all, the organization of the Queensland Police Force is characterized by complexities which mask inefficiencies, misconduct and corrupt practices. The Department needs to be thoroughly re-organized.

## **8.2.3 Resources**

### **(a) Police Numbers**

For police to perform the duties and responsibilities required of the Force there must be enough officers provided with sufficient resources. Personnel and resources must be allocated on the basis of need.

Determining police numbers requires evaluation of a number of factors: the duties and functions required of police officers, population distribution, composition and characteristics, (urban or rural, large city or small town), geography and the incidence, nature, frequency and location of crime.

Whether or not there are enough police to adequately cover the State is largely dependent upon the allocation of officers and the emphasis placed from time to time upon specific police activities.

Police numbers in some areas of Queensland, however, are quite low in comparison with other areas and other states of Australia. At present, Queensland has the least favourable ratio of police officers to population in Australia. (See Figure 8.6)

**AUSTRALIAN RATIOS OF POLICE  
TO POPULATION**

Queensland	1 : 532
New South Wales	1 : 485
Victoria	1 : 439
Western Australia	1 : 459
Tasmania	1 : 432
South Australia	1 : 409
Northern Territory	1 : 216

From Police Department 1987/8 Annual Report.

**FIGURE 8.6**

Although the ratio for the Queensland Force improved between 1972 and 1988, it did not improve at the same rate as New South Wales and Victoria. (See Figure 8.7). This may be partly because Queensland's population has grown at a faster rate than the population in other states.

**POPULATION NOS. FOR EACH POLICE OFFICER**

(Based on figures quoted in Queensland Police Annual Reports)

	<b>QLD.</b>	<b>N.S.W.</b>	<b>VIC.</b>
1972	600	609	678
1977	562 *	572 *	578 *
1982	563 *	570 *	480 *
1988	532	485	439
Improvement over Period	11.3%	20.4%	35.2%

\*Estimates only. Graphical information presented in Reports.

**FIGURE 8.7**

Police numbers will always be subject to economic constraints. However, the material presented does demonstrate that Queensland has failed to maintain its police: population ratio at a rate comparable to that in New South Wales and/or Victoria during a period of rapid state development and accelerated social change. Increases in tourism and the associated policing problems with large numbers of short term visitors in the population are a compounding factor.

One basis recognized widely by other policing studies for determining police to population ratios is the Eric St Johnston ratio. Applying the ratio to the establishment of the Queensland Police Force reveals that police districts and regions display a wide range of variance from the staff numbers determined by means of this ratio. (See Figure 8.8)

**PROJECTED POLICE NUMBERS REQUIRED  
BASED ON ERIC ST JOHNSTON RATIOS**

**Eric St Johnston Ratio:**

Population over 20,000	1 : 350
From 5,000 to 20,000	1 : 530
Under 5,000	1 : 1000



## PROJECTED POLICE NUMBERS

Regions & Districts*	Present Police Nos.*	Population	Police Nos. Adjusted?	Present Police Nos. as % of Adjusted
<b>Southern Region</b>				
Charleville	45	10,716	20	225%
Dalby	57	30,804	88	65%
Roma	56	22,186	63	89%
Toowoomba	116	117,563	336	35%
Warwick	68	38,920	111	61%
<b>Totals</b>	<b>342</b>	<b>220,189</b>	<b>618</b>	<b>55%</b>
<b>Far Northern Region</b>				
Cairns	194	110,319	315	62%
Innisfail	48	31,957	91	53%
Mareeba	59	34,480	99	60%
<b>Totals</b>	<b>301</b>	<b>176,756</b>	<b>505</b>	<b>60%</b>
<b>Northern Region</b>				
Mt Isa	96	33,674	96	100%
Townsville	319	169,085	483	66%
<b>Totals</b>	<b>415</b>	<b>202,759</b>	<b>579</b>	<b>72%</b>
<b>Central Region</b>				
Gladstone	82	53,195	152	54%
Longreach	48	12,780	24	200%
Mackay	145	118,901	340	43%
Rockhampton	186	123,602	353	53%
<b>Totals</b>	<b>461</b>	<b>308,478</b>	<b>869</b>	<b>53%</b>
<b>North Coast Region</b>				
Bundaberg	74	61,581	176	42%
Gympie	84	55,731	159	53%
Maryborough	68	57,665	165	41%
Sunshine Coast	143	130,540	373	38%
<b>Totals</b>	<b>369</b>	<b>305,517</b>	<b>873</b>	<b>42%</b>
<b>South Eastern Region</b>				
Beenleigh	170	201,475	576	30%
Gold Coast	300	221,323	632	47%
<b>Totals</b>	<b>470</b>	<b>422,798</b>	<b>1208</b>	<b>39%</b>
<b>North &amp; South Brisbane Regions</b>				
Brisbane Area#	1660	518,246	1481	112%
Redcliffe	177	187,221	535	33%
Ipswich	152	131,586	376	40%
Oxley	157	122,000	349	45%
Wynnum	115	130,750	374	31%
<b>Totals</b>	<b>2261</b>	<b>1,089,803</b>	<b>3115</b>	<b>73%</b>
<b>GRAND TOTAL</b>	<b>4619</b>	<b>2,726,300</b>	<b>7767</b>	
<b>ACTUAL STRENGTH</b>	<b>5085</b>	<b>2,726,300</b>	<b>7767</b>	<b>65%</b>
<b>PRESENT RATES</b>	<b>1: 536</b>	<b>ADJUSTED RATIO:</b>		<b>1: 351</b>

# Includes Regional resources.

\* Source: Queensland Police Department Annual Report 1987/88

† Calculation based on Eric St Johnston Ratio.

**FIGURE 8.8**

Although somewhat subjective, and its relevance untested, the application of these ratios in Queensland would require an additional 2,700 police officers.

There is much variation between the police coverage of different parts of the State, and great variation in the extent to which each establishment varies from the "ideal".

The impact of development and population growth has apparently not been translated into alterations in staff allocations in some areas of Queensland.

There are also some obvious anomalies among police districts. Charleville and Longreach, for example, are apparently over-resourced, while Beenleigh, within the fastest growing area in the State and an area which has high crime rates, appears to be grossly under-resourced. It has been claimed that such variations are partly dictated by social and historical factors and partly by political factors.

The ratio is useful in highlighting the need to resolve such anomalies, and can provide a guide to overall police numbers.

In this context, it is interesting to note that the Brisbane metropolitan area (comprising the police districts of North Brisbane, South Brisbane and Fortitude Valley) has been relatively well-supplied with resources. It has staffing levels which are close to requirements, predicted by the Eric St Johnson ratio and experienced a significantly lower crime growth than the rest of the State between 1984 and 1987. The details are contained in Figure 8.9

#### BRISBANE METROPOLITAN POLICING 1984 TO 1987

	Pop.#	Selected Crimes	General Crimes	Police Force	% of State Estab.	Adj.* Nos.	Actual % of Adj. Nos.
1984	574.000 (est.)	18145	52713	1310	28%	1640	80%
1985	561.781	18496	53107	1403	29%	1605	87%
1986	564.128	18461	53510	1301	27%	1612	81%
1987	554.381		53721	1496	29%	1584	94%

In period 1984 to 1987:	Metropolitan Area	Queensland
Selected Crime Rate rose	5%	16.0%
General Crime Rate rose	1.9%	14.8%
Police Numbers rose	14.2%	8.2%
Resident Population# Numbers	(-3.0%)	(+1.8%)

# Population Estimates from Queensland Police Department Annual Reports.

Note: "Metropolitan area" consists of Brisbane, Fortitude Valley and South Brisbane Police Districts.

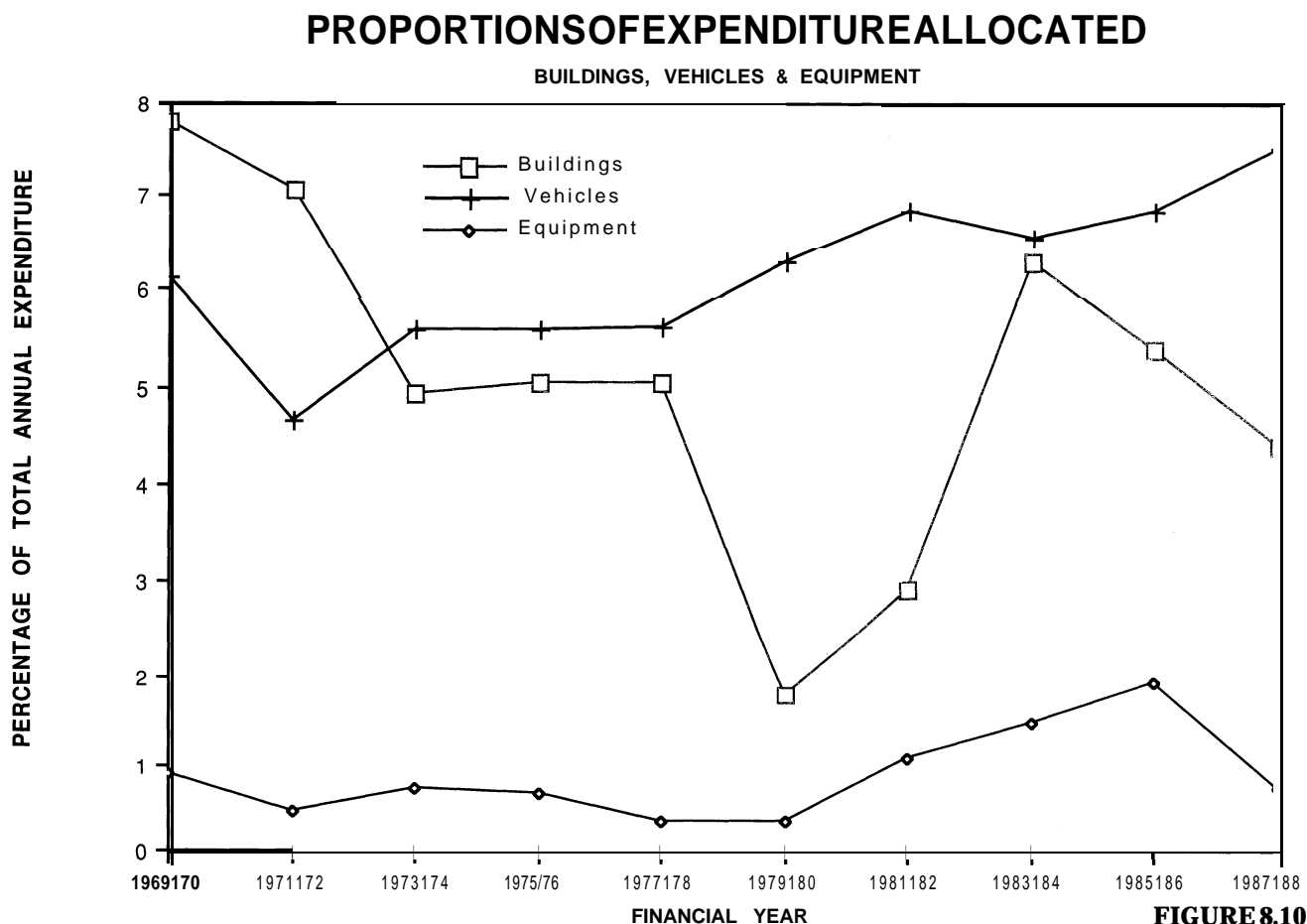
\* Calculation based on Eric St Johnston Ratio.

**FIGURE 8.9**

It will require vastly improved local research to determine necessary police:population ratios in various regions. It is sufficient at this stage to highlight the fact that available evidence suggests significant additions are necessary, especially in growth centres of Queensland.

### (b) Equipment and Vehicles

The proportion of total expenditure allocated to equipment, vehicles and accommodation has varied over the years, reflecting major capital expenditures and yearly budget variations. These variations are shown in Figure 8.10.



Submissions to this Commission argued that there is a need for more equipment, and that is not disputed.

Police vehicles present an interesting study. There are approximately 23 vehicles available per 100 police officers, down marginally on a figure of 24 available in earlier years.

The use of police vehicles to drive senior officers to and from work has been criticized as responsible for diverting police and vehicles from patrolling duties. Whilst the Police Department argues that keeping cars on the road as "taxis" maintains a police presence and acts as a deterrent, this practice results in commitment of scarce resources needed for emergency situations and has an adverse impact on police response times.

One of the most significant changes in police methods in the last 20 years has been the advent of the Brisbane Mobile Patrols, which were introduced in 1972/73.

Initially, these patrols established a police presence which was additional to that already provided by the police stations. Since then, a number of small suburban police stations have closed altogether or are closed between 4 pm and 7 am, which means the local police presence has been reduced and replaced by mobile patrols.

The controversy which has surrounded the closure of small police stations has continued for many years. It is regrettable that an objective analysis of the effectiveness of the new approach is not possible, as the data is simply not available.

Given that the Brisbane Mobile Patrols currently operate only 28 sedans over an area ranging from Zillmere to Mt Gravatt, it is not surprising that controversy over coverage, service and response times continues. Indeed, as the number of vehicles operated is so surprisingly small, it seems obvious that the service needs to be upgraded. The resources assigned to this area have not substantially changed for 10 years.

Because of fleet purchase concessions, sales tax exemptions and the favourable resale prices obtained for Government vehicles, it is possible to maintain a fleet with limited additional capital outlay once an initial base level is reached. The vehicle deficiency is therefore not an insurmountable problem by any means.

Because police mobility is of vital importance, the cost of the extra vehicles must be included in recruitment, training and equipment costs for an increased police establishment. Every additional 100 police officers will require a minimum of 25 additional vehicles. However, allocation and use factors require constant internal evaluation and review to ensure that the Department obtains maximum benefit from its vehicles.

Examination of other equipment requirements indicates that increased funding will be needed for a number of years especially in the area of covert surveillance and the intelligence gathering capacity of the Force including computing capacity. Determination of the correct strategy for computing will depend on the results of a study into information needs within the criminal justice system overall, as recommended later in this Report.

### **(c) Police Resource Requirements**

Although improved local research will form an essential basis for establishing future resource requirements in a more objective manner, general research does suggest that:

- at certain levels of police coverage, at least, increasing police numbers does not necessarily reduce crime rates or increase the rate at which crimes are solved;
- ⚡ patrol activities assist in maintaining order, providing response capacity and service, but have limited impact on the incidence of crime. Regular foot patrols, however, reduce citizens' fear of crime;
- ⚡ two officer motorized patrols are no more effective than one officer patrols, and the likelihood of injury to officers in one person patrol cars does not increase;
- saturation patrolling does reduce crime in an area, but moves it to other areas;
- ⚡ violent crimes, which are the crimes most feared by the public, are rarely encountered by police on patrol; and
- ⚡ most crimes are solved not by criminal investigations, but because someone apprehends the offender immediately, or someone, usually a victim, bystander or other citizen, identifies the offender or provides information which permits identification.

There is need to establish a resource plan reflecting such elements or factors as population, ethnicity, area, communications and transport facilities, crime factors and crime statistics and trends. It must take account not only of operational workload but staffing considerations, like holidays, sick leave, long service leave, and essential non-operational time as in attending court to give evidence. This plan will guide recruiting programmes in future.

In making such demographic analyses, crime factors should be identified and so far as possible standardized to allow comparisons.

Relevant statistics are essential to planning the proper allocation of and need for police resources. Those statistics presently maintained by the police, at least those published by it, are inadequate and misleading. After an appropriate statistically based model is developed, assessing the real need for resources will be considerably simplified.

## 8.3 CHANGING THE APPROACH

### 8.3.1 Introduction

Although there may be argument about the need for resources, there are changes in emphasis and organization which can be made to the Queensland Police Force which are equally important for the development of a stable, efficient and effective criminal law enforcement body.

### 8.3.2 Community Policing

#### (a) Policing Strategies

The diverse range of policing duties requires sound decisions to be made about priorities and strategies. Most policing effort is reactive, with preventive strategies receiving low priority. While acknowledging that a considerable amount of policing time will always involve response to events, there is need to integrate preventive policing strategies as priority activities in the role of every police officer, in order to halt the escalating crime rate.

#### (b) Reactive Policing

The traditional operating methods of police are dominated by patrol duties and detective functions.

Patrol duties consume most of police force resources and are a common occupational experience for the members of the Force. Patrol operations are usually carried out by pairs of officers in vehicles or on foot. They patrol randomly or in a predetermined pattern observing citizens, monitoring hazards or risks and responding to calls for help. Patrols are based on the theory that the visible presence of police prevents crime and reassures citizens.

The detective service attempts to gather information to solve crimes and prosecute the offenders. The reliance of detectives on information often puts them in close contact with criminals. The nature of their work means they are difficult to control and supervise, and this problem is exacerbated by detectives' aura of belonging to an elite service, and their considerable power within the organization.

In the past decade, it has become apparent that these methods have not stemmed the growth of crime, especially violent crime, essentially because they are reactive. Police respond to events rather than pre-empting and preventing them.

The success of measures such as "Crime Stoppers" and "Australia's Most Wanted" have demonstrated the effectiveness of involving the public in the apprehension of offenders. These programmes are primarily reactive, in that they take place after crime has been committed. They may help prevention if the people apprehended are habitual criminals who are thereby prevented from continuing their lives of crime.

If crime is to be reduced and the public reassured, the police and the public must co-operate in initiating strategies to protect citizens from crime and capture and prosecute offenders.

#### (c) Preventive Policing

While there will always be a place for reactive policing, the ever increasing crime rates have resulted in a world-wide trend away from reactive strategies towards positive crime prevention. This involves police work as a community based endeavour.

The challenge for police is to involve the community in developing new approaches which achieve results, constrain crime growth rates and ultimately reverse them.

In implementing these approaches, both police and public will have to move away from a view of the Force as a separate professional defence against crime and disorder, towards attitudes which involve the community and the police in preventing crime. This will be

successful only if the community accepts its share of the responsibility and the Police Force provides the necessary leadership and support for this to occur.

#### **(d) Community Policing**

##### **(i) Establishing the Basis**

Community oriented policing is not a coherent set of policing strategies, but involves a multiplicity of developments, all of which are based on the notion that community involvement is essential to successful police work. Citizens have to be encouraged to accept their duties and responsibilities in upholding the law, protecting lives and property and helping in the apprehension of offenders.

To be successful, community policing and crime prevention must focus on the needs of particular communities and involve the community in meeting those needs.

Information on crime trends within the community must be available to enable appropriate programmes to be developed and the impact of community policing strategies to be assessed. This in itself is an extremely difficult task, as communities are far from cohesive and involve groups without easily defined boundaries.

Communities tend to be diverse, divided groups composed of individuals who exhibit the full range of human characteristics and behaviour. They are also notoriously difficult to organize for the achievement of longer term goals and objectives. Since the best predictors of crime and clearance rates tend to be social conditions such as income, unemployment, population, and social heterogeneity, the worst areas for crime and hence the most appropriate for the development of community based strategies are likely to have 'problem' characteristics.

##### **(ii) Developing Community Policing Programmes and Strategies**

The establishment of community crime committees consisting of members of the public, police officers, welfare and other community groups is the first step in community-based crime prevention.

Not only are these committees important in articulating community needs and enlisting community support for initiatives, but they are also important because community members are often the first to be aware of crime trends, levels of community concern and more particularly, of the likely impact and consequences of suggested strategies and programmes. Information generated from the work of a number of such committees provides a basis for local, district and regional planning by the Force.

The principle of community involvement can be extended to smaller scale projects involving special interest groups. Preventive programmes aimed at shop stealing, for example, can be developed in consultation with store management, security staff, employees and customers.

The most common community preventive programmes in Australia are the Safety House Scheme and Neighborhood Watch. However effective these schemes have been, their introduction is only one aspect of a community preventive strategy.

Successful introduction of community policing requires basic changes in the orientation of the Police Force, its staff and its operations. They must move away from the concept of policing based on inflexible strategies and towards the delivery of services dictated by the needs of the community.

The development of effective crime prevention strategies requires comprehensive and accurate information on the victims of crime. Information on the times, places and characteristics of people victimized, and information on the characteristics and motivations of offenders help identify dangerous locations, situations and potential victims.

Identification of these causal factors is vital to the development of crime prevention programmes and strategies.

The problem with ready made programmes (such as Neighborhood Watch) is that they may be introduced without modifying them to meet community characteristics. Collecting information, assessing community needs and developing specific programmes to address those needs is likely to be time and resource intensive and has high risk of failure. As a result, the public are offered “packaged” solutions which have been accepted by police elsewhere.

### (iii) **Introducing Community Policing Programmes**

Obstacles to the introduction of community policing methods are likely to come from police officers and their unions. Senior officers of the Queensland Police Force openly acknowledge this.

All organizations are resistant to change, but police organizations over a long period of time have demonstrated abnormally high levels of resistance.

Interstate experience is that while Police Forces may be altered to introduce community based policing and operating methods, including increased emphasis on foot patrol, acceptance by individual officers is more difficult to obtain.

In Queensland, the Brisbane Policing Study, which was to lay the foundation for community policing development, emphasized vehicle patrols, and the ‘rationalization’ of police stations into fewer, larger divisions to be serviced by these patrols. The re-introduction of foot patrols was not given prominence. Overseas, foot patrols have been the primary operational strategy in successful community policing, as they give police personal contact with the community and increase the perceived levels of safety and security.

Co-operation between police and the community is best initiated at a one to one level. It is important that the public are aware of and able to interact with police officers in normal community settings.

Small stations, taken in this context, are not necessarily ineffective or uneconomic. Low crime rates in some divisions may indicate that police are being extremely effective in preventing crime and preserving order.

In Japan and parts of the United States, small local police stations provide twenty-four hour service. In this State, employment conditions for police officers may at present preclude this arrangement. It is important, however, that local stations are manned and local programmes are conducted at times which are convenient to the public. Closing police stations at 4 p.m. or conducting programmes during working hours is not sensible in areas where the majority of citizens are working.

If local stations cannot provide twenty-four hour service then backup services (including mobile patrols) should be adequate to provide an assured response. Co-operation between these services and local police stations is also required, so that community police are fully informed of matters which occur outside of station hours.

Although the requirement for the Police Department to perform many “extraneous duties” has been a constant complaint in Department reports, some of these duties provide interaction between the police and the public in the course of everyday life and not in situations of stress, ill-will or threat.

Fewer, larger police stations may appear to be more economic, but are unlikely to increase interaction between police and the public in community settings.

In country areas, this interaction already occurs. In urban areas, it is extremely important that police stations be accessible to the community. Many existing stations

are poorly sited and deter rather than encourage community contact. Shop front stations in local shopping centres are one approach to this problem.

Policing must again become a neighbourhood affair, where members of the community are familiar with locally based police officers and the officers and their families become part of the community which they serve. Community policing should become the primary policing strategy. Local officers must be uniformed to assist in community identification and familiarity.

Many community policing activities may not require police training and powers. Civilian staff attached to local police stations could be integrated into the community policing team to assist with duties not requiring full police powers. Under restructuring arrangements proposed later, there should be ample civilian support in the regions for this purpose.

Community policing requires a re-orientation of the Police Force away from an emphasis upon reactive police "defence" of the community towards a co-operative effort which involves both this defensive aspect and an offensive or preventive aspect. This includes altering policing strategies to accommodate the needs of the community as well as mobilization of both the community and the Police Force to prevent crime and maintain order.

#### **(iv) Involving Groups with Special Needs**

Australian society is far from homogeneous. Within all communities, groups exist which differ in race or culture from the majority.

For community policing to be successful, special measures will be needed to ensure these groups are involved in community programmes. In areas with high concentrations of specific ethnic groups and in Aboriginal communities, recruitment of Police Department staff with language and cultural skills, who can gain the acceptance and co-operation of these groups will be essential to the successful introduction of community policing programmes.

### **8.3.3 Regionalization**

Effective policing is dependent upon as many members of the Police Force as possible considering themselves parts of local teams and so identifying themselves with their local areas.

The establishment of community policing must be accompanied by an increased emphasis upon regional arrangements. If Regional Commanders are to respond to the needs of the communities which they serve, they must have control over, authority and responsibility for resources, including money, staff and equipment.

The principles which should be applied in determining regions include community of interest (geography, likeness of communities, traditional and contemporary nature of allegiances and attachments of communities), economic and political factors, management arrangements, existing local authority, state electoral and statistical boundaries and the nature of policing problems and crime trends.

It would be premature for this report to specify the number and size of police regions required to ensure the greatest impact from community policing. Re-organization of regions, districts and divisions will undoubtedly be necessary in the future, especially as performance measures, crime research results and the comparisons they permit become available and influence the management of the Force. A current proposal to establish four large Police regions in Queensland, therefore, cannot be supported without the degree of research and evaluation considered necessary to support the merits of this case.

While the political and social ramifications of necessary changes to police staff allocations cannot be ignored, the present system of distribution hinders the efficiency and effectiveness of the Force. A thorough review



of staffing arrangements in all divisions, districts and regions is needed to determine appropriate establishments. Regional and district officers must play an active role in this process, to ensure local information essential to sound decision-making, is afforded priority.

Where legitimate considerations prevent alterations to some establishments in the short term, regional and district officers could design projects and programmes for trial in those areas which have excess staff levels. This would be advantageous in the introduction of community policing strategies and would provide opportunities to identify needs and trends and design evaluation measures in smaller areas before attempting them on a larger scale.

### **8.3.4 Metropolitan Policing**

The Department's proposed amalgamation of the existing North and South Brisbane Regions into one metropolitan region is not considered advisable. The population would be much larger than that of any other region in the State and would hamper effective management. However, the Department's plan to have district officers take over responsibility for all policing activity in their areas including mobile patrols and criminal investigations is consistent with the concept of regionalization.

Co-operation, co-ordination and liaison must be improved if the metropolitan area is to be effectively policed. Regional, district and divisional commanders must be consulted and advised on operations which cross local boundaries or which require the rapid redeployment of officers and equipment. Centralization is not necessary, however there should be an operations centre and present plans for its location in the new Police Headquarters are supported by this report.

The metropolitan area is developing outward, so the need for co-ordination and liaison extends beyond the boundaries of the existing Brisbane metropolitan area to include the south-eastern corner of the state.

Departmental accommodation plans which involve the development of major police complexes at Mt Gravatt and Boondall should proceed. Locating the complexes outside the city centre will improve police accessibility. These developments could form the basis for the North and South Brisbane regional structures.

It seems that, rather than addressing the problem of re-allocating resources, the Department has proposed a regional structure which keeps control of metropolitan policing firmly in the hands of Head Office.

The problem of allocation of staff and equipment addressed in the metropolitan policing plan by projected closure of police stations and the introduction of the new regional arrangements have been addressed in this report not by re-arrangement of police stations (with continuation of head office control of placement of these resources) but by delegating responsibility for these decisions to regional commanders.

Consequently, regional commanders in the metropolitan area will be required to carry out duties and responsibilities within their regions similar to those of other regional commanders throughout the State, not preside over a vast regional structure wherein effective management is precluded by both size and Head Office influence.

### **8.3.5 Civilianization**

#### **(a) Present Staffing Arrangements**

Over the past fifteen years, the component of public servants and crown employees has remained relatively stable at approximately 16% of the Police Force. Despite the growth in specialized tasks, there has been no trend towards increasing the civilian component of the Police Department. Police officers have been placed in many positions which do not require police skills and for which, in many instances, they are unsuited.

There are a number of reasons why the Department has not more fully used the range of skills and experience available from the civilian workforce.

Under prior public service arrangements, the Department could not always choose which categories of staff were employed. 'Freezes', which limited public service staff numbers while permitting increases in the number of police officers, encouraged a tendency to fill administrative or specialist positions with readily available police officers.

Police culture has played a major role. Police officers (and their unions) have regarded any extension of civilian roles as an intrusion into 'police' duties. As well, there is a general unwillingness among police to accept direction from any 'outsiders' or to accept authority other than that of a more senior member of the Force.

The Police Unions and the Police Force hierarchy have a common interest in extending the sphere of influence of police officers within the Department, and in providing a range of positions within the organization for the advancement of ambitious officers and the placement of those officers no longer able or willing to perform active police duties.

The Police Department presently has a goal of a "fully integrated Department with both police and civilians committed to the stated purpose of the Department", but it is hedged with limitations on civilianization.

## **(b) Civilianization**

There are a number of arguments which have been used to counter suggestions that positions currently held by police officers could be civilianized.

First, it is said that employment must be available for officers who become physically disabled but who want to continue to contribute. This is certainly desirable, and could be accommodated by more flexible staffing arrangements, including the option of employment in an essential position as a civilian.

Secondly, it is said that costs are not necessarily reduced by employing civilians, that they are dependent upon the position and task, and that in fact some public service positions may require a higher salary. The price paid, however, for civilian specialists may well be justified, if the alternative is a mediocre result caused by police being inadequately trained or experienced.

In addition, salary costs are not the total cost of an employee. Training, leave, superannuation, penalty rates and allowances have to be taken into account as well.

Thirdly, it is said that civilian members do not take account of relieving requirements and that, for example, if there is only one administrative assistant and when he or she is absent on leave, no relief staff are available.

Lack of relieving staff is an organizational and staff planning problem, not an argument against the employment of a particular category of officer. (Part-time administrative assistance is one way of overcoming staff shortages caused by recreation leave.)

Fourthly, it is said that civilian staff are subject to control from the public service hierarchy, which undermines the line of command and the authority of senior police officers. Duality in the control of employees is similarly an organizational problem, which can be addressed by restructuring.

Lastly, it is said that civilian industrial awards allow for industrial action including strikes, which is inconsistent with 24 hour police service. The short answer to this is that history demonstrates that public servants very rarely strike.

## **(c) Improved Use of Police**

With crime levels escalating rapidly, trained police must be available to undertake operational policing duties. As many duties presently undertaken by police are non-operational and not directly involved with crime prevention or law enforcement, a general review and reallocation of resources is warranted. This will allow police to be replaced with civilians who are better suited for the many administrative and other specialist roles required in a modern police department.

The education, training and experience of police officers is fundamentally different from that required for other functions. People who join the Police Force have expectations about the work they will be doing, and their training prepares them for this work. If individuals are then told to do work which is not in accord with their expectations and training, serious morale problems result. Morale problems invariably cause poor performance, absenteeism or resignations which result in avoidable indirect costs.

In the Queensland Police Department, the placement of police officers in certain administrative or routine positions is a customary punishment or consequence of inadequate performance as judged by senior staff. This 'punishment centre' philosophy is unlikely to result in efficient and effective performance, especially if vital functions of the Force such as operations control are involved.

Police training is costly and its purpose is the provision of operational policing duties to the community. Moreover, police conditions of employment and remuneration, including leave arrangements, have been established on the basis of duties provided 24 hours a day, 365 days per year. Inappropriate placement of police officers invariably results in artificial arrangements designed to compensate these officers for penalty rates and overtime foregone, for example special allowances for particular duties, hours of duty organized to attract allowances and so on.

#### **(d) Greater Use of Civilians**

The Department has a responsibility to make sure that staff are allocated to enhance performance, achieve staff satisfaction, and ensure efficiency in operations.

Current and concise job descriptions should be developed for all the positions in the Department so that the type of staff, skills and qualifications needed for each position can be determined. Positions which contain inappropriate mixtures of duties should be redesigned.

This process will undoubtedly identify many jobs which are presently done by police which would be better done by civilians, and others which could be performed by either police or civilians. Police involvement in many areas of the organization could be greatly reduced or eliminated, leaving officers free to do the jobs on which the public places priority.

The need to exercise police authority and use police skills is the only valid reason for reserving positions for police officers.

There are many operational support positions which have the potential for civilianization. (Figure 8.11 refers) Whether any or all such positions are necessary is a separate question to be addressed in the review of present police functions recommended later.

New public sector employment arrangements mean that the Department now has greater flexibility to employ staff in a variety of circumstances. For example, shift work may be necessary for civilian staff.

Not only will the placement of numbers of carefully chosen, skilled and trained civilians within the Department free police officers for policing duties, it will also assist in developing the new community emphasis within the Force. Community policing initiatives will be carried out by civilians and police officers working together.

Problems of police culture will be addressed by breaking work groups of police officers into units including both police officers and civilians.

### **8.3.6 Specialized Policing Activities**

At present the Police Force includes a number of specialized functions, each with its own hierarchy. These arrangements have resulted in a group of police officers being devoted to each function after initial experience as constables.

Many of these functions do not require full police powers and, in some cases, officers engaged in these activities can be completely divorced from routine police operations for many years.

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## INDICATIVE LIST OF POSITIONS WITH POTENTIAL FOR CIVILIANIZATION

- Police Administration Branch
  - Operational Audit Section
  - Management Services Branch
  - Community Relations, Ethnic Liaison and Media Liaison Activities
  - Some Police Citizen Youth Welfare Association involvement
  - Ceremonial Mounted Police Duties (not patrol duties)
  - Police Band
  - Police History and Museum
  - Information Bureau and Intelligence Functions
  - Technical and Scientific Services including photographic, firearms, document examination, fingerprint and scientific sections
  - Despatch
  - Uniform Store
  - Stores and Equipment
  - Launch Maintenance
  - Police Diving Squad and some Water Police activities
  - Radio and Electronics
  - Mt Cotton Driver Training Centre
  - Breath Analysis Section
  - Some Traffic Operations (including radar and patrols)
  - Traffic Policy
  - Traffic Accident Investigation Squad
  - Disaster Victim Identification Duties
  - Police Operations Centre
  - Fraud Squad
  - Arson Squad
  - Explosive Ordnance Reconnaissance Team
  - Headquarters Building Security
  - Welfare
  - Human Resource Planning Unit
  - Personnel
  - Industrial Relations
  - Supervision of cells in large Police Stations
  - Prosecutions
  - Legal Section
  - Recruitment
  - Manual Section
  - Police Academy
  - Police College
  - Some Training, Courses and Seminars
  - Criminal History Recording and Offence Reports
  - Police Gazette
  - Miscellaneous licenses
  - Visa Section
  - Warrant Bureau
  - Statistics
- 

**FIGURE 8.11**

Those special functions associated with criminal investigations (including the Detective Service) rely on training and the development of skills needed to fight crime and bring offenders to justice. These are skills needed by all police officers. So called specialized roles should, therefore, be critically reviewed with a view to re-establishing legitimate police functions as routine operations and to ensure police are not performing jobs which civilians could undertake.

### **(a) Prosecutions and Legal Functions**

#### **(i) Prosecutions**

The Prosecution Corps is said to be an economical way of dealing with the vast number of summary criminal matters and committals. It also provides a training ground for the Police Force's Legal and Training staff.

The Legal and Training Section's role includes responsibility for the preparation of legislation administered by the Department and for advising the Minister for Police.

The Prosecution Corps has a policy of accelerated promotion as a conscious endeavour to attract staff. Even so, the loss of overtime for prosecutors has meant a dearth of applicants. Some who have qualified have treated the training as a promotional device. After costly and extensive training, they serve a minimum time in the Corps before getting transfers to a higher rank elsewhere. This accelerated promotion and transfer has often been at the cost of police who have been performing duties for some time with the expectation of promotion. It is generally resented and is said to create morale problems.

The employment of experienced police officers as Police Prosecutors absorbs resources which might be better employed on other essential policing duties.

It is undesirable that the courts be seen as having to rely upon the Police Force to exercise important discretions in bringing and pursuing charges. That is made worse by any public perception that the Police have special standing or influence in the prosecution process.

A large number of complaints are pursued by Police Prosecutors when they are unwilling or, because of Departmental practice, unable to withdraw charges which are either misconceived in law or inappropriately brought. These actions are very wasteful of valuable court time and of police resources.

Independent, legally qualified people could be employed by the Director of Prosecutions to conduct prosecutions.

This course of action may involve increased initial costs, but they must be balanced against the ability to recruit staff with specialized skills, the cost of training and employing approximately 100 police exclusively on prosecution duties, and the other costs of present practices.

Independent, legally qualified prosecution staff will in all likelihood bring about efficiencies and reductions in the case load of prosecutions. Defective cases can be identified and either remitted for further investigation or, if the defect is incurable, be dropped. Better prepared cases from which avoidable legal flaws have been eliminated will result in fewer contests, with savings in time and resources.

It may not be feasible to provide fully trained prosecution staff, independent of the Police Force, for all minor offences particularly in remote areas. Experienced police could be allowed to prosecute very minor offences in remote areas. Otherwise, the police resources taken up by the Police Prosecution Corps could be redirected to ordinary police duties, except for those prosecutors who are in the process of completing tertiary study with a view to becoming part of the Director of Prosecutions office.

## **(ii) Legal and Training**

Having a Legal Section within the Police Department, staffed by police officers, results in legal advice and in-house training which is not independent of the demands of operational policing. In the absence of this independence, legal skills and knowledge can be applied to pervert rather than uphold the course of justice. It also increases the likelihood of different advice on the meaning of the same legislation being given to different parts of the Government.

The quality of legal advice in lectures to police prepared by the Legal and Training Section has been deficient and in some instances incorrect. It over-complicates and

misdirects police investigations and lacks sensitivity to legal issues. This is understandable because, with a few exceptions, the staff of the Legal Section have not been fully or formally legally trained.

Putting aside the point of principle as to whether the Police Force should be advising the Government on legislation, the advice, including draft legislation, which has been given to the Government by the Legal and Training Section of the Police Force in recent years has been defective. It has demonstrated an insensitivity to the overall balance of considerations in criminal law. Sectional interest in obtaining convictions has produced legislation which, apart from poor draftsmanship, has addressed only matters of concern to police prosecution; the reversal of the onus of proof and the liberal use of deeming provisions.

These laws have been controversial, have had no demonstrable effect upon the escalation of crime, and have not improved the administration of criminal justice.

While the application of legislative requirements is a Police Department responsibility, legal advice should be obtained when necessary from appropriate professional sources such as the Crown Solicitor's Office or the Office of the Director of Prosecutions. Indeed, a closer relationship between police and professionals in these offices may be of considerable benefit in inculcating the ethical values of these professionals in police.

### (b) Special Squads

There are a number of specialist squads in the Police Force; particularly in the Criminal Investigation Branch. (Figure 8.12)

Special Squad	Nos.	Special Squad	Nos.
Major Crime	12	Railway	14
Homicide	13	Fraud	42
Armed Holdup	8	Sexual Offenders	16
Drug	32	Arson	8
Break & Enter	23	Fauna	2
Dealers	7	Stock	4
Metro. Field Staff	14	University Liaison	1
Auto Theft	23	Headquarters	42

CIB Area Offices	Nos.
South Brisbane	22
Fortitude Valley	19
Nundah	14
Michelton	10
Taringa	10
Upper Mt Gravatt	13
Albany Creek	3

FIGURE 8.12

A series of relatively independent and unto-ordinated specialist groups is not, however, the most satisfactory response to the need for special law enforcement powers and skills, either generally, or with respect to such matters as organized crime, official misconduct, consensual and clandestine offences.

The present specialist groups are largely the product of ad hoc responses to pressures and needs. They are costly, complicate administration to an increasing extent as the number of units and the variety of their functions expands, and deplete the staff and resources available for local law enforcement by community police. Moreover, there are too few staff for efficient specialized units.

In some cases they deal with only a small number of reported offences. Generally they have little practical or lasting effect on major or repetitive criminal activities.

Their existence helps to disguise institutional deficiencies including inadequate funds and resources, and imposes additional burdens on local police.

Information storage and analysis by individual squads is inefficient and a barrier to the development and use of an integrated information system for use in law reform generally.

Police in the specialist squads are also more exposed to the temptation of and opportunity for misconduct. The specialist unit system has fostered and helped corruption. It masks police officers' unlawful activities. Glaring examples are the direct involvement of a number of members of the Auto Theft Squad in organized car stealing and bribery of members of the Licensing Branch by operators of gaming and prostitution.

The assignment of exclusive responsibility for the investigation of a particular type of criminal offence makes the members of that squad attractive targets for corruption, and places corrupt police in an ideal position to organize crime and prevent its detection by other police. The task of investigating or policing any particular type of criminal conduct should not, in all but a few cases, be the exclusive concern of a particular unit.

With the exception of those involved in covert operations, the tasks performed and techniques used by the specialist operational squads are only aspects of standard police work. The process of taking statements, preserving the scenes of crimes, keenly observing, making inquiries, evaluating information and, where necessary, exercising powers such as to search premises or search or detain or arrest persons is the same. Only the relevance of particular facts or lines of inquiry, as pertinent to different types of possible offences, changes. Greater prowess as an investigator is the product of natural imagination, perceptiveness, analytical ability and dedication, not 'specialized or specific' learning or physical or trade skills. Police skill but not specialist skill is what is needed for these tasks.

The system of transfers and promotions between specialized units and general duties on an unrestricted basis implicitly recognizes that the skills obtained are aspects of ordinary police work. The significance of police officers in such squads acquiring greater experience in investigating a particular offence or classes of offence is greatly overrated. Furthermore, specialist squads limit the opportunities of general police to enhance their skills.

For example, the primary distinction between the Break and Enter Squad, the Dealers Squad, the Auto Theft Squad and the Armed Hold-up Squad is the type of criminal conduct with which they are mainly concerned. All use general police skills.

Criminal investigation skills are necessary for the performance of the police officer's role. All police officers should be given the training and opportunity to develop these skills. The ability to obtain information from the public requires expertise in human relationships and communications, and is of great importance. At present, there is little emphasis upon development of these skills.

The establishment of special squads has limited the opportunities for general police to enhance their skills while providing management with opportunities for avoiding their responsibilities. In many cases, limited resources have resulted in only a token policing effort. Some examples help to illustrate the point.

### **(i) The Drug Squad**

The Drug Squad had very limited resources until recent small additions, and has inadequate covert surveillance capacity. Although the squad assists local and interstate police, the impact on major trafficking and organized crime has been limited.

In most cases, local police and the community provide information regarding smaller scale drug offences. These problems need to be handled within police regions, and all police need sufficient training to perform this task.

With regard to major operations, the work could be better undertaken by a larger group with special covert policing expertise and responsibility not confined to drug offences. A vast improvement in intelligence capacity and systems will be a necessary prerequisite.

## **(ii) Juvenile Aid Bureau**

The Juvenile Aid Bureau provides an example of the formation of a specialist squad to address organizational problems caused by lack of essential skills, police attitudes and culture.

The Bureau was set up because the Police Department established that many police were unwilling to work with juveniles. As well, there was a resistance in the CIB to preventive work and philosophies. Because of these attitudes, duties involving juveniles were reported to be given to the newest members or as a penalty. Consequently, the officers performed only the minimum necessary duties without commitment to the juveniles coming to their attention.

The present Juvenile Aid Bureau is staffed with volunteers, equipped with goodwill, dedication and a minimum of in-house training. They are subjected to the scorn and ridicule of other police officers as they attend their 'Kiddy-Cop' duties. The protocols developed by the Bureau, such as methods of interviewing the suspected victims of sexual abuse, have not been accepted in other areas of the Force, which deal with young people when JAB members are not available. There has been no attempt to address the cultural and attitudinal problems towards juvenile offenders.

The Police Department needs to address these problems and as well, make sure that all officers are trained to perform juvenile related duties.

Juveniles and young adults are directly responsible for a large proportion of the offences which are committed. Many older criminals began their careers in crime in their youth and continued either through choice or necessity as other options closed to them because of their offences. For many, a term of imprisonment while young and immature has ingrained bad attitudes and provided lessons in criminal skills.

The Juvenile Aid Bureau also endeavours to assume responsibility for resolving the many tragic crimes against children. No civilized community can accept or condone the existence of child abuse or the plight of those who are destitute, vulnerable to exploitation or simply devoid of proper guidance in their formative years.

Child abuse, including the sexual exploitation of children is prevalent throughout the community. Instruction in the investigation of juvenile offences and child abuse is given only to police officers attending commissioned officers qualifying courses and occasional Juvenile Aid Bureau courses. It is futile for groups of specialists, who are not drawn from the local communities, to deal with isolated cases.

Recruits with an interest and involvement in youth work should be encouraged and as many young police officers as possible should have experience in work with juveniles from the beginning of their careers. Police officers with interest in and involvement with youth activities should be offered the necessary training and support to enable them to adequately perform this important role.

General police training should include dealing with victims of child abuse and sexual assault. Emphasis should be put upon training local police to handle such complaints at least to the point where any threat to the child is removed and the child's physical well-being and health are stabilized or improved.



The further involvement of police in such matters would then be confined to prevention and investigation including, when necessary and appropriate, the interviewing of potential witnesses. Local police should be primarily responsible for such tasks. Additional expert assistance should be provided when needed.

Large numbers of ordinary police officers who mingle with other members of local communities are far more likely to have a significant effect in relation to the serious problem of child abuse and juvenile crime than a number of specialists who are able to provide only an isolated response, however committed and hard working the people involved.

### **(iii) Victim Support**

Reported crime rates are generally considered to indicate the amount of criminality in the community. However, they also have another aspect. For each reported crime there is at least one victim. While in many cases, the perpetrator of the offence may never be detected, prosecuted or punished, every victim is punished by the effects of the crime.

When a crime is reported, the victim's experience includes contact with the police. To date, police responses have been mainly motivated by the desire to have the victim help their investigations and appear as a prosecution witness, should this be necessary. The adversarial system of criminal justice contributes to the distress of victims and this process often begins with initial police contact.

The recent adoption of this State of the Declaration of Rights of Victims of Crime has given victims the right to be supplied with information and notified of impending criminal actions. It also requires police to receive training to enable them to address the rights and meet the needs of crime victims. Until recently, police have not been provided with any training to assist the victims of crime, and training is still inadequate.

Ideally, victims should have specialist referral units available, but the population distribution in the State makes access to these services impossible for many citizens. Police are likely to be the initial point of contact in many circumstances and must be given the training necessary to equip them for this role.

### **(iv) The Homicide Squad**

On the surface, it could appear that the high clear-up rate of homicides might justify the retention of this centralized squad. However, clear-up rates are primarily dependent on community information, scene of crime investigations and specialist scientific and technical support.

Every police region requires the capacity to handle homicide investigations. Revised regional arrangements will provide additional personnel and scientific specialists when these are required.

### **(v) Special Branch**

This Unit was established to gather intelligence on individuals or groups regarding threats to democratic Government, peace and order including terrorism, espionage and subversive activity, whether that be criminal or political. This Commission reviewed data held by the Branch, and concluded that the intelligence gathering capacity of the Unit was limited, systems were out of date, and that past rumors of politically inspired intelligence gathering on a wide scale could not be substantiated, (though basic information was obtained from all Parliamentarians to assist in the event of a threat). Other criminal intelligence held was in inaccessible manual form.

The major role of the Branch in recent years has been VIP protection and escort. There is no good reason why this function cannot in future be performed by the

Witness Protection Unit of the Criminal Justice Commission. The intelligence responsibility of Special Branch could best be incorporated into a revised central information bureau for the Police Force.

The Special Branch is the Police Force's official ASIO liaison point for mutually agreed information exchange in terms of a formal but voluntary agreement between these two bodies. The detailed review of intelligence systems and needs within the Criminal Justice Commission and the Police Force will, however, establish the proper liaison point or points for the exchange of information with ASIO in future. Once this is clarified the Special Branch should be abolished.

### **(c) A New Approach**

It is true that there are some aspects of police work which may warrant special skills. For example, persons dealing with complicated frauds must be familiar with corporate and commercial law and practice and broadly familiar with corporate and commercial forms and documentation. These skills are not otherwise aspects of police work, and could be better obtained and developed in permanent qualified civilian staff or experts employed on contract.

Special skills required for legitimate policing duties should be taught in proper courses, but at present this is not done. The 'school of hard knocks' theory of education by example, experience and repetitive error is totally outmoded and unacceptable in a modern law enforcement organization.

Techniques and skills should be developed by learning and research (including systematic academic study and practical observation and study of law enforcement methods elsewhere), and given by formal education to as many police as possible who should then be given the opportunity to implement what they have learned.

Criminal investigation could be enhanced if made more dependent upon local activity than upon centralized activity. Local police well known to and trusted by the individual communities they serve, will attract information. Maximum use should be made of locally knowledgeable police officers.

These officers are best placed to handle the majority of policing responsibilities ranging from threats to peace, disaster and emergency situations and the prevention and detection of crime. All police require training to ensure their competence in these areas.

The special squads are therefore not on balance considered the best way of tackling many policing problems. Most of the activities currently performed could be more effectively undertaken by community based police. Existing Special Squads should therefore be progressively abolished in conjunction with the establishment of proposed regional arrangements. A preferable mechanism to handle the few exceptions is developed below.

## **8.3.7 Task Force Arrangements**

Although there is, at present, a geographic basis of organization, criminal investigation is for practical purposes, with minor exception, organized and commanded centrally in Brisbane. That is reflected by the collection of specialist squads in the CIB based in Brisbane. Little operational flexibility is allowed and little independent responsibility is cast upon Regional Superintendents. The role of the Regional Superintendent is rather that of administrative overseer and the implementor of centrally devised policy.

With increased emphasis upon regionalization, the Regional Commander will assume control over and authority for regional operations. The Police Force will be organized into the Regional Command, comprising most operational police, and the Task Force Command.

Regional Command will provide the local community based police service. It will have full law enforcement responsibility and will supply all operational policing services throughout the State on a regional basis. It will be a disciplined rank based organization. Civilians at regional, district and divisional level will complement this effort, and assist police officers in their community policing role especially in respect to juveniles, and sections of the community with special needs.

Police assigned to task forces will have responsibility for operations against major crime and organized crime, assisting Regional Command in specific investigations, assuming temporary responsibility for particular policing problems in particular areas, covert and surveillance operations and anti-terrorism operations.

Criminal investigation should occur at a local level and be supervised and supported at a regional level. Any necessary specialist investigators and specialist operational support should be provided from regional level by task force personnel. Serious crime occurring within a region, and beyond the capacity of the local police, could also be met by task force personnel. Those police could operate within the region when intensive investigation is necessary and be primarily responsible for collation of information and the transmission of information about criminal activity to and liaison with central headquarters.

A number of benefits will flow from the decentralized operational control of criminal investigation. A healthy competitiveness in operational efficiency between regions, districts and establishments would probably lead to overall improvement in operational efficiency of the Police.

Local commanding officers would accept primary responsibility for initiating investigations. The individual police officers responsible for activities would be easily identified and opportunities for improved control, direction and supervision would be enhanced.

The organization of criminal investigation at regional level could be co-ordinated in Brisbane and the regions should liaise and co-operate both between themselves and with a central headquarters as necessary, particularly in respect of serious crime and organized crime.

The Task Force Command will contain personnel based in the Regions and staff located at Head Office. While based in regions, task force personnel will in most cases be under the direction of Regional Commanders. The Head Office Task Force Group will be commanded by an officer equivalent in rank to Regional Commander, who will have responsibility for the co-ordination role, and would command especially sensitive or statewide investigations which might involve task force personnel attached to regions.

The principle of task force organization should be assignment-specific with a minimum number of permanent established task forces. Assignment to either Head Office or Regional locations should avoid long periods of continuous contact or associations between groups of task force members and criminal elements.

Task force staff may include both police and civilian specialists with secondments on short term assignments for police from other jurisdictions. When not required for task force duties, members will assume regional responsibilities.

Appointment to the Task Force Command should be by competitive entry at any rank based on merit. Members of the Task Force and members of Regional Operations should be entitled to apply for any vacancies. Applications from persons who are not members of the Queensland Police Force but who have appropriate experience, should also be sought. Applicants from within the Force should be assessed on formal education, training including police courses, proved performance as police officers and work experience. Applicants from outside the Force could be admitted to the Task Force on the basis of rigorous practical and academic examination, and where necessary, vigorous entrance training.

Membership of the Task Force would not become an exclusive career option. Members would be encouraged to move into and out of Regional Operations at various stages of their careers. Hopefully, the investigative techniques and skills gained from membership of the Task Force and specific training courses given to those members will be filtered to the rest of the Police Force.

### **8.3.8 Uniforms**

It is proposed that members of the Task Force be uniformed whilst on duty. Only in special circumstances should superior officers authorize plain clothes duty. Comparatively few serious allegations made in evidence before this Commission concerned uniformed police. While police who are corrupted may not be deterred by the requirement that they wear uniform, at least when they are on duty they can be identified and will not be able to frequent brothels or other places where they have no reason to be without being identified as police.

Similarly, police who are well-known within their community are likely to be identified if they frequent places or act in ways which arouse public suspicion.

## **8.4 RECRUITMENT AND TRAINING**

### **8.4.1 Introduction**

The recruitment of people to become police officers is of critical importance in determining the quality of the service provided to the community. The aim of recruitment should be to attract only those applicants who will, with good training, become honest and effective police officers who earn and deserve community respect and support.

### **8.4.2 Entry Standards**

Until very recently the entry standards and procedures for recruitment included assessment of an individual's age, height, health, fitness, character, education, intelligence, and general suitability for police work. A recent change to legislation increased the maximum age for entry to 40 years, removed discriminatory height requirements, and substituted more appropriate health standards.

Written applications, written tests and panel assessment are used. Having completed Grade 12 is regarded as essential for school leaver applicants, who enter the cadet programme. The average entrance TE score over the last five years has been between 830 and 850. Applicants for the probationary programme must be between 18 and 40 years and have education up to at least Grade 10. There are between 200 and 400 new inductions each year, and the probationary/cadet ratio is 2: 1.

Suitability for police work is assessed subjectively by a panel. Only limited formally validated instruments or tests directly applicable to police work are available to assist them.

The Australian Federal Police and other Forces have made efforts in recent years to better assess an applicant's suitability for police work using a combination of methods including group selection techniques, assessment centres, psychological tests, and individual profile models. The Queensland Police Department, in its formal submission, indicated an intention to introduce some of these methods, and this Commission supports such a move.

Any review of selection criteria should incorporate research conducted by the Department's psychologists to make sure that the criteria reflect the requirements of the job. Testing procedures which identify a spread of suitable personality types are essential. The tendency to select officers most likely to conform to present Police Force culture must be overcome in developing the new schemes. They should focus on aptitude for police work-especially community policing and the important social services that police must perform. Unless tests are designed and selected with help from external professionals, they may only reinforce present stereotypes.

Psychological tests and other objective assessment methods should complement, rather than replace, present selection methods. A range of the tests used by other Forces might provide a good starting point.

It is vitally important that the history of each applicant for entry to the Force is thoroughly evaluated in terms of past behaviour and standards of conduct. It is insufficient to rely on written referees. Investigation and verification of the background of each applicant must be undertaken, to ensure that only individuals of honesty and integrity are admitted to the Force, whether at base grade or more senior levels. All applicants should be told about the need for this investigation, which should be conducted openly and frankly.

In short, a professional recruitment and selection process must be implemented.

A career in the Police Force is likely to become more attractive for graduates, if tertiary qualifications, other training and special skills are recognized in the process of assessing merit for appointment or later promotion. Recruitment campaigns should also target graduates and those with special skills.

### **8.4.3 Recruitment of Women**

At present, women may only enter as probationaries and an informal process has operated to keep the number of female police officers selected in any intake to between 5 and 12 per cent although women comprise 25% of applicants.

Women presently comprise 5.4% of the Force, although they have, in the past, accounted for a higher proportion of police members than this. (Up to 16% in 1973/74 Women have been recruited as “sworn” officers only since 1965, and assignment to general duties only became common in the 1970’s. Consequently, although women appear to have been promoted at the same rate as men, their absence from Commissioned Officer and Senior Sergeant ranks can be attributed to their comparative lack of seniority.

Within the Force, the proportion of women may have been kept low because of a misconception that women are more likely to resign than are men, and so training will be wasted. However, over the past five years, a greater proportion of men resigned from the Force. Women who resigned also stayed longer than the men who resigned.

At present, the Police Force has a policy which commits it to an increase in the proportion of women within the Force to 7% by recruiting 20% of women in each intake.

However, the emphasis should be upon recruiting the best possible applicants for police service. The introduction of an inflexible female quota system for initial training intakes is unlikely to achieve this. Special programmes may be necessary to attract qualified applicants who may not otherwise consider a police career. This will result in the recruitment of people better suited to the crime prevention emphasis of the Force, irrespective of sex, race or religion.

### **8.4.4 Age of Recruits**

A related issue is the relative youth and inexperience of cadets and some probationaries, many of whom come straight from the classroom. High attrition rates during and in the first year after training, indicate that their expectations of police work do not accord with the reality, and that they are not prepared for the unpleasant aspects of policing.

A better recruitment practice would be to select men and women with more maturity who have education or work experience beyond high school which will give them a better grounding for police work.

There are, therefore, compelling reasons to scrap the cadet system which directly recruits Grade 12 school leavers.

It may not be possible or practical to stop recruiting Grade 12 school leavers immediately. It may be practical to arrange components of behavioural science study for new recruits at external institutions during their first two years of service during both Academy and training stations programmes. This study could be accredited towards a part-time degree programme. The long term objective would be the recruitment of more mature tertiary qualified personnel.

### **8.4.5 Lateral Entry**

Like most Australian Police Forces, the Queensland Police Force recruits the majority of its personnel for base grade constable positions, with promotions being achieved after subsequent years of service, training and examination. The Police Force has been seen as a life-long career.

It could be argued that base level recruitment and internal promotion ensure consistency in standards and operational practice and that once high standards are established they are more easily maintained. The theory is that officers in the Force become as one, with consistent high standards of performance and discipline. Such a force is easily managed in a conventional authoritarian fashion.

On the other hand, a reliance on base grade entry can breed insularity and parochialism within a force. It produces strong cultural norms, including solidarity which is expressed by protecting fellow officers, even if they are engaged in serious misconduct or criminal activity.

Clearly, the Department's policy of relying almost entirely on base level recruitment and internal promotion has proved wanting and must be seriously questioned on behavioral as well as efficiency grounds. For example, the present policy excluding lateral recruitment even affects applicants who seek to rejoin the Force following resignation having attained non-commissioned rank previously. If re-appointed, they normally revert to the rank of constable unless they have retired previously on medical grounds.

Submissions to the Inquiry have advanced arguments both for and against lateral entry to the Police Force.

The Unions and individual police have expressed strong resistance to lateral entry. They see it as an impediment to promotion and a threat to the concept of a life-long career in the Force.

Major arguments against lateral recruitment have included the fact that there is no substitute for practical police experience, that recruiting internally has served the Police Force well, that lateral entry and accelerated promotion may create an elite corp of officers with a destructive affect on communication and morale, and that it would narrow the promotional opportunities for career police officers.

If promotion is to be determined on merit, then the best applicant for the job should be appointed, irrespective of whether that person comes from within or outside the Force. In most cases, one can imagine that internal applicants would win on merit, largely because of their experience and training. But for specialized jobs and key management positions, external applicants may be more appropriate.

There is sound justification for introducing lateral recruitment. Efficient serving police officers have nothing to fear from the process, and it would allow those who have experience in other police forces to be recruited at an appropriate rank.

Lateral entry will enable the Force to acquire specialist skills, attract more highly qualified young people, and encourage members of the Force to better themselves. It recognizes that mobility is a fact of modern employment. Lateral entry is sure to bring significant advantages at the managerial level, where valuable management experience from other large organizations can benefit a Police Force. Another important advantage is the introduction of external values, beliefs, attitudes, and especially important, innovative ideas from other police forces.

In the present circumstances, external recruitment of some experienced staff at middle and especially senior levels in the Force is essential. This should help to develop a new culture within the Force, and encourage improved standards of performance and conduct.

While base grade recruitment will always account for many entrants to the Force, the present capacity of the Police Academy is limited to not more than 450 recruits in any one year. If the size of the Police Force is to increase, lateral recruitment will simply be necessary to enable the attainment of that goal.

For successful lateral entry, and to meet changing expectations regarding mobility within the workforce, it will be necessary to consider police officer appointment for terms less than a full length career. Ten year terms of initial base level appointment with subsequent five or ten year renewal options are suggested, based on the principle that tenure is secure if conduct and performance is satisfactory. A mature lateral appointee would be able to select a five year term of service under this proposal. The concept should be incorporated in a consolidation of the present award in keeping with recommendations later in this chapter.

## **8.4.6 Induction Training**

### **(a) Overview**

All Australian Police Forces have a system of pre-service and probationary training of one to two years duration. At the Oxley Academy there are two types of induction training

programmes. Entrants to the cadet programme for young men with Grade 12 education spend 18 months in pre-service residential training, including six months attachment to various stations. The probationary programme for men and women over 18 years requires a non-residential period of seven months at the Academy. Both groups then have about nine months on-the-job training as first year constables before returning for five weeks of advanced training. The majority of induction training is operational and an overview of training content is contained in Figure 8.13.

<b>CONTENT OF PRESENT INDUCTION TRAINING</b>		
Topic	Cadet	Probationary
Law and Duties	38%	40%
Physical Education	16%	14%
Human Relations	11%	6%
Typing	4	4%
Science	2.5%	2.5%
Fire Arms-Drill	2%	3.5%
Driver Training	7%	10%
Administrative Matters	11%	14%
External Lectures	8.5%	6%

**FIGURE 8.13**

Many commentators consider the current cadet system too expensive and the training period too long. (It was apparently lengthened to 18 months to better use academy facilities.)

Although the 18 month cadet programme is too long, the six months probationary programme is considered too intensive. In the short term the condensing of both programmes into the one stream, comprising 12 months of interspersed live-in academy and station training would overcome this difficulty and provide considerable efficiency benefits. Accommodation changes may be required at the Academy.

## **(b) Teachers**

Most academy teaching is done by police. The practice of maintaining a balanced percentage of external educators at the Academy was discontinued in 1984, when services of the principal and some other teachers involved were terminated. They were re-employed by the Department of Education at Cabinet direction.

The Police Department did not give an official reason for this move but a number of submissions to this Commission cited as reasons, conflicts about selection practices, teaching methods, course content, examination conduct and assessments.

In 1986 an educational consultant reviewed programmes at the Academy and made recommendations for improvement. Unfortunately the issues of external education and civilian instructors were not addressed, though the consultant's recommendations relating to college independence and professional management of courses, instructors and students appear to have merit.

There appear to be obvious advantages in professionally independent academy staff who are completely free of pressure exerted on behalf of individuals from either inside or outside the Force.

Several submissions have claimed that there is a lack of independence at the Academy and the Police College and have suggested that the examination branch at headquarters exercises a great degree of control over the curricula, marking tests, and determining which officers pass or fail. Any such process is plainly unacceptable.

A way to relieve concerns would be to have the control of operating standards and practice at the Academy vested in an independent authority. The Police Commissioner could contribute to the development of curricula requirements, and set certain standards to be met and maintained both by training staff and recruits. The Commissioner or other senior officers would not interfere in the daily running of the Academy, especially the marking of examinations or the assessment of instructors. Proper accountability of the Academy is needed, with Academy management responsible for standards of individual students or instructors.

The selection of suitable training officers, mentors and lecturers for the Academy and training stations is obviously a vital part of an effective training system. The process of review of police education, recommended later in this report, will include a requirement that all training staff are evaluated to ensure adequate standards are established and maintained.

### **(c) Limitations of Police Academy Training**

Since a significant amount of police work involves community service, the wisdom of training police in isolation from the rest of the community, and confining the study of social sciences to a small proportion of the course, must be questioned. Subjects such as sociology, psychology, communication, values and ethics might best be undertaken in other educational institutions where police could mix with their peers in the community, and be exposed to the broad range of different views and arguments involved in the study of these subjects.

### **(d) Supervision of New Recruits**

It is essential that revised standards of training that stress integrity and the proper use of police discretion are reinforced during initial placement periods at training stations. Practices learnt and experience gained during the first few months on the job are a powerful influence on the development of new recruits and their future attitudes towards policing and the community. New recruits do not receive adequate supervision at training stations under present arrangements. Training officers in many instances have other priorities and standards between officers are inconsistent. Having one central Superintendent, Training is also less than adequate considering the current intake rate of 400 officers per year.

The best supervisors in the Force, with demonstrated integrity and commitment to the principles of reform, should be made available to closely direct and coach new recruits at training stations. This needs to be a full-time task given top priority and supported by regular contact with the inspectorate to ensure acceptable standards of performance, and individual development are achieved. The selection as a supervisor for new recruits should be seen as a positive career step and a favourable indication of progress towards commissioned rank. Supervisors selected should attend regular training and review programmes to achieve a degree-of consistency in standards across the Force.

### **œ Conduct and Ethics**

Organizational and management changes and the introduction of professional staff management may partially overcome the problem of police misconduct.

Additionally, training must include an ethical component as an integrated aspect of all matters taught. Case studies and practical exercises in which ethical decisions have to be made are now an integral part of the training of many professionals (for example, medical students) and play an important part in introducing people to ethical dilemmas and choices.

## **8.4.7 Police Education**

The traditional conception of the police officer as a crime investigator and apprehender of criminals, has been long overshadowed by community need for a multitude of police services. Many surveys in Australia and overseas confirm that law enforcement activities comprise at most only 20% of police time. Police are increasingly expected to use sociological and psychological skills in dealing with a whole range of community problems. Dealing with such problems forms the bulk of their duties.



Police come into contact with almost every type of human problem and are often the only group available to render service and assistance. Police need an education which equips them with a sense of balance in both enforcing the law and serving the community. As well, they need preparation to cope with the traumas associated with police work. The military model of training, applied to young school leavers, cannot achieve these objectives. The community involvement segments of cadet training, together with the use of more civilian educators, provide limited improvement.

Whether operational skills and abilities are wisely applied by young officers in confronting the full range of policing circumstances will depend primarily on factors such as personal attitude, social values, and disposition, all of which are fostered by higher education coupled with experience. Police need a deeper appreciation of social, psychological and legal issues which are intrinsic to their work-an understanding which can only be acquired by higher education.

United States research confirms that authoritarian tendencies are lower and tolerance higher among better educated police. Better educated police also perform more effectively.

This research confirmed that an absence of higher education leads to police isolation from the community and the development of an anti-intellectual sub-culture, where corruption was more likely to flourish. The study concluded that the net residual benefits to be gained from higher education far outweighed any costs or disruptions to the force involved.

Education programmes in Colleges of Advanced Education or other tertiary institutions which provide basic knowledge of criminal justice processes and foundations of social science are needed. The courses would be ideally attended by police along with people from other disciplines, to ensure the breadth of experience essential to the study and understanding of human behaviour. The current practice of superimposing tertiary education on the present Academy training courses is not considered the best long term strategy, but may prove beneficial as a stop gap measure.

All aspects of police education and training should be reviewed. The Research and Co-ordination Division of the proposed Criminal Justice Commission should include a professional education and review unit to carry out this task. Police educators would need to be involved in the review process, which would be expected to produce revised education and training programmes for new recruits and serving police officers.

The education and review process would ideally be assisted by reference to a small panel of part-time academics and educational experts. The Police Education and Training Advisory Council of New South Wales provides a worthwhile model.

The review team should make detailed recommendations to the Police Commissioner and report these findings to the Criminal Justice Commission, which will be charged with responsibility for overseeing and evaluating the implementation of revised programmes.

## **8.4.8 In-service Training**

In-service training is emphasised by the Queensland Police Department, and is meant to prepare officers for more demanding and specialist roles, and for promotion. It has not been possible for the Commission's investigations to review in detail the composition and conduct of each training programme. However, a number of comments can be made about the general suitability of current practice, and needs for change.

### **(a) General Policing**

The Queensland Police Force now has a programme of training and examinations which essentially parallels the rank structure.

Queensland, like other police forces in Australia, needs to provide police with more refresher training. Such training should not be related to promotion, but aimed at reinforcing standards, giving police the opportunity to discuss problems with current practice and updating their knowledge of methods and procedures. Written instructions alone are not an effective means of achieving this.

There is no effective training and development programme in place for potential or current police supervisors and managers in charge of general operational work.

The formal training and examination programme should be reviewed and redesigned having regard to the rank structure ultimately adopted by the Queensland Police Force. In keeping with this, formal systems of appraisal should be incorporated in the process of selecting suitable applicants for promotional training and examination. When considering officers for promotion, on the job ability and performance should be taken into account as well as aptitude demonstrated through training and exams.

### (b) Training for Special Squads and Assignments

Each special squad does its own internal advertising for vacancies, selection and training. Selection criteria vary from squad to squad, and are influenced significantly by the Superintendent of Training, or the officer in charge of the particular squad concerned. The range of specialist training courses offered by the Academy since 1977 (as outlined in the Department's submission) is tabulated in Figure 8.14.

#### SPECIALIST TRAINING COURSES

Course	No Completed	Duration (Weeks)
Crime	8	4 weeks
Detective Classification	—	
Juvenile Aid	16	3 weeks
Traffic Accident Investigation	9	4 weeks
District Training Officer	3	2 weeks
Breathalyser	13	3 weeks
District Community Liaison Officer	3	2 weeks
Police Clerk	5	2 weeks
District Fire Arms Training	3	1 week
Rape Squad	2	2 weeks
Welfare Officer	1	2 days
Public Safety Response	Weekly	—
Commissioned Officers Special Course	1	4 weeks
Radar Operator	1	1 week
Hostage Negotiator	1	1 week
Dog Squad	1	3 months

**FIGURE 8.14**

Courses are advertised. Preference is given to police officers working in a related field, although the selection process for courses seems to be largely subjective. Once an officer has completed the course, he or she is eligible for entry into specialist squads.

With transfer and incorporation of so called 'specialist' roles to the regions, as recommended earlier in this chapter, many more police will have to receive specialist training. Upgrading the skills of serving police will be a demanding process, and will take a number of years.

For the remaining specialized activities to be undertaken by Task Force personnel, selection criteria and the selection process as mentioned earlier, will need to be more objective. Selection criteria must include education and aptitude for the type of work as well as suitability in terms of standards of behaviour, ethics and record of conduct. The selection process needs to be a formal one, and reasons for non-selection relayed clearly to the applicant.

### **(c) Training for Management and other Senior Commissioned Ranks**

Important criticisms have been made of the Chelmer Police College training programmes and examination process. Officers do not have confidence in selection and examination processes, and it seems that selection is based primarily on seniority and the Superintendent of Training's view of an applicant's suitability. The headquarters examination section determines whether an applicant passes or fails an exam, and does not have to justify its decision to the officer being assessed.

It has also been said that the commissioned officers' course over-emphasizes legal aspects and does not pay enough attention to management. The Sergeants qualifying and Commissioned Officers programmes I and II need to be reviewed.

Officers who apply to undertake various training programmes should be subject to a formal selection process.

A range of policing experience should be an essential prerequisite to becoming a commissioned officer. Transfer, promotion and placement decisions therefore become critical in establishing the necessary prerequisite experience. Only those officers who have demonstrated competent supervisory performance over the years should be eligible to apply for commissioned officer training.

Appointment as a commissioned officer should be the result of a process of training, development, and achievement over time, rather than one particular course. A mix of internal training and development, complemented by attendance at external programmes and courses attended by managers from other disciplines is desirable.

A portion of any programme should emphasise the necessary values, attitudes, ethics, integrity and codes of behaviour required of police commissioned officers. Equally important are demonstrated management and administrative skills essential for work at senior levels of the Police Department.

### **(d) Training Facilities**

The Oxley Academy is used for both induction and in-service training, whilst the Chelmer College has been used for commissioned officer training to a large extent. Decisions on the future of both facilities will be influenced by the results of the detailed review of training programmes suggested earlier. It appears likely that the Oxley facility will need some upgrading to accommodate a broader variety of in-service programmes, and should continue to be run as a predominantly police training establishment.

The Chelmer College needs considerable upgrading if it is to continue to be used as a residential college for in-service training of senior officers.

Reports indicate that significant development expenditure will be required, and for this reason some are advocating the sale of the facility. This issue should be resolved following the results of the detailed training review which will form the basis for a reliable feasibility study on the Chelmer facility.

## 85 PROMOTIONS AND TRANSFERS

### 8.5.1 Qualifications for Promotions

#### (a) The Present System

Promotional courses are conducted to qualify police officers for appointment to the ranks of constable first class, sergeant second class and first class, senior sergeant and commissioned officer. It should be noted that 50% is the generally accepted pass rate in theoretical examinations.

To qualify for promotion Queensland Police must typically have the necessary experience, undertake the necessary training course, pass the prescribed examinations, apply for vacancies and satisfy the promotion panel.

The effectiveness of an officer does not at present seem to be of primary importance in the promotional process. There is little indication of importance attached to the personal educational standard, particular experience and proven efficiency and skills of an appointee. There is no assessment of a particular appointee's aptitude for appointment to higher rank generally, let alone an appointee's aptitude to perform the specific tasks which appointment to the higher rank will require other than the internal courses mentioned above.

The Promotions and Transfers Board (comprising Assistant Commissioners) makes recommendations on appointments below commissioned officer level to the Commissioner. Promotions to commissioned officer level are recommended by the Commissioner to Minister and Cabinet, and approved by Governor in Council.

Four selected senior officers attend the Australian Police Staff College, Manly each year. Officers should be able to apply for such programmes, rather than nomination being the only method of selection.

#### (b) Reform

Minimum lengths of service at various grades should be set as guidelines, not used as a major criteria for determining entry to qualifying courses or for promotion.

All vacancies should be advertised, and senior positions should be advertised outside the Force as well as in the Police Gazette. Commissioned officers should compete for positions in the same way as non-commissioned officers.

By convention in Queensland, most promotions have been made on the basis of seniority.

The practice of appointing by regard to seniority in the first instance does not encourage pursuit of individual excellence, is insensitive to operational efficiency and probably has the detrimental effect of discouraging those with talents and skills suiting them for police service from either joining the Force or continuing to serve in the Force.

It is vitally necessary to the efficiency of the Police Force that the persons best fitted to perform given roles are put in those roles. Promotion in the Queensland Police Force should be on merit, having regard to the tasks to be performed in the higher role and the ability and aptitude of the proposed appointee in the first instance, rather than by regard to seniority.

Another deficiency of the present system is that the promotions panel has limited knowledge of the merit of applicants, especially lower ranks. A series of promotion panels of more junior officers, regionally based, would provide better quality selections and recommendations for promotion by merit.

On the job experience, career counselling and attendance at normal external tertiary courses, coupled with performance appraisals should provide adequate bases for promotion by merit, especially to lower level management positions such as senior constable and sergeant. While

additional education may not have a discernable impact on current performance, it may impact on potential in the new position, and in this case would form a part of merit determination.

Though it may be that the Department will need to rely on written applications and assessment by interview panels until such systems are developed, it is only by establishing and maintaining formal position descriptions and a regular appraisal process for each officer that the Department will be able to confidently use merit as the main criteria for promotion.

### **(c) Performance Appraisal**

Unless performance is measured, standards will continue to be ignored or brought to attention only when they are blatantly breached. Preparing job descriptions for all positions in the Department is a prerequisite for setting individual performance objectives. Officers should then be regularly appraised on a limited number of significant and measurable job-related achievements. These should be agreed between officers and supervisors at the start of each period, documented, and evaluated formally at the end of the period (usually yearly).

In addition to the formal review, both individual and supervisor should discuss performance informally at regular intervals. It should be the responsibility of both officers involved to ensure these regular feedback sessions occur. The system should be supported by opportunities to develop skills in areas where improvement is necessary.

When an officer disagrees with an assessment, that must be recorded on the form and the individual must be able to consult a reviewing officer.

It cannot be assumed that all supervisory staff are capable of conducting performance appraisals. Consequently the system will require a written set of guidelines and adequate training.

It should be added that the process of assessment should not include the police officers being prescribed quotas of charges to be laid or having to maintain "kill sheets". Those practices have long since been discredited as deleterious to police morale and inefficient and damaging to the public image of the Force. They lead to police officers unnecessarily looking to bring charges against people, often for minor offences.

## **8.5.2 Appeals**

### **(a) Current Police Department System**

Officers may appeal only against appointments to the rank of sergeant and appellants must hold the rank immediately below that to which the appointment was made. For example, only sergeants 2nd class can appeal against an appointment to the rank of sergeant 1st class and only sergeants 1st class can appeal against an appointment to the rank of senior sergeant.

There are no appeals against promotion to the rank of constable 1st class. This rank is attained by a combination of success at prerequisite exams and entitlement determined by seniority.

Constables 1st class must pass exams to be eligible to apply for or appeal against appointments to sergeants 2nd class. Equally senior sergeants must complete the commissioned officers course to be entitled to advance to the rank of inspector.

Appellants must have applied for the position in question and done so within the specified time.

An appeal board constituted for the purposes of an appeal against promotion comprises a stipendiary magistrate who is the chairman, a person appointed by the Commissioner of Police (usually a superintendent) and the member's representative (selected from a panel of police nominated by the Police Union).

## **(b) Possible Reforms**

The Appeal Board is overly formal, legislative and cumbersome. Legal adversarial processes have no place in administrative and managerial promotion decisions. It is therefore proposed that designated senior officers from the inspectorate (mentioned later as the independent group established to ensure standards are maintained) should hear appeals.

Appeals should be, conducted in informal sessions where the concerned parties air their views. The obligation should be on the appellant to make submissions based on either the selection process or the Department's comparative assessment data.

Legal representation should not be permitted.

All suitably qualified officers should be entitled to lodge appeals against promotions to all positions including Regional Commander.

The scope of potential appellants should not be confined to those holding the rank immediately below that to which the appointment in question is made. The existing system serves to retard outstanding officers from rapid promotion.

With lateral entry, considerable disruption could be created by appeals against the appointment of senior officers from outside the Force. Most appeal systems do not allow for this, because of the inability to terminate a recently engaged officer, who may have signed a 5 year contract. In many cases the external applicant is recruited deliberately for the purpose of infusing new and different ideas, into the organization. Some systems allow objections by internal applicants to be lodged and heard by an independent party. The options of salary review or alternative placement for internal staff can then be considered. There may be benefit in adopting this approach to ensure that internal staff with potential do not become disenchanted with the process of lateral recruitment.

## **8.5.3 Transfers**

A number of concerns have been raised about the transfer system. It has been alleged that officers not complying with existing police conventions or the demands of certain superiors are transferred as punishment to undesirable areas of the State.

Submissions to this Inquiry claimed that there have been cases where officers were selectively posted to the country for the sole purpose of creating a vacancy in Brisbane, so that it could be filled by a person favoured by a senior officer. It was claimed that this occurred in areas such as the Licensing Branch.

Leaving aside these allegations, the information used to match people to positions is inadequate, as there is limited data on which to base recommendations to the Transfers Board. Consequently, the system results in injustices and inefficiencies.

The process of determining transfers should be formalized and regionalized. Regional commanders should control the process within their regions, and keep Headquarters informed. Task Force transfers should be handled by the Commander, Task Force in conjunction with regional staff.

As a general rule, officers should be rotated through sensitive or 'high risk' areas on a three to five year basis.

Transfers should not be used as punishment. Punishment transfers do not resolve problems and uproot the officer and the officer's family, at considerable expense for the Department. Conduct serious enough to warrant transfer is probably also serious enough to warrant dismissal.

Appeals against transfer decisions are not considered appropriate. Officers will be expected to serve in the Force according to organizational priority and interests of the community, subject to the greatest possible consideration of individual circumstances.

## **8.5.4 Career Progression**

The current system for career progression comprises numerous levels, each of which can only be attained after passing qualifying courses and examinations. The fact that it takes officers most of their working career to get to senior management level means that the senior management team in the Department is always relatively inexperienced in such management.

On average, officers spend less than three years as inspectors, superintendents or assistant commissioners. The Police Department has a large number of constables, a large supervisory (senior constable and sergeant) contingent, and a reasonably large number of inspector and superintendent positions which do not, in fact, have management responsibilities.

This system has led to inefficiencies in the chain of command, and a lack of motivation in many police officers. A new career progression system is needed.

This system must serve the interests of effective policing, which means it must be linked to positions with defined levels of responsibility, and not artificially related to the number of ranks and grades.

Anomalies in the rank and grade structure will be redressed during the process of job description, evaluation and salary review.

The recommendations of this report would result in a 'flatter' structure for the Force, with about five levels of responsibility. Work will be restructured to give priority to community policing and civilianization of all non-policing roles.

Career progression would then change.

## **8.6 PAY AND CONDITIONS**

### **8.6.1 Rates of Pay**

Base rates of pay for members of the Queensland Force are about the same as those of their counterparts in other states. This is shown in Figure 8.15.

A range of allowances, in addition to base rates of pay, is also payable for attaining specified educational standards, undergoing special training courses or performing duties which involve special responsibilities. A sample of these allowances, with interstate comparisons, is presented in Figure 8.16.

While allowances in Queensland generally fall within the range paid elsewhere, the upper limit of most Queensland allowances falls well below the maximum payable elsewhere. In addition, some interstate allowances are reported to provide greater benefits at lower levels of seniority.

The award also provides for the payment of overtime for work performed outside rostered hours of duty, on very early, or very late shifts, and on weekends or public holidays.

## POLICE OFFICERS-BASE PAY RATES

(Queensland and Interstate Comparisons)

Classification	Qld Salary Range (\$00'S)	Interstate Salary Ranges (Max/Min)
CONSTABLE (Includes Snr Constable)	21.6-26.9	205-27.1
SERGEANT (Includes Snr Sergeant)	27.2-32.9	28.9-35.1
INSPECTOR (Includes NSW rank of Chief Inspector)	43.1-46.9	41.5-49.1
SUPERINTENDENT (Includes NSW rank of Exec. Chief Superintendent)	48.7-52.5	44.1-67.5
ASSISTANT COMMISSIONER	60.3	53.9-65.0
COMMISSIONER	90.3	76.9-92.5

(Local and Interstate Salary Ranges (Base Pay Rates) as at 1 st May 1989. All figures in thousands of \$'s per annum.)

**FIGURE 8.15**

## SAMPLE OF POLICE OFFICERS' ALLOWANCES

(Queensland and Interstate comparisons)

Allowance	Qld Range per annum	Interstate Range per annum
DETECTIVE (Out of Pocket Allowances)	\$592-719	\$547 - 2,844
POLICE PROSECUTORS	\$793 - 1,247	\$278 - 2847
POLICE DIVERS	\$397	\$290 - 1,362
INSTRUCTORS	\$528-793	\$290 - 1,933
BREATH ANALYSIS OPERATOR	\$419	\$216 - 1,055
MOUNTED POLICE	\$194	\$232-660
DOG HANDLERS	\$1,050	\$489-975
CLOTHING ALLOWANCE	\$708	\$642 - 1,100
DRIVER TRAINING INSTRUCTORS	\$277	\$589 - 1,212
TRAFFIC DUTY ALLOWANCE	\$278	\$365 - 1,055

**FIGURE 8.16**



The estimated annual earnings of the average Queensland Police Officer are therefore somewhat different from base rates of pay. (See Figure 8.17) This amount does not include an estimate of earnings from the performance of special duties which can result in substantial income for officers prepared to perform these duties. The order of such 'real' salary is shown in Figure 8.18 (and relative to Australian Federal Police award).

### **POLICE OFFICERS-(ESTIMATED) SALARY PACKAGE**

(Estimated 'Real' salary of 'Average' Police Officer)

	Average Payment/Year	% of Total
Base Salary	\$24,576	76.8
Overtime	\$2,144	67 .
Payroll Allowances	\$4,160	13.0
Travelling & Relieving Allowances	\$800	25 .
Uniforms	\$320	10 .
<b>TOTAL</b>	<b>\$32,000</b>	<b>100.0%</b>

**FIGURE 8.17**

### **POLICE OFFICERS-ESTIMATE OF 'REAL' SALARY RANGE**

(Queensland and Federal Police)

	Estimate of 'REAL' Salary Range (\$000's)	Federal Police Salary Range (\$000's)
CONSTABLE (Base Salary x 1.2)	25.9-32.3	22.3-31.9
SERGEANT (Base Salary x 1.2)	32.6-39.5	33.3-39.0
INSPECTOR (QLD)/ SUPERINTENDENT (ACT)	43.1-46.9	43.6-5 1.6
SUPERINTENDENT (QLD)/ COMMANDER (ACT)	48.7-52.5	55.5
ASSISTANT COMMISSIONER	60.3	64.5
COMMISSIONER	90.3	NOT PROVIDED

**FIGURE 8.18**

The average officer can expect to earn about 20% of base pay per annum as additional income from overtime and allowances. Police officers involved in community programmes often perform these duties outside their rostered working hours without overtime entitlement.

Commissioned officers are generally not eligible for additional pay. To compensate, the transition to commissioned officer status is accompanied by an increase of about 30% of the maximum salary entitlement of a senior sergeant.

Statistics available to this Commission demonstrate that within the Queensland Police Force, the amount of overtime worked increases with the numbers of officers available for duty. It seems that overtime has become an expected benefit to be allocated by senior officers as an integral part of salary and conditions,

rather than a means of providing additional capacity at times of overload or emergency. This further supports a need for comprehensive salary review.

A recent consultant's study recommended time off in lieu as an alternative to overtime payments. However, police already receive generous leave provisions. If large numbers of officers were to take additional time off as a consequence of the proposed arrangements, additional staff would be required to provide the necessary levels of police coverage.

In November 1988, the average income of an Australian adult male in full-time employment including penalties and allowances, was \$29,062. The majority of the workforce earn less than this. Consequently, while officers in the Queensland Police Force are not generously paid, they are reasonably paid by Australian standards, especially once the rank of sergeant has been attained.

## 8.6.2 Special Duties

Some police officers are officially permitted to employ their police role and skills in their off-duty time for monetary reward (for example wide load escorts, pedestrian and traffic control at construction sites, payroll escorts). Normally the duties involve public safety or traffic control and the presence of uniformed police ensures visibility and impact.

Arrangements for these duties are made by the organization requiring the service, through the Police Department. Pay rates for officers performing these duties are stated in the Police Award. The Department invoices the requesting organization for the officer's pay, payroll tax and hire charges for police vehicles and equipment used.

Normally 'specials' are available only to uniformed staff. For those who wish to forego off duty time to work on special duties, the financial rewards can be substantial as these duties are paid at double time.

This practice has the potential to place police officers in situations where their position in the system of justice can be exploited for personal advantage, with the Police Department's knowledge and consent.

The practice must stop, on the understanding that the potential earnings from these duties are to be taken into account when new rates of pay are determined.

If duties presently performed as 'specials' are essential to ensure public safety or control traffic, they should be performed as part of normal police work. If the duties are not considered essential, the Department should charge fees for services performed.

## 8.6.3 Leave Entitlements

The leave entitlements of Queensland Police Officers appear to be generous when compared with those of other Public Servants in Queensland, even when allowances have been made for additional entitlements as compensation for shift work. (See Figure 8.19)

However, sick leave entitlements appear comparable with those of police officers in other states. (See Figure 8.20)

In Queensland, all members contribute on average one day of their annual leave each year to a 'sick leave bank', out of which a member, having exhausted his personal entitlement, may be granted further leave on full pay. The net effect is that Queensland police officers have a virtually inexhaustible entitlement to sick leave on full pay. In practice, however, members of the Force would not normally take more than an average of 7 days of sick leave per year.

**COMPARATIVE LEAVE ENTITLEMENTS-QLD POLICE  
AND PUBLIC SERVANTS**

	Police	Public Servants
Recreation Leave	42-45 days/yr (6 weeks)	20 days/yr (4 weeks)
Long Service Leave	1.3 wks/yr available at 5 yrs service	1.3 wks/yr available at 10 years service
Sick Leave	60 days/yr on full pay (non-cumulative)  30 days/yr on half pay (non-cumulative)	10 days/yr on full pay (cumulative)

FIGURE 8.19

**POLICE SICK LEAVE ENTITLEMENT  
INTERSTATE COMPARISONS**

State	Sick Leave Entitlement
QUEENSLAND	60 days/yr full pay 30 days/yr half pay (non-cumulative)
NEW SOUTH WALES	75 days/yr full pay (non-cumulative)
VICTORIA	30 days/yr full pay on appointment 15 days/yr full pay thereafter (cumulative)
NORTHERN TERRITORY	15 days full pay on appointment 15 days/yr full pay thereafter (cumulative)
FEDERAL POLICE	42 days/yr full pay on appointment 21 days/yr full pay thereafter (cumulative)

FIGURE 8.20

### 8.6.4 Work Related Injury

When officers are injured at work, the award entitles them to full salary plus allowances for a period of up to 6 months.

This entitlement operates separately from and in addition to all other sick leave entitlements.

However, police officers in Queensland are not covered by the Workers' Compensation Act, and despite the provisions in the Award for injury while on duty, sick leave, and the Sick Leave Bank, there is no provision for the payment of police officers' medical and/or hospital costs. Journey accidents (which may occur whilst an officer travels to or from work) are not covered at all. That position seems plainly wrong and ought be addressed, at least by extending current workers' compensation entitlements to police.

## **8.6.5 Summary of Conditions of Employment**

The terms and conditions of employment for Queensland Police are better than those of the average Australian working person and comparable with those of interstate police officers.

However, because of the complexity of the system of pay, overtime and allowances, salary administration is complex. Benefits are not equitably shared among officers as pay can be influenced by rank, location, shift arrangements and management practice. Committed officers may perform necessary community policing work out of hours for little or no reward.

External consultants recently reviewed salary administration. They suggested that penalty rates and allowances be incorporated in new salary rates. Although salaries and allowances paid by the Queensland Police Department are within the range of those paid interstate, they are in the lower part of that range. The multitude of different allowances should be consolidated in a new award in the interests of fairness to all officers and efficiency. Fair salaries must be professionally determined.

The process of determination of a new police award and appropriate salary structure would need to be undertaken in consultation with the Police Unions. The approach should take account of current salary levels including allowances, overtime and 'specials'.

The salary structure should accord with the new 'flattened' rank structure, provide for term appointments and provide for salary increments to be paid to experienced performing police who agree to remain in operational areas where they are needed, rather than seeking promotion to areas where they may be less beneficial to the Force.

The external consultant used for this process must have prior knowledge and experience in reviewing Police Force salaries and conditions, involving major award restructuring and necessary negotiating with unions. As consistency between position description information, work value assessment and salary determination is essential, all stages should be incorporated in the award restructuring exercise.

Police pay is, of course, one factor in corruption. While no reasonable salary would ever make officers immune from temptation, a reasonable salary, attractive working conditions, pride in the Force and satisfaction with the work, act as natural insulators against misconduct.

## **8.6.6 Counselling**

A number of submissions to the Inquiry have expressed the view that policing is a dangerous occupation, exposing officers to risks to life and health which are far in excess of those experienced by other occupations.

Independent research tends to contradict this view, by establishing that the incidence of accidental deaths, shootings, other deaths in service and non-fatal assaults are no greater in police forces, than that experienced in the general community. Be that as it may, police certainly see their job as a stressful and demanding one, and this is a view that is shared by a vast majority of the community.

Apart from overt danger, other major sources of stress for police are said to include frequent public challenges to their authority, media treatment of incidents involving members and the enforcement of out-dated and unpopular laws.

In reviewing statistics regarding sick leave for the Department, it is evident that this level tends to be slightly higher than that which applies to other government departments. It is not possible to make any adequate assessment of the relationship between sick leave and stress but stress related illnesses are also said to be a significant factor in police medical retirements.

For those reasons, it is arguable that police need access to a professional Employee Assistance Scheme operating independently of the Police Force and the Unions.

Queensland Public Servants and many other employees in industry and semi-government organizations already benefit from the services offered by an array of such schemes.

Ideally, a scheme in the Queensland Police Force would provide confidential personal counselling for members and their families, assessment and referral facilities for officers experiencing problems affecting their work performance, conflict resolution for officers experiencing inter-personal difficulties at work and advice to management on the training needs of supervisory staff.

## 8.6.7 Retirement

### (a) General

The Minister can allow any member of the Force to stay as a serving member until aged 65, but the normal retiring age of the Commissioner and the Deputy Commissioner is 62 years and for other members of the Police Force the retiring age is 60 years.

Members can elect to retire five years prior to their prescribed retirement ages.

An officer leaving the Police Force is entitled to receive a certificate of discharge outlining duration of service and conduct.

### (b) Medical

The Police Act provides for medical retirement by reason of “bodily injury . . . , mental or bodily infirmity”. Medical retirement requires investigation by the Minister and examination by two medical practitioners or receipt of other testimony sufficient to satisfy the Minister (in the case of officers of sergeant rank or above) or the Commissioner (in the case of officers below the rank of sergeant) that the incapacity is likely to be permanent, prevents the officer discharging his duties and that the member should be retired for the public interest.

An officer applying to retire for health reasons has to furnish a report through his superior officer to the Commissioner outlining the circumstances of his condition. This report may be accompanied by a medical report.

The Commissioner pays the costs of medical examinations where the officer is found to be unfit for duty or when he is satisfied the application was made on reasonable grounds.

Officers are obliged to attend medical examinations.

An officer is exempt from duty from when he is instructed to attend a medical board until the matter is finally determined.

Once an officer has reported his wish to retire, or the Department has initiated action to this effect, the officer is required to consult a Medical Board which ordinarily comprises a Government Medical Officer and a specialist physician. Prior to the actual consultation, the Board representatives consult with the officer’s own medical practitioner(s). A recommendation is then prepared and forwarded to the Commissioner recommending either retirement or that the officer is fit to resume duties. Officers are usually brought to Brisbane for the above described assessment.

Figure 8.21 sets out the annual number of medical retirements since 1984 and the percentage of total establishment represented by this figure.

	1984	1985	1986	1987	1988
No. of Medical Retirements	14	36	46	37	33
Police Force Establishment	4686	4775	4872	5072	5085
Rate of Retirements	.3%	.7%	.9%	.7%	.6%

FIGURE 8.21

Average length of service for women who retired on medical grounds in this period” is between 8- 10 years. For men the average figure ranges from 13.5-20 years.

Approximately half of all medical retirees have served less than 12 years in the Force. This situation has remained stable for the past three years.

Police Annual Reports for the years 1981, 1982 and 1983 report that in the period from 1 July 1979 to 30 June 1983, 20 officers retired on medical grounds, 10 of these in the first 12 months of that period.

It is reasonable to assume that changes to superannuation provisions in 1984 allowing for lump sum pay outs to retirees on medical grounds prompted an increase in application rate.

It is, however, important to question the need for some retirements on medical grounds.

If an officer is unable to perform allotted duties due to a medical condition, and that medical condition is not easily defined, or the prognosis is not certain, then a decision on that officer’s future should be deferred. There are adequate sick leave provisions to allow this without disadvantaging the officer financially. Furthermore, officers should be considered for alternate duties either as a temporary or permanent measure where their condition renders them unsuited to their original position.

Section 37 of the Police Act should be amended to oblige the Commissioner to consider not only the officer’s allocated duties but also any other duties which the officer could reasonably be expected to perform.

The Government Superannuation Office has a facility to pay a ‘gap’ pension to compensate an officer who has accepted re-deployment to a position attracting less remuneration. This allows an officer to perform less demanding duties while maintaining salary entitlements. The payment of this gap pension is at the discretion of the Government Superannuation Office and subject to review. Consideration should be given to assessing whether such a scheme has applicability to the Police.

Retirement on medical grounds should be used only as the final option in a plan to manage officers with health problems affecting their work. The Force should make every effort to retain experienced members.

Medical retirement should not be used to solve discipline problems. The community should not be expected to bear the cost of an inappropriate managerial response.

### **8.6.8 Resignations**

Resigning members must give one month’s notice in writing unless the Commissioner especially authorises alternate arrangements. Failure to comply attracts a fine of up to \$200.

The Police Act requires a resigning member to return anything supplied for the execution of his duty. The penalty for not complying is three months imprisonment. A search warrant can be issued, so property not duly returned can be seized.

An officer is entitled to receive a certificate of service. If the member has been of good conduct and service has been satisfactory, these facts will be recorded on this certificate.

Between 1980 and 1987 the resignation figures for serving officers were fairly stable at between 60 and 70 a year. However, in the period 1 July 1988 to 30 June 1989, 132 officers resigned from the Queensland Police Force. Resignations from induction training programmes have also been running at higher levels than previously.

Members resigning from the Police Force should be required to attend an exit interview with a senior officer. While the number of resignations is a useful indicator of morale, it will be far more helpful to management if each officer is properly debriefed and the opinions offered by the resigning member are given to those best equipped to consider them and incorporate necessary changes into the reform and improvement process.

The current resignation rate stresses the need for such a measure. It can be expected, given entrenched police culture and attitudes, that the high rates will continue during implementation of the major reforms following this Commission, as will the number of medical retirements.

Although this is worth attention, it should not in itself be a matter of great concern. A high rate of resignation provides the opportunity to revitalize the organization by the introduction of a large number of new employees, and to introduce new policing strategies and staffing arrangements.

## **8.6.9 Superannuation**

Police are obliged to contribute to the Police Superannuation Fund upon passing the entry medical. **Benefits** are then paid as a pension or lump sum upon the officer's death, or at age retirement, or if an officer is retired on medical grounds.

Police also participate, as do all Government employees in Go Super. The Queensland Government pays the equivalent of 3% of each officer's gross salary into a centrally administered fund. This money is invested on the member's behalf and payable as a lump sum on death, retirement, or medical retirement.

Unlike the Government Superannuation Office, the Police Superannuation Board has no power to conduct independent inquiries into an officer's health and if it is decided by the Minister that an officer will retire on medical grounds then that officer is automatically entitled to receive superannuation benefits. It may be appropriate for the Police Superannuation Fund to be vested with this power.

Officers resigning from the Police Force can elect to:

- z claim a refund of their contributions plus interest and either retain the cash or 'roll over' the benefit into another selected fund;
- z 'preserve' their superannuation by leaving their contributions in the Fund. These contributions, together with interest and a proportion of employer contributions will then be invested and payable upon retirement, death or medical retirement; or
- z transfer this entitlement to another compatible fund according to existing portability provisions.

It will be necessary to review the provisions of the Police Superannuation Fund to ensure that they cater for officers appointed on contracts.

## **87 MANAGEMENT AND STRATEGIC PLANNING**

### **8.7.1 Introduction**

Management is responsible for planning, organizing, co-ordinating, staffing, directing, controlling, monitoring and reporting the functions of the organization and must be held fully accountable for all such responsibilities.

Considerable skills are needed to manage an organization the size and complexity of the Queensland Police Force.

### **8.7.2 Management and Supervision**

#### **(a) Management**

##### **(i) Qualifications and Training**

The approach to management in the Queensland Police Force assumes that management skills can be readily acquired and applied through intuition, or after short term courses run by 'in house' police instructors.

A promotions system based on seniority and the passing of internal examinations does not take external qualifications into account. It overlooks the value of education and expertise. As a result, management becomes characterized by outdated, insufficient and inappropriate skills.

Management training and techniques have become increasingly complex and sophisticated. Tertiary institutions provide both part and full-time courses in the theory and practice of effective management. The modern approach to management, upon which most of these courses are based, is informed and systematic.

## **(ii) Management Style**

The structure of any organization often reflects the preferred management style of senior officers of an earlier era. Management style of all other officers is largely gained and maintained through the formal organizational rules which support this structure.

Within the Queensland Police Force there is excessive reliance on an authoritarian style of management, which is encouraged by the rigid rank structure. In circumstances where promotion is based on seniority rather than skills, management by issuing orders may secure compliance but does not provide real leadership.

Responsibilities of senior officers for developing, encouraging and setting examples for subordinates barely exist.

## **(iii) Characteristics of Management**

The management problems are aggravated by a promotional system which results in those who reach senior positions generally being within a few years of retirement. Present inspectors have an average age of 50 years, while superintendents have an average age of 52. Senior sergeants have an average age of 48. However 36% are aged over 50.

Even those who reach assistant commissioner/deputy commissioner level and remain in the Force past age 55 serve an average of only 2.5 years in these positions. There is little time for them to adapt to management requirements or to become familiar with one position before moving to another. There is no chance of effecting more than superficial improvement.

## **(iv) Changes to Management**

People with demonstrated management skills should be recruited from both inside and outside the Force to provide it with leadership.

The Department should move away from the reactive authoritarian management style towards one which can forestall problems before they occur, and can be flexible enough to combine the power of persuasion with the power of punishment to obtain compliance.

Management support and administrative systems require overhaul and review so that they provide management with the information and support necessary for them to effectively discharge their duties and responsibilities.

Organizational arrangements must ensure that managers have sufficient authority but also contain control mechanisms to make sure that those who have authority are accountable.

## **(b) Supervision**

### **(i) Training and Recruitment of Supervisors**

Supervisory skills are also neglected within the Police Department. Sergeants' qualifying courses contain some material on supervision and control of subordinates but since



most police work is controlled at the supervisory level, it is essential that supervisory skill and aptitude are given a greater emphasis in developing and selecting personnel to fulfil these roles.

(ii) **Duties and Responsibilities of Supervisors**

The lines and levels of control within the organization must be clear enough to firmly establish supervisory responsibilities. Every position and unit should be under the supervision of another position. Overlap and duplication should be avoided and the responsibilities of supervisors should be known to all concerned.

The span of control of each supervisor should be as narrow as possible because the immediate future for the Force will be characterised by a climate of change and uncertainty. The main factor in determining span size may be the availability of staff with the necessary supervisory skills.

(c) **Discipline**

Supervisors also play an active role in the discipline process. If misconduct is to be controlled, compliance with expected standards of conduct and performance by individual officers must be monitored and controlled. Supervisors must ensure staff are fully informed of required performance standards, reinforce those standards regularly and deal with minor breaches of conduct and shortfalls in performance in a timely and consistent manner.

These discipline measures are important elements of the broad strategy for addressing misconduct as outlined in Chapter IX.

(d) **Decision-Making Style**

Present management style, structural arrangements and lack of appropriate authority levels have resulted in a decision-making process which is centralized and paper-intensive. There is a tendency to guide decision-making by written rules as much as possible. As a result, it is usually the exceptional situations, not addressed by written procedures, in which management decisions have to be made. However, the decision-making environment is so rule-bound and inflexible that the information coming to management is often edited and made to 'fit' established formulas.

This means that management often does not recognize that circumstances are unusual or extraordinary. As an example, areas with high crime rates and growing populations which have poor police to population ratios are not readily identifiable and addressed. Yet, changes in patterns or incidence of crime, problems with procedures or operating practices are precisely the situations which may indicate operational problems, misconduct or corruption and require a quick management response.

The Police Department admits that the criteria for decision-making and allotting priorities are uncertain and cites political intervention as a feature of past decisions, especially those requiring re-allocation of police resources to growing urban areas.

The present organizational situation, where positions have responsibility without appropriate authority, also leads to the tendency to pass decision-making 'up the line'. If organizational arrangements do not require officers to make decisions, or permit them to make decisions (with punishments if decisions taken later prove to be inappropriate), there is no incentive for officers to develop decision-making expertise.

### **8.7.3 The Inspectorate**

The essential function of the Police Inspectorate has been lost in the Queensland Police Force and should be restored. It is not to be confused with the pro-active operations of the Official Misconduct Division.

The Police Inspectorate should carry out an inspection role on behalf of the Commissioner to monitor Departmental operations, ensure all staff (police officers and civilians) are performing efficiently and adhering to established procedures and standards. Task Force activity should be included in the overall inspection programme. That programme should be approved by the Commissioner, and should incorporate the Department's reorganized internal review and operational audit functions.

The Inspectorate should comprise officers and civilians with distinguished service records, attached for 3-5 year periods reporting through a Superintendent to the Commissioner.

The Inspectorate will focus on the results achieved by operational units, the standards of individual performance and compliance with established procedures and standards.

A regular programme of audit should be included in their activities to cover areas such as drug seizures, property, firearms, claims for expenses/overtime and use of police vehicles/other equipment.

The Inspectorate must act against serious breaches of discipline and report any possible official misconduct it detects or suspects to the Official Misconduct Division. However, its primary role should be instruction and supervision rather than investigation. It should advise, promote improvements, counsel and encourage police. It should report to the officer in charge of each unit or establishment inspected and report also, to the Commissioner, in summary, on results of inspections.

#### **8.7.4 The Police Department's Strategic Plan**

During the last two years, the Police Department has been engaged in a strategic planning exercise. This process was a result of Government approved recommendations from the Savage Report in 1987, and incorporated later directives from the Treasury requiring all departments to prepare their budgets for the 1989/90 financial year on a programme basis.

These two initiatives are intended to ensure departments implement Government policy, meet community needs, comply with legislative mandate, properly account for expenditure and keep the Parliament and community adequately informed about the nature of expenditure and results achieved for money spent.

Although the Department has made progress with both these initiatives, revision of the plan will be necessary in the light of the findings of this report.

Some of the major limitations which need to be improved are discussed below.

- Regional crime statistics and local community policing issues must be thoroughly appraised. It is essential that the viewpoint of local operational police be included in the planning process.
- The Department's ability to implement new strategies must be realistically assessed so that necessary assistance can be obtained from civilians within the Department and other professionals in the community.
- The mission statement, philosophy statement, goals and strategies for the Department need to reflect a greater emphasis on crime prevention, community policing and the community services which a modern police force should provide. Crime detection is vitally important as well, however, the emphasis on special squads is now no longer appropriate. Goals and programmes now need to be revised to reflect the regional delivery of police services, and civilianization. Information and personnel activities will also require a degree of modification.
- Individual integrity, ethical and behavioural standards, essential to good policing must be given prominence.
- Practical review, control and recording procedures need to be incorporated as an integral part of the plan.

#### **8.7.5 Reporting**

The Annual Report submitted by the Commissioner of Police should contain an accurate and accountable disclosure of the Department's performance.

Because of the Police Department's role in law enforcement, particularly crime prevention, it is vital that its reports to Parliament are comprehensive and factual.

The Police Department, like all other Government Departments, must conform with legislation on departmental standards of performance reporting. The current Financial Administration and Audit Act requires departments to account for their expenditure against appropriation headings approved by Parliament in the yearly budget.

This line item appropriation system requires only historic reporting of spending against appropriation headings. Reporting of impact or results of spending has not been required.

The Department, in keeping with Government trends generally, should move to accrual accounting methods and publish an annual statement of income and expenditure, with balance sheets. This would obviously improve accountability.

Reporting expenditure against programmes and their results is not required by law, but all departments have been instructed to do this for the 1989/90 budget. All expenditures should be linked to programmes, indicators of performance should be provided on a year by year basis and a comment should be made in each report about results achieved compared with results anticipated.

## **8.8 INFORMATION AND SUPPORT SYSTEMS**

### **8.8.1 Introduction**

The efforts of operational police will be severely limited unless they have access to well integrated and reliable intelligence and other information essential to crime prevention and detection activities. In addition, efficient support systems including financial and administrative arrangements, need to be designed and managed so as to provide the highest level of assistance to operational police in carrying out their duties.

Evidence and submissions before this Commission point to deficiencies in present information and support systems within the Police Department which seriously diminish overall performance. The area is one of vital importance and quite extensive improvements are now required for reasons discussed below.

### **8.8.2 Information Systems**

Reliable, comprehensive information is vital to any Police Department. Technology, including computing development, offers a chance to improve criminal investigation work. Evidence suggests that improvements anticipated from systems developed in recent years have not been realized.

The Queensland Police Department spent some \$15.2 million on computer equipment over the past five years and introduced a number of new systems applications using ~~the~~ internal team of computer specialists assisted by external consultants. It is difficult to quantify the extent of any overall positive impact from this investment, considering the fairly static 'clear-up' rate of crime and the escalating crime rate. A number of observations, however, can be made based on this Commission's own experience and submissions received outlining deficiencies in Police Department systems.

Police management of the existing Computer Branch within the Department has not been effective. Systems developed in the past lack necessary documentation, are not integrated, and have not been developed in accordance with a strategic computing plan or upon consistent standards. Inadequate emphasis has been placed upon the service role of the Branch and control systems are quite deficient. The Branch is losing specialized staff and not performing effectively. Substitution of civilians by non-specialist police staff will only exacerbate present problems.

The Branch needs an infusion of computing professionals.

In addition to management and technology problems, corrupt members of the Police Force have, in the past, actively influenced Computer Branch activities, and the evident lack of systems integration may in

part be a direct consequence of this involvement. Rivalries between sections of the Police Force have also resulted in suppression of information. Detectives in specialized units rely upon their exclusive access to certain information to bolster their privileged positions. Such 'specialists' guard information and their informants jealously. The emphasis upon the chain of command within the Police Force, and rigidly structured patterns for information gathering, results in much useful information simply not being entered into the system. The systems for disseminating both criminal and routine information are also structurally impeded.

Computerization alone can not overcome these problems. New structures, procedures and controls must complement the development of technology. Despite whatever technological development is available, most crime continues to be solved through information provided by citizen witnesses to the offence or circumstances relevant to it. Police systems have not been good at converting public information into evidentiary material. The present systems are not sufficiently discerning. Some potentially useful criminal intelligence can only be classified as 'useful general information' and does not fit a particular 'criminal information' category. The consequence has been that useful and relevant information has not been channelled into the investigatory mode. All of these problems are especially manifest in the Department's two major criminal information data bases as outlined below.

### **8.8.3 The Information Bureau**

The Information Bureau comprises some 40 Police and 60 civilians, (mostly typists) and records reported crime and generates information and data bases on complainants, suspects, criminal histories, stolen property, missing persons, licensed dealers and outstanding warrants. It does this by means of the police computer network which services police stations all over the state. The information for the crime recording system comes from criminal offence reports.

Most information comes from operational police, and accordingly its reliability and comprehensiveness is totally dependant on the individual officers who provide it. Controls over input quality and consistency are inadequate.

For metropolitan areas, indexes of complainants, stolen property and material on suspects are generated in the bureau from reports phoned in by patrol officers. The reports are taped by means of an Ansaphone system, typed in the bureau and then entered into the system. Regions compile their own criminal offence reports and send copies to the Information Bureau.

Crime statistics are also compiled from criminal offence reports. At present this is done manually from copies of reports, rather than being generated from the computer data base directly. The Bureau also compiles information on 'suspects' and a missing persons index from data provided by field officers, and specialist squads such as the Juvenile Aid Bureau.

The information network also provides details of firearm licences, vehicles of interest, vehicle registration and driver licence information on a State-wide basis.

The Bureau also generates regular, printed crime circulars which include material from special operational areas such as the CIB and contain photographs and identikits of suspects. This material is not distributed electronically as facsimile services between Headquarters and stations are underdeveloped. This causes special problems with the location and service of outstanding warrants, as well as the transmission of other urgent printed matter. The computer system has no graphic capability.

### **8.8.4 The Bureau of Criminal Intelligence Queensland (BCIQ)**

The Bureau of Criminal Intelligence is the other major information unit established in the Force to gather intelligence from other special squads and the regions, and liaise with interstate and Federal bodies such as Police Forces, the Australian Customs Service, the Immigration Department, Telecommunications Commission, the Coastal Protection Authority, Postal Investigations and the National Crime Authority. It has special links with equivalent bodies in other Police Forces and the ABCI (Australian Bureau of Criminal Intelligence) established as the hub of the network.

The Bureau is expected to assist all sections of the Force with their intelligence requests, however, it relies on a card system and has limited capacity to generate or disseminate intelligence.

Information held by the Bureau is insecure because of poor controls over individual access to the system, and a lack of voice protection facility on radio communication.

The Bureau was designed to collate and integrate information from all special squads, but in practice this has not been achieved.

In summary, the two major units responsible for information and intelligence within the Police Force are ineffective, and require review and significant improvement.

## **8.8.5 Review of Information Systems**

The Queensland Police Force requires one professionally managed Information Bureau responsible for all of the Department's criminal records, associated information and intelligence. This unit should control the collection, analysis, storage, access and dissemination of information by the Police. It should be developed as a 'state of the art' information network centre.

This Bureau will be subject to oversight and access by the Criminal Justice Commission under arrangements later outlined. The Intelligence Division of the Criminal Justice Commission, after review, may take over the role of official liaison with some bodies, for example the NCA and ASIO.

A comprehensive review of all information systems within the Police Department is a necessary prerequisite to setting up the new Information Bureau to ensure a smooth and efficient transition to the central data base proposed, together with revised interstate liaison arrangements and necessary Criminal Justice Commission supervision.

Essential to this process will be the allocation of supervisory responsibilities, authorities and duties and the selection and training of competent supervisory staff.

The Computer Branch is likely to require re-organization and the introduction of new decision and project control methods to guide future application development. A civilian computer manager with extensive experience in mainframe applications is needed. Civilians will in future comprise a high proportion of the unit's personnel, balanced by the presence of a small number of police with practical intelligence experience who can support but not control the intelligence function.

Specialist external consultants working with officers from the Criminal Justice Commission and Police Department could provide the necessary skills to review existing systems and implement the required developments and changes in the short term.

The proposed changes to approach and organization within the Force outlined in this chapter will result in a 'flatter' structure with more direct lines of communication between operational police and senior officers. Command and information system efficiency will need careful attention. The compatibility of information systems with those used by other law enforcement agencies with which the Force interacts will also be an important consideration.

These services should be managed by qualified professionals of integrity with computing and information analysis expertise. Rigorous screening including voluntary disclosure of assets, activities and associations would be a prerequisite for employment.

It is again stressed that there are fundamental practical objections to appointing police officers as the managers and custodians of Police information services, or Criminal Justice Commission intelligence services.

### **8.8.6 Dissemination of Information**

At present, under the Police Rules, the unauthorized use of or publication of police information is an offence. There are no internal control or check mechanisms to ensure the integrity of information presently recorded. Similarly, no internal control and check mechanisms exist to ensure that all potential information is recorded.

Development of the computer network will provide the opportunity for speedy dissemination of information to field officers, supervisors and managers. The advent of increasing numbers of computer-literate police officers provides the opportunity to make more and more use of this technology.

While information of an operational nature should be available to field staff to enable them to do their work properly, controls should be in place at all times to prevent unauthorized access to any Departmental information whether from inside or outside the Force. Unauthorized use or publication of police information by police officers should continue to be an offence under the Rules, subject to Rule revisions mentioned earlier. Sale of police information should be a criminal offence.

Internal control and check systems must be developed to ensure access to the system can be monitored and controlled. At present, the lack of controls precludes any check on the integrity of information. Crime statistics are therefore suspect. Moves towards national uniform crime reporting will include training and control measures which should partly solve these problems. More comprehensive solutions require better training, supervision and management, and the development of systems which have the confidence of the users.

### **8.8.7 Informant Control Systems**

Informants are valuable sources of criminal intelligence. The protection of informant's identities from outside disclosure has long been recognized as essential.

The factors surrounding the creation of police relationships with informants and the backgrounds and motivations of the majority of informants, often place police officers in situations which give rise to allegations of criminality. The inherent need for confidentiality in respect of information provided by informants, both to protect them, and to preserve them as sources of further information, exacerbates that risk.

When a police officer is acting 'under cover', and many contacts with informants are made, environmental factors and personal attachments may lead to misconduct and/or allegations of criminality against the police officer.

In Queensland, there are no formal systems for registration of informants, although the Department has proposed that such systems be introduced. Several other police forces in Australia have such systems, which were designed to protect both the informant and the law enforcement officer.

These systems are basically concerned with the registration of informants, by pseudonym if that is thought necessary. They prescribe the size of payments to be made to the informants on the basis of the value of the information and establish methods for dealing with informants who have been arrested. Contacts between officers and informants are registered.

Similar systems need to be established in Queensland. They should be administered by the Information Bureau, which is after all, the unit which will ultimately handle the intelligence gained from the informant. It will be able to assess the reliability of the information by comparing it with other intelligence, and is more likely than an individual police officer to know the history and activities of an informant. It will also be better able to determine remuneration which reflects the worth of the information.

The Bureau will also be well-placed to monitor any undesirable tendency where the use of informants by individual undercover operatives occurs.

Essentially, the use of informants should be supervised and both the controller and the informant should be afforded protection by the informant registration system. When informants' involvement becomes such

that they are potential witnesses their physical protection will be passed over to the Witness Protection Division of the Criminal Justice Commission.

### **8.8.8 Support Systems**

Submissions to this Inquiry, and the Inquiry's requests for information have demonstrated areas of inefficiency in administrative and support systems of the Police Department, including filing and information, computer design and implementation, uniform ordering and issue and allocation and use of motor vehicles. Shortcomings in reporting and information systems have already been discussed.

The present systems for enlisting media and public support (including the Media Relations Section) also appear to be deficient. There is a lack of co-ordination, and police officers distrust the Media Relations Section because of beliefs that it has been used for political manipulation. At the same time, individual officers manipulate personal relationships with journalists to protect their own interests.

Systems for contacting and informing the public, interested parties and crime victims also seem to be deficient, for example, in cases concerning missing persons.

The personnel system has not worked well and has been systematically abused in the areas of transfer and promotion. Systems to deal with occupational health and safety, and welfare are poorly developed.

It seems that most, if not all support systems are in need of review, and piecemeal measures are not appropriate. Such a review will take some time, but should be a priority. The establishment phase of the proposed Criminal Justice Commission should provide the opportunity for the thorough review which is required.

### **8.8.9 Financial Management Systems**

The Secretary of the Department is responsible for financial management. Large sums have been spent in developing and computerizing financial systems, but it is doubtful if financial management at the regional and district level is given a high priority.

**If** programme budgeting initiatives are to benefit the Police Department, it is at these levels, regional, district and divisional, that involvement and commitment is most important. At present, there is no regional representation on the Budget Committee. It is difficult to make sure that money is being used well when the people using it are not also involved in drawing up the budget.

When programme budgeting is properly introduced, trends noted within the data will help forward planning and re-allocation of resources based on community need.

While the setting of departmental objectives is to be commended and encouraged, there has, to date, been little emphasis on linking spending to performance. The Annual Report provides some coverage of activities and functions pursued, but there is no opportunity to see whether spending in a certain area led to any improvements.

Establishing sound performance indicators is never easy. Enough is now known, however, to produce some realistic objectives and anticipated results specific to policing and monitor these on a two or three year rolling basis each year.

### **8.8.10 Policy, Procedures and Standards**

The manual section, which is located within the Training and Legal portfolio of responsibilities, is responsible for informing police about policy, procedures and standards. Every police officer is issued with a manual, which is regularly updated. General Instructions and Commissioner's Circulars are also distributed. Police report that they seldom refer to any of this material, although the index to circulars was recently made available through the computer network.

The Department is aware of the difficulties in implementing new procedures and practices and admits that the volume of material is excessive.

Procedural matters are covered in training courses, but they are predominantly concerned with legal matters. Moreover, the short duration of these courses and the relatively small attendances raise doubts as to their impact.

Procedure manuals and guidelines which cover matters of an operational nature are also available but rarely referred to by field staff outside of training courses.

Regular training and refresher courses for all staff would help ensure that necessary information on policy and procedures is received by all officers. Computer message facilities could be expanded to ensure that members are kept up to date.

Changes in policies, procedures and standards should be disseminated through a combination of media. Supervisory staff should be trained in new procedures and given responsibility for the training of other staff. Computer messages, introduction of training squads for special matters, seminars and regular review of supervisory practices are also means by which required changes can be introduced and monitored.

## **89 PROPOSED STRUCTURAL CHANGES**

### **8.9.1 Principles**

The Queensland Police Force is operating in a rapidly changing social environment, and the present rigid structure limits its capacity to adapt.

Present arrangements result in an unnecessary concentration of authority and decision-making in head office. If flexibility essential to regional command and community policing is to be achieved, officers at lower operational levels must have sufficient authority to respond to situations as they arise.

The present Police Department structure has parallel hierarchies which are not integrated. The structure is made up of a number of pyramids which connect, if at all, only at the highest level.

The most graphic example is the co-existence within the Police Department of the public service and police hierarchies, each with its own, although sometimes overlapping, spheres of influence.

A further example is where some officers in charge of centralized specialist functions and squads also control specialists in regions and districts either formally, as in the case of the CIB, or informally as is the case with Prosecutions or public service staff.

The confusion and uncertainty which arises from overlapping lines of authority and responsibility make it difficult for the organization to hold officers accountable for defined areas of responsibility. As a result, accountability tends to be poorly defined except in the case of junior constables, who are directly controlled by their superiors.

The new structure for the Department has been designed upon the broad principles of effective administration and management which apply to all complex organizations. It is based upon existing regional arrangements, but with greater levels of authority and responsibility for commanding officers at the regional, district and divisional level.

An effective police organizational structure should be as 'flat' (non-hierarchical) as possible to permit the management of the organization to be aware of and exercise supervision over the activities of officers in the field.

Particular attention has been paid to designing a structure which provides for as few organizational levels as practicable between the Commissioner and operational police officers to aid communication, expedite decision-making, and ensure that policies are relevant.



A regional basis has been retained for operational activities with regions composed of Districts and Divisions (stations).

Delegations of authority and areas of responsibility and control within the organization have been formalized and defined to avoid overlap and duplication, strengthen accountability, and improve efficiency. A clear division is proposed between mainstream policing activities, and administration/support functions.

Managerial positions are related to the authorities and responsibilities within the organization, and to the methods of ensuring accountability and supervision. At present, the rank and salary structure of the Force does not necessarily relate to management or supervisory responsibilities.

Present accommodation arrangements which result in regional, district and divisional commanders being located in the same premises tend to undermine the exercise of authority and the determination of responsibility at the appropriate levels. The proposed changes to these delegations may need to be reinforced by reviewing accommodation arrangements for Regional and District Commanders to gauge whether relocation is essential to the revised command arrangements.

The Police Act and the Rules are not the appropriate mechanisms for determining management and organizational arrangements and should be amended. In all other Government Departments, it is the responsibility of Departmental management to ensure that the organizational changes take place as required. Organizational arrangements and positions are determined by management, with the consent of the appropriate Minister within broad guidelines provided by the Act and Regulations. This permits a more flexible organizational structure, which can respond to meet changing demands.

## **8.9.2 Organizational Arrangements**

The Police Force should be restructured. The recommended structure has been developed accepting the present number of police regions, but acknowledging that numbers and boundaries may vary in line with research findings. The proposed Departmental structure is illustrated in Figure 8.22.

The model comprises three commands: Regions, Task Force, and Support Services.

The Commissioner of Police should remain the head of the Police Force, assisted by ten Commanders.

Eight of these positions will be Regional Commanders having full authority and accountability for managing police regions, and commanding the districts and various police stations (divisions) within each region.

Whilst Regional Commanders will be entitled to call upon the administrative, operational support and Task Force support from Head Office, each would be in command of any such units located in their region.

A position of Commander (Task Force) will be established in Head Office at a level equivalent to Regional Commanders.

Whilst there will be Task Forces located in the regions, it will be necessary to have a centralized capacity to assist in major investigations and operations within particular regions. Special arrangements, covert activity and tactical response capacity will be included in the Task Force command. The proposed operational structure is located at Figure 8.23.

Another Commander (Support Services) will be required to co-ordinate the provision of administrative support including administration, personnel and finance and operational support. The bulk of the units under this Commander should comprise civilian personnel. The Commander would be a police officer equivalent in status to other commanders. All civilian directors of major divisions will be responsible for providing responsive professional services to support the overall policing effort, and will have delegated authority to run their areas.

The Inspectorate, because of its review and reporting responsibilities of all command areas, will report to the Commissioner.

The proposed Head Office structure is illustrated in Figure 8.24.

PROPOSED POLICE DEPARTMENT STRUCTURE

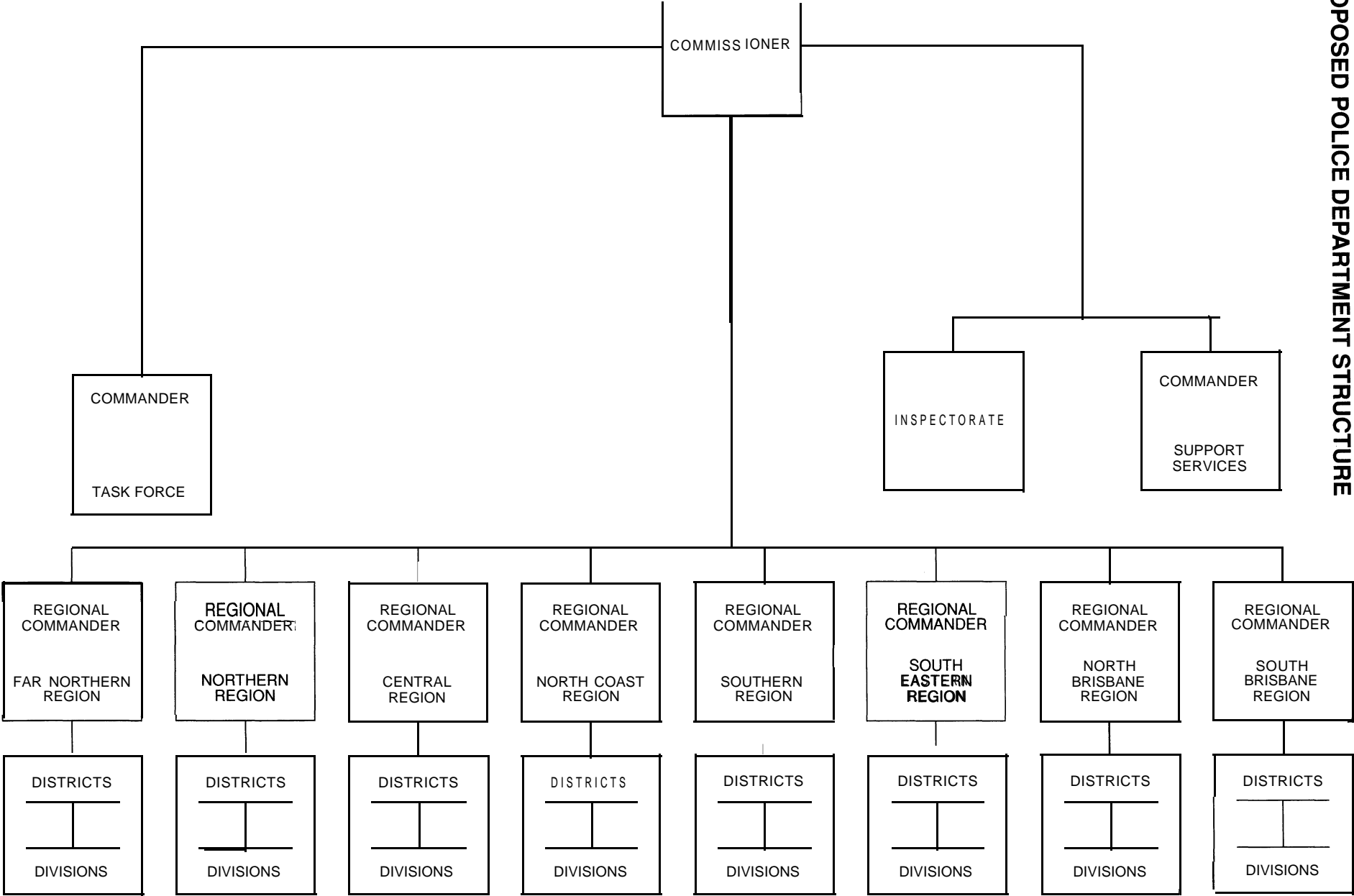


FIGURE 8.22

PROPOSED POLICE OPERATIONS STRUCTURE

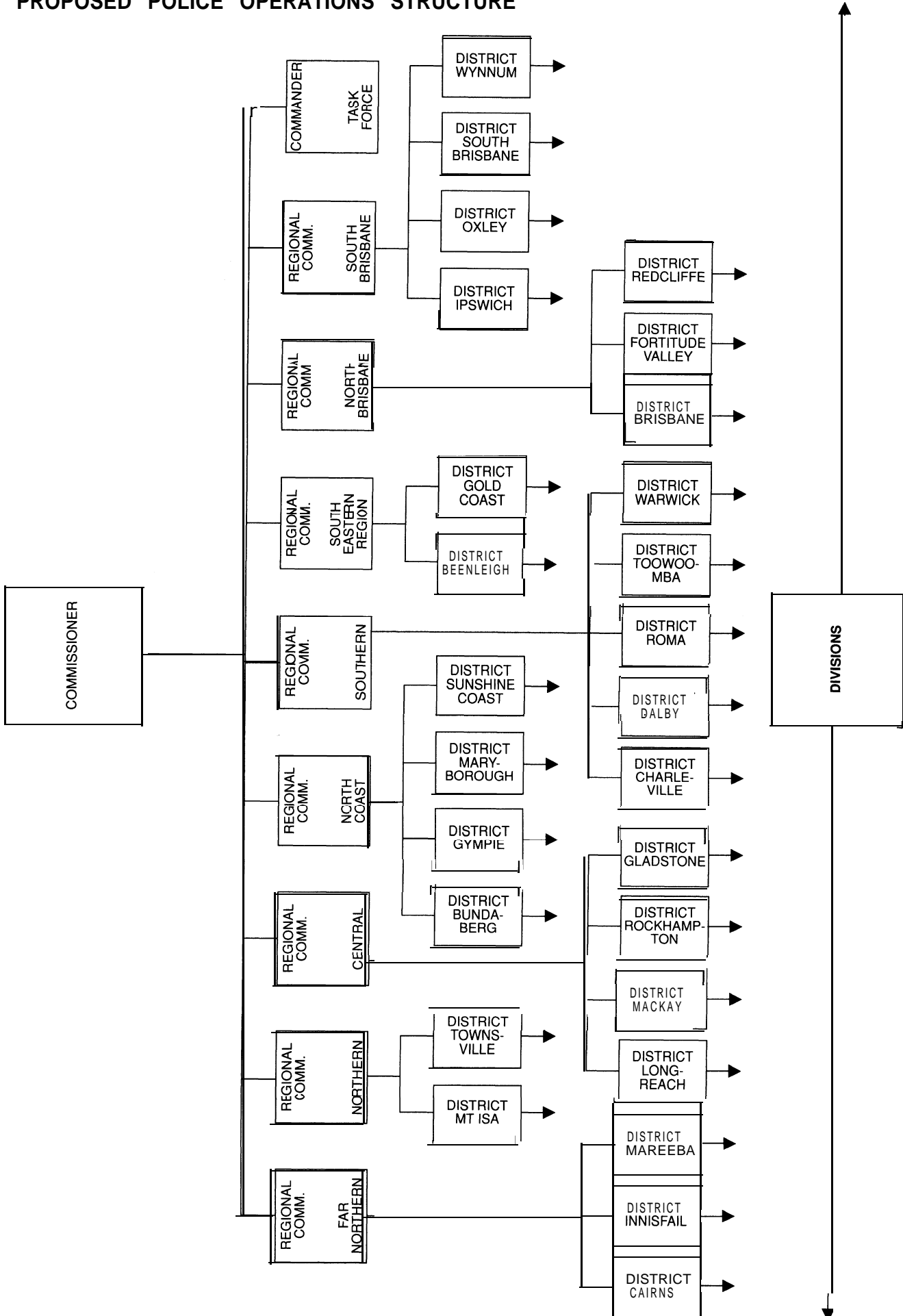
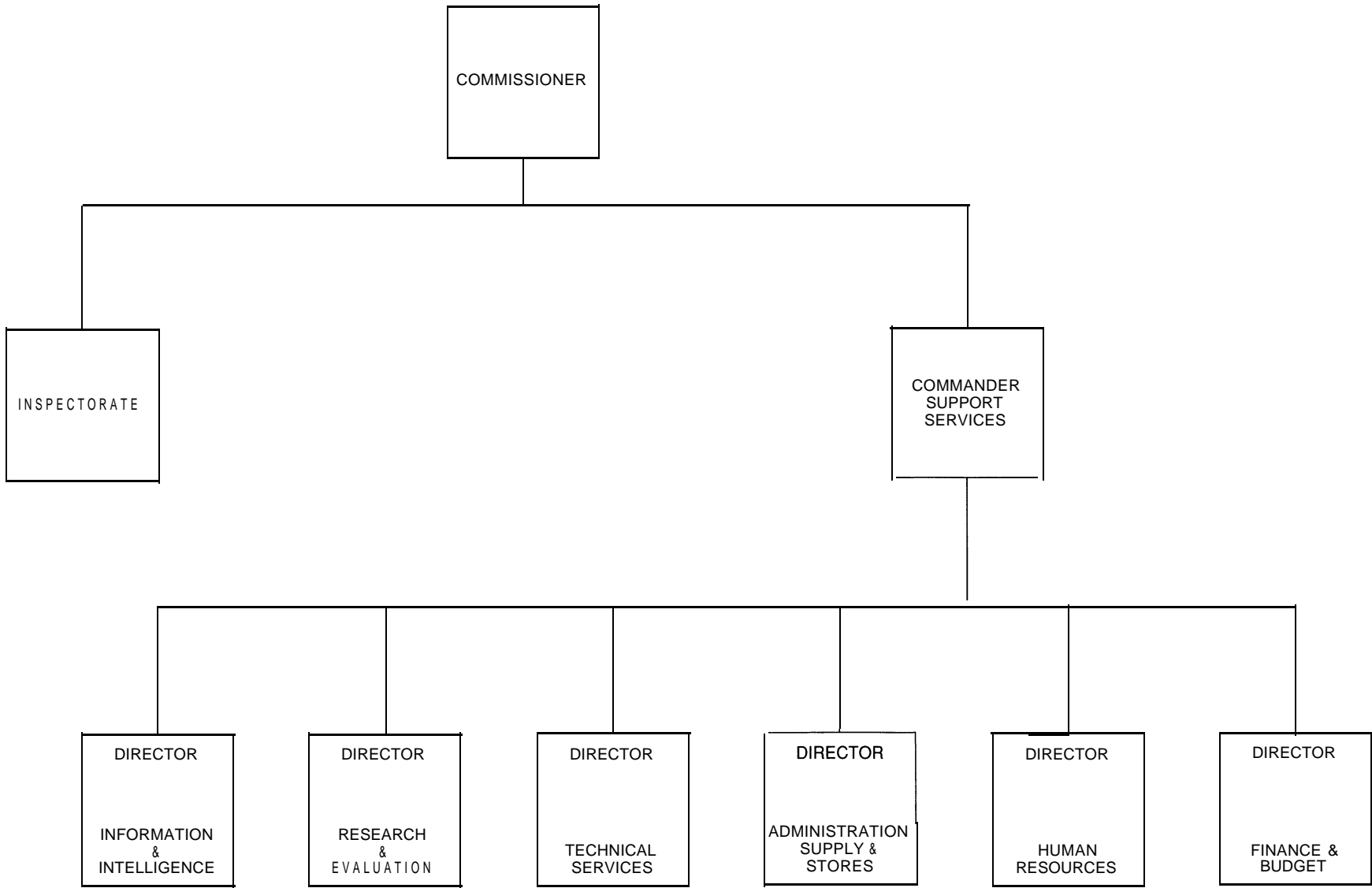


FIGURE 8.23

**PROPOSED HEAD OFFICE STRUCTURE**



**FIGURE 8.24**

The other main component of the proposed structure is a simplified system of police ranks. Apart from the Commissioner and the ten Commanders, it is proposed that the only ranks beneath them be superintendents, inspectors, sergeants and constables. It will obviously be necessary that there be salary increments within each rank, but, apart from that, the ranks should remain as simple as specified.

### **8.9.3 Tenure of Commissioner of Police**

Under current legislation, the Police Commissioner is appointed, conditional on good behaviour, effectively until attaining the age of 65 years.

This has proven unsatisfactory, and, in any case, it is inconsistent with the approach taken to other statutory officers within the Queensland Government and Public Service.

The position of Police Commissioner does require secure tenure, so that it is insulated against potential political interference. On balance, it would be preferable if the Commissioner were contracted for a term of three to five years.

A provision enabling the Government to remove a Commissioner from office for good reason is needed. The Commissioner's contract of employment should obviously provide for termination prior to completion of the specified term on the grounds of established disability or misconduct. The former would be the subject of competent medical opinion and the latter a matter of determination by the proposed Misconduct Tribunal. Provision for termination on the grounds of inefficiency or incompetence evidenced by failure to achieve agreed goals, standards of discipline and performance of the Police Force is also required, but needs safeguards to prevent the premature dismissal of a diligent Commissioner for political reasons. To achieve this, the contract should stipulate that action for dismissal on the grounds of incompetence or inefficiency may only proceed on the recommendation of the proposed Criminal Justice Commission to that effect, endorsed by the proposed Parliamentary Standing Committee on Criminal Justice.

### **8.9.4 Police Powers and Relations with other Institutions**

#### **(a) Misconduct**

It would be noticed that there is no need or purpose in the proposed structure for an Internal Investigations Branch. It is proposed that all disciplinary breaches and official misconduct be dealt with by a reformed approach to police disciplinary matters and by the Misconduct Division of the proposed Criminal Justice Commission respectively, developed in detail later in this Report.

#### **(b) Relations with the Government**

It is anticipated that the Commissioner remain answerable to a Minister of Police for the overall running of the Police Force, including its efficiency, effectiveness and economy. Under no circumstances should the Department be included in the responsibilities of the Attorney-General.

The Minister can and should give directions to the Commissioner on any matter concerning the superintendence, management and administration of the Force.

The Minister may even implement policy directives relating to resourcing of the Force and the priorities that should be given to various aspects of police work and will have responsibility for the development and determination of overall policy.

Priorities determined would have to include the degree of attention which is to be given to policing various offences. The advice sought by the Minister in deciding these matters and the process by which such decisions are made will depend on the circumstances at the time, and cannot be defined or rigidly laid down in legislation. Nor should they be left to the discretion of the Police Commissioner or Police Union. They should be properly reviewed

and determined in the immediate future by the Criminal Justice Commission and approved by the Parliamentary Committee.

The proposed Criminal Justice Commission has a much wider role than that proposed for a Police Board which was suggested by many submissions to the Inquiry. It will not remove the need for a Commissioner of Police, nor diminish the responsibility of that Commissioner for the superintendence of the Force, however, it would take particular responsibility for oversight of the reform process, and report to Parliament upon it.

In the interests of open and accountable Government, and the proper independence of the Police Department, a register should be kept of policy directions given by the Minister to the Commissioner; and recommendations provided by the Commissioner to the Minister. In the case of staff appointments, the register would also record the instances where the Minister or Cabinet chooses not to follow recommendations put forward. The register would be tabled in Parliament annually by referral through the Chairman of the Criminal Justice Commission to the Criminal Justice Committee.

The Commissioner of Police should continue to have the independent discretion to act or refrain from acting against an offender. The Minister should have no power to direct him to act, or not to act in any matter coming within his discretion under laws relating to police powers.

### **(c) Powers of Individual Police Officers**

#### **(i) Exercise of Powers**

The authority held by an individual police officer and its use and control are a vital part of the administration of criminal justice. As well as being of enormous practical significance, such authority has been the subject of debate among both academics and police.

A police officer's authority is not expressly limited by statute, though officers are obliged to obey the regulations under the Police Act (the Police Rules) on pain of disciplinary or criminal penalty. In addition, an officer of a given rank is generally obliged to obey the instructions of his superior.

Nevertheless, as far as the statutes go, each police officer has the authority to investigate and enforce the law in respect of any offence which he suspects has been committed, whether it be by a derelict, his own superior officer, or even the Minister for Police.

Unfortunately, the exercise of this right and its corollary, the right not to investigate and enforce a law, has had negative effects and has assisted in the institutionalization of corruption.

Active, dishonest minds can always find plausible rationalizations as to why individuals should or should not be charged, even when the decision seems unjustly lenient or oppressive. The deliberate decision to refrain from the prosecution of some offences and offenders has led to contempt of the law in certain areas. The unjust and oppressive charging of people, and the failure to charge, both came up in evidence before this Inquiry as favourite instruments of corrupt police.

What must be done is to circumscribe each police officer's right to exercise authority.

The primary control over exercise of power in normal circumstances should be through the command structure of the Force itself, Responsible senior officers, properly trained, who weigh up competing considerations and encourage their subordinates to do likewise before exercising power, are the people who should have prime responsibility for making sure police preserve and regain public confidence.

The exercise of the discretion not to prosecute and that of the power to warn, must, in particular, be circumscribed and controlled. There are advantages in allowing police officers to warn people about their behaviour, but those warnings must be recorded

and reviewed by superior officers in order to prevent a repetition of offences and misconduct.

Junior police must be properly supervised and guided in investigative procedures. They must come to appreciate the benefits of external and procedural controls over the exercise of powers, and understand that these controls tend to remove bases for criticism of them and of the quality of the evidence they present to the courts.

Individual use of authority must be in accordance with guidelines predicated upon the predictable and regulated use of power. Police adherence to such regulations must be enforced. Only then can law enforcement agencies be given necessary powers.

## **(ii) Access to Information**

A suitable command structure is also relevant to the availability of information to all police officers.

The potential for misconduct is even more pronounced with the power of access to criminal intelligence. As well, general access to information by police officers is not justified by the balancing of public and private interests in law enforcement and privacy.

The granting of more intrusive powers with respect to information gathering and dissemination can only be justified under the strictest controls, which include limited access.

The only legitimate basis upon which a police officer should be privy to any information is that it is of direct potential relevance to a current investigation.

The restriction on the dissemination of information is a central and fundamental safeguard. That safeguard should be reinforced by the need for any individual police officer seeking information pertinent to an investigation to do so via the officer in charge of the investigation. The police must be prepared to demonstrate to the controllers of the information system the need for the information to be provided, the potential relevance of information and the state and ambit of the investigation which they are conducting.

## **(d) Police Unions**

The two Police Unions are unusual industrial organizations in that all serving officers belong to one Union or the other and the Unions represent only one organization's employees. In addition, many serving senior officers have held senior Union positions during their careers.

The Union has exercised considerable influence in shaping Police Force personnel and management practice over many years, and whilst the Unions have a legitimate role to play in industrial matters affecting their members, it is singularly inappropriate for the Union to demand the right to influence the selection of the Police Commissioner or Minister.

In addition, any contact between the Unions and Government Ministers, (including the Premier) should only occur with the Police Commissioner and his Minister being present.

The Police Unions did, however, provide a comprehensive submission to this Commission and their interest in and support for many of the reform initiatives suggested in this report is acknowledged.

## **(e) Relations with the Media**

The Police media unit historically has served two purposes, one essential and the other inappropriate.

Police media unit members attend disaster scenes to help deal with media queries and make sure reporters get the information and interviews they need without impeding police work.

The media unit also has involvement with daily bulletins on the road toll, missing persons and other aspects of police activity. All this is a useful and legitimate 'information' function with the only qualification being a need to ensure media liaison works effectively at both central and regional levels.

The unit historically has also served a purpose to deflect and combat criticism of the force, irrespective of whether or not that criticism was well based. Evidence to this Inquiry suggests that on at least one occasion, senior police used the media relations staff to 'leak' false information to a journalist. The Police Department's own special task force report on the media relations section recognized this risk.

“..... potential for misuse of the Media Relations Section could occur if corrupt police of any rank have unfettered access to an unsuspecting information officer or his assistants. Misinformation on policing matters, particularly that covering up illegal activity, could be released to the mass media should sufficient controls not exist.”

There is therefore need to establish guidelines consistent with regional management principles so that the legitimate role of informing the public on matters of crime and security is not tarnished by a predisposition to misinform in the face of legitimate criticism.

Another important and legitimate basis to inform the media, will be to ensure the community is accurately appraised of the Police Department initiatives and reforms and their impact, so that public credibility may progressively be re-established through demonstrated performance, integrity and ethical conduct of police officers and the Department.

The Criminal Justice Commission would be in a position to monitor media relationships and ensure established guidelines are followed.





## **IX. OFFICIAL MISCONDUCT**

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  - (ii) Changing the System
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# CHAPTER IX

## OFFICIAL MISCONDUCT

### 9.1 INTRODUCTION

'Official misconduct' is a term generally used to refer to either the failure properly to perform or the abuse of public office and authority. It often involves the commission of serious criminal offences.

Official misconduct, including corruption, can involve not only police, but Ministers of the Crown, parliamentarians, judges, law officers and public servants of all types.

The grave significance of official misconduct has, for a long time, been reflected by the law, which makes certain conduct and activities separate serious criminal offences. For example: official corruption, extortion by public officers, abuse of office, judicial corruption and electoral corruption are specific offences. Other offences may also be involved in official misconduct, for example: perjury, forgery, stealing, misappropriation, intimidation and violence.

### 9.2 POLICE MISCONDUCT

The Police Force is at the threshold of the administration of criminal justice. Official misconduct by police officers can cripple the system. Police officers' special training, powers, authorities and opportunities can be abused and make misconduct more destructive and difficult to combat.

The approach to police misconduct in Queensland has been inefficient and ineffective. The problem of police misconduct must be reviewed and another approach taken.

#### 9.2.1 The Position of the Honest Police Officer

##### (a) The Police Rules

##### (i) The Present System

Even the best selection, training and management will not entirely eliminate police misconduct. The problem of investigating police misconduct has been tackled in different ways in different places, with varying degrees of success. To a large extent, attempts all over the world to combat police misconduct locally have revealed similar and recurrent problems: police culture, lack of effective control of internal investigative procedures, lack of internal investigative resources, organizations and procedures which inhibit honest police, and lack of public confidence in the Police Force's ability to investigate complaints against its members.

Queensland police are required by Police Rule 81 to report any misconduct which they know about.

That Rule only requires police to report knowledge, not suspicion, or what they have been told or overheard. That limitation has been exploited by police, who, when asked why they did not report their suspicions, have taken refuge in the excuse that they had no proof of misconduct, only suspicion.

Honest police are encouraged to take the same refuge, especially since they do not know whom to trust with their suspicions, and there is no protection for them should corrupt police come to know that they have made a report.

Honest police face the further risk of being accused of breaking another Police Rule which prohibits knowingly making a false statement “affecting the character of any other member”.

The problems with Rule 81 are compounded by the fact that complaints have to be made to other police officers -either to the commissioned officer immediately above the complainant, or to the Commissioner. The circumstances under which the complaint should be made to the Commissioner are not specified, but presumably include those when the officer concerned does not trust his superior.

Once a complaint has been made, the Police Rules which govern how it is dealt with are heavily in favour of the alleged wrong-doer. They set up a full adversarial process in which the alleged offender may claim privilege against self-incrimination and, in effect, require that the complainant provide proof of a case against the alleged offender.

When the statutory limitations are combined with the police culture, it is not hard to understand why honest police have failed to report corruption. Making such a report has meant almost certain hardship. Failing to make such a report was a breach of duty under the Rules, but the chances that the breach would ever be punished were negligible.

The message to honest police was clear. If they made an allegation, they would be required to provide evidence, while a legal shield would be erected around the accused, usually with legal representation paid for by the Police Union. Meanwhile the police brotherhood would punish the ‘whistleblower’. The Rules could be turned against the complainant who would often become the subject of false complaints, fabricated evidence and punitive transfer. Fellow officers would shun and mock the ‘whistleblower’ who would be given the worst rosters and duties.

## **(ii) Changing the System**

The Police Rules should oblige every police officer to report any reasonable basis of suspicion of misconduct. More is said of the appropriate methods of handling allegations of police misconduct later.

Police should be able to make reports against other police on a confidential basis. Such reports should be in the first instance to someone independent of the Police Force.

Honest police obliged to report misconduct, at least in the short term, may have to continue to work with the person or people whose conduct they have reported. They should have the assurance that their reports will be properly and independently treated.

There will be circumstances in which honest police who report their suspicions will be wrong, and an investigation will reveal that there was no misconduct. Sometimes the officers they accused will be able to work out who made the report. Nothing can make that situation any easier, except education of the Police Force in the need for each officer to be accountable.

In time, it is to be hoped that police officers who have the dedication to report suspicious circumstances will be respected rather than reviled.

‘Whistleblowers’ should be actively protected against retribution by allegedly dishonest police or other police, including friends or associates of allegedly dishonest police. The type of protection will differ depending on the circumstances. In some cases the police officers may wish to transfer to other duties. This should be accommodated if possible (and if the request is not merely an artifice on the part of the police officers concerned).

On the other hand, tension which results from a report of misconduct or suspected misconduct will often be alleviated by taking the police officer who is the subject of the investigation off current duties. Residual tension after conclusion of an investigation

can be monitored, and expert confidential counselling should be available, and if necessary, mandatory, for those concerned.

An independent body should monitor the careers of police who have reported or provided information about misconduct or suspected misconduct by other police. Police officers should be reassured that their careers are being independently watched to guarantee that they will not be penalized.

### **(b) The Police Union**

The past activities of the Queensland Police Union of Employees and particularly its executive, have been mentioned elsewhere. The Union on occasion has been both the means by which and the forum in which honest police have been dissuaded from doing their duty and reporting misconduct.

The Union has involved itself in cases where one member has made allegations against another. That is not part of the Union's proper function. The requirement in Union Rules that any member making a 'charge' against any other member do so in writing to the Honorary Secretary of the Union, accompanied by a Statutory Declaration, is an unwarranted intrusion by the Union into investigative processes. The Union of course may regulate its own affairs but has no proper involvement in police disciplinary matters (save in any general sense relevant to industrial relations).

### **(c) Secrecy**

The Police Rules prevent a police officer from making any public statement or giving any information to the media about Government or Police Department policy, or which may involve public controversy. A police officer may only issue or use Police Department statistics (other than those published in the Commissioner's Annual Report) with the approval of the Commissioner. A police officer must obtain the approval of his district officer or commissioned officer in charge to issue or use statistics which have been published in the Commissioner's Annual Report.

These Rules impose an obligation of secrecy on a police officer. Obviously secrecy should be required of an officer in respect of operational matters and special techniques and skills, but there is little proper justification for the present Rules. They lead to controversy and dispute and the purpose of them is subverted regularly by leaks from police and public statements by the Union.

The former are reliable only in their frequency, controversial nature and tactical purpose. The latter can also have political or tactical purposes and are made with impunity, daring the administration of the Police Force to risk industrial dispute.

The regime of secrecy does not for a moment effectively prevent or even hinder those with a particular purpose in breaking it or circumventing it; it is only an inhibition to honest police.

If the Rules imposing such general secrecy were reformed, honest police would not be inhibited from making proper complaint as often and as openly as necessary to get something done about it. If this means that less constructive 'stirrers' have to be tolerated to some extent, then so be it.

At the same time the reform of the disciplinary and complaint processes should largely eliminate the need for honest police officers to take public stands on matters of concern.

The natural inclination of a police officer, who has confidence in the administration of criminal justice is not to take such a public stand. The emphasis must be on removing the cause for honest police to complain publicly rather than the preservation of insular, defensive attitudes enshrined in the Rules.

## 9.2.2 The Failure of the Internal Investigations Section

### (a) Scope

The Internal Investigations Section began in early 1977 as an artifice. It has no capacity to carry out surveillance of other police and no other police unit may.

Before July 1987, Internal Investigations did not deal with all matters involving the disciplining of or even the charging of police officers. Not all complaints against police were referred to the Internal Investigations Section, although some complaints, after investigation by commissioned officers in the field, were referred to Internal Investigations or directly to the Commissioner.

Only in July 1987 were guidelines given to commissioned officers on how to deal with complaints from the public of graft, corruption, serious assault or other serious offences against police.

Such complaints are now all referred to the Deputy Commissioner or the Detective Superintendent in charge of Internal Investigations, who decides by whom the investigation is to be carried out.

However, when the complaint is not made by the public, the matter is not necessarily directed to Internal Investigations. A Regional Superintendent may deal with it locally, and send the file to the Superintendent of Internal Investigations at the conclusion of the investigation. Not all allegations of criminal offence against police officers are investigated by Internal Investigations.

Most complaints to the Internal Investigations Section have in the past not been made by other police officers. Those that were mostly related to purely disciplinary matters such as the enforcement of a senior officer's authority over a subordinate. Very few complaints of corruption have ever been referred to the Internal Investigations Section and none has resulted in criminal charges or effective disciplinary action.

### (b) Resources of the Section

The Internal Investigations Section consists of one superintendent and seven detective inspectors aided by three uniformed officers, who perform only clerical duties.

Each of the inspectors has responsibility for about 15 major investigations at any one time. Each such investigation takes two to three months, (though whether this length of time is needed is another issue). The inspectors blame their workload for the delays.

Some of the inspectors do not have their own office. There are no interview rooms in the Section's premises, which are generally inadequate. The Section has no surveillance or covert operational capabilities. It has a few tape recorders and only one still camera. Until recently no specialized training was given to officers involved in internal investigations. In August 1988 it was decided to include practical exercises on conducting such investigations in the second part of the commissioned officers' training course.

### (c) Method of Investigation

The Internal Investigations Section's usual method of investigating a complaint of police misconduct is to interview and take statements from the complainant, and sometimes from relevant witnesses, and then to interview the suspected police officer.

In the case of a report of misconduct by one police officer of another, the Police Rules require warning against self-incrimination to be given to the suspected police officer. The investigators in any event generally warn suspected police officers of their privilege not to incriminate themselves during interrogation. With rare exceptions, police investigators have made no attempt to direct suspected police officers to answer questions or provide information.

There are no standard operating procedures for the investigation of suspected police.

Whilst police attached to this Commission, using ordinary police techniques and powers, have conducted effective investigations into alleged police misconduct, generally the interrogation of police officers by the Internal Investigations Section has been pleasant, ineffectual and feeble. Usually the suspected police officer has been given the advantage of being informed of the allegations during the interview and being allowed to make a statement in response. Generally such accounts or statements have not been closely tested and suspected police officers generally have not been subjected to any searching or subtle interrogation.

The approach of the Internal Investigations Section is a good indicator of the inability of police without external independent supervision to act objectively and effectively when investigating each other.

The policy of the Internal Investigations Section has been to recommend departmental charges in preference to the laying of criminal charges. Even then, very few of the allegations investigated have resulted in disciplinary action, as was earlier noted, and with unacceptable results.

Inspectors of the Internal Investigations Section make a report, including recommendation, to their superintendent at the end of an investigation. Heavy reliance is placed on that report and the Superintendent rarely dissents from the recommendation. The report and the Superintendent's recommendation then go to the Deputy Commissioner and from there to the Commissioner. In minor matters, the Deputy Commissioner has the discretion to direct that the officer concerned receives counselling.

The great bulk of investigations conducted by the Internal Investigations Section result in no charges of any sort, departmental or criminal, because of 'insufficient evidence'.

There is a stark contrast between the way accused police and civilians have been treated. 'Insufficient evidence' has been conventionally adopted as an expression to explain not proceeding in cases where the 'only' evidence is a complainant's word against that of the police officer concerned. This excuse has often been supported by some carping criticism of the complainant or artificial reliance on immaterial inconsistencies in the complainant's and/or witnesses' accounts. In any other instance, such as a verbal confession by a civilian suspect which was later retracted, the fact that the only evidence was one person's word against another has not ordinarily been seen as a barrier to prosecution by the Police Force.

All investigations by the Internal Investigations Section have been ad hoc and reactive. No attempt has been made to analyze the major sources of complaints, types of complainants, categories of complaints or whether a greater incidence of complaints is received about members of particular units. The Internal Investigations Section has not done any pro-active policing. Although a Complaints Review Committee was formed in 1986 to interview police who had been the subject of a number of complaints and investigations, there has been little evidence of any action as a result of the Committee's work.

#### **(d) Conclusion**

The Internal Investigations Section has been woefully ineffective, hampered by a lack of staff and resources and crude techniques. It has lacked commitment and will, and demonstrated no initiative to detect serious crime. Corrupt police have effectively neutralized whatever prospect there might have been that allegations against police would have been properly investigated. The Section's effects have been token, mere lip service to the need for the proper investigation of allegations of misconduct.

The Internal Investigations Section has provided warm comfort to corrupt police. It has been a friendly, sympathetic, protective and inept overseer. It must be abolished.

### **9.2.3 The Failure of the Police Complaints Tribunal**

#### **(a) Scope**

The Police Complaints Tribunal began operations on 1 May 1982. It was set up as a political response to allegations of serious police misconduct made by two former police officers.



The Tribunal is an illustration of an administrative body with the superficial trappings of quasi-judicial impartiality and independence, set up as a facade for Government power.

Even when those appointed to such bodies are beyond reproach, ultimate power is retained by the Government while a generally unsuspecting community is deceived. The Police Complaints Tribunal is a sophisticated example of the device.

Its activities are confined to complaints received by it on matters of public notoriety.

Despite its title, the Tribunal's role is wholly dependent on the very institution into which it is meant to be inquiring. Until recently the Tribunal had no resources from outside the Police Force and was only granted some as the result of this Inquiry.

It has no power of determination and it can only make recommendations to the Minister which, if acted upon, almost always involve reference of the matters back to the Police Force. The Tribunal adds nothing of substance, but is a mask to disguise the reality. Lest the mask slip, the deception is secured by secrecy provisions.

## **(b) Relations with Police**

In practical terms, the investigation of police is still in the hands of police officers and the Tribunal has been met with obstruction and non co-operation from the Police Force. Far from co-operating with the Tribunal the Police Force has used a range of devious techniques to avoid the Tribunal's recommendations for action against some police.

The result has been that even when the Tribunal has been able to investigate and disclose misconduct by police, its recommendations have been ignored or diluted.

The Police Force's attitudes to the problems inherent in the Tribunal's work have been to ignore them, deny their existence or cover them up. The Police Unions, the Police Department and the Government have developed attitudes and policies dominated by political considerations. The Police Complaints Tribunal, like the Internal Investigations Section, from both a conceptual as well as practical viewpoint, has had the effect of masking rather than dealing with police misconduct.

## **(c) Constitution of the Tribunal**

At the time of writing, the Parliamentary Judges Commission of Inquiry is scrutinizing the conduct of the former Chairman of the Police Complaints Tribunal, His Honour Judge Eric Charles Ernest Pratt Q.C. Judge Pratt was the Chairman of the Tribunal when this Commission was set up.

Because of the continuing Parliamentary Judges Commission of Inquiry, this report will pass over important issues which would otherwise have been covered, and nothing will be said here to reflect on Judge Pratt, or for that matter the present or any former chairman of the Police Complaints Tribunal, all of whom were District Court judges.

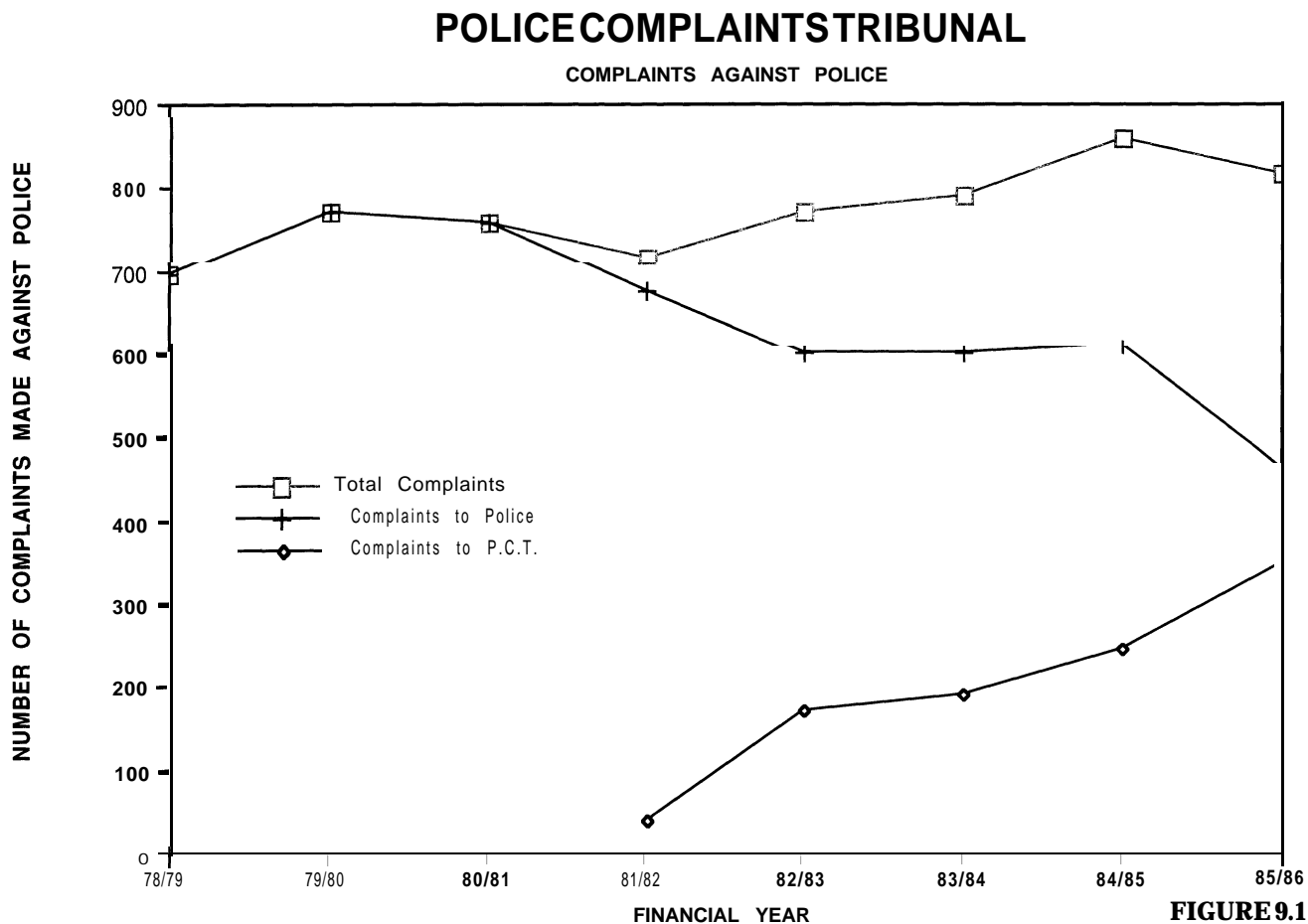
Nevertheless the Police Complaints Tribunal has structural deficiencies. It is dominated by a police representative and a former public servant, which is quite unsatisfactory. It is also unsatisfactory for magistrates, who regularly have to decide questions of police credibility in the courts, to be members of the Tribunal.

## **(d) Complaints**

The Police Complaints Tribunal, as best it could, kept trivial and vexatious complaints out of the police system, thereby conserving some police resources.

This caused a reduction in the number of complaints listed for investigation by police, and this reduction was duly exploited in police reports to make it look as though the general level of complaints about police misconduct was dropping.

The following Figures (9.1 and 9.2) illustrate the Tribunal's lack of effect. They show the pattern of complaints against police and the disposal of those complaints in the years before and after the Tribunal was established (1981/82).



By reference to Figure 9.1 (above) it is clear that from 1978/79 to 1985/86 there was little change in the aggregate level of complaints made against police officers, which invariably fell between 700-900 per year.

From 1981 when the Police Complaints Tribunal was established the number of complaints lodged with the Police Department fell from about 750 in 1980/81 to about 475 in 1985/86.

That decline in the incidence of complaints was offset, however, by a rise in the number of complaints lodged with the Tribunal, so that by 1985/86 (4 years after its establishment) the Police Complaints Tribunal was processing some 350 complaints against police per year, or about one-third of all complaints.

The net effect was 'no change' as regards the aggregate level of complaint against police officers—a point which is further illustrated by Figure 9.2 (below) which shows that when (on average) some 17 complaints per 100 police were lodged in any one year, approximately 3 complaints in 17 were 'sustained' (i.e. found by the Tribunal to have some legitimate basis) but less than 1 complaint in 17 resulted in the laying either of criminal charges or of charges under the Police Rules ('charges laid').

# COMPLAINTS PER 100 HEAD OF POLICE

TOTAL COMPLAINTS, COMPLAINTS SUSTAINED, CHARGES LAID

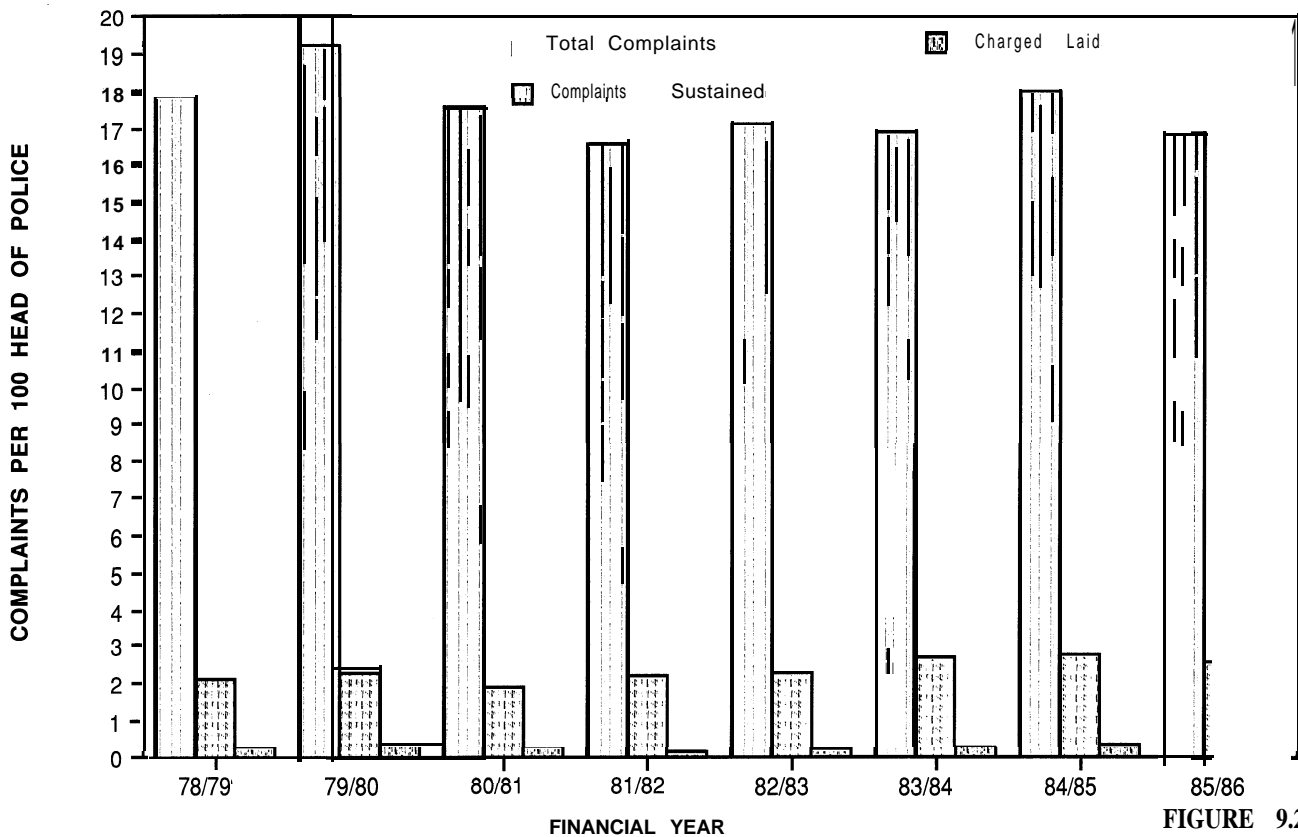


FIGURE 9.2

When these trends are considered, it is clear that the Police Complaints Tribunal has had little (if any) impact on police misconduct, the reported incidence of which has risen dramatically in recent months.

For example, between the first quarter of 1988 and the first quarter of 1989, the number of (non-trivial or non-vexatious) complaints received by the Tribunal rose by over two-thirds.

This compounded an already serious 'backlog' problem of several hundred unattended matters.

## (e) Conclusion

The Tribunal's public statements and reports over time rejecting suggestions that there is a marked level of corruption in the Queensland Police Force, or that the Police Force is overly aggressive or covers up misconduct, demonstrate the Tribunal's lack of effectiveness.

The Tribunal is regarded by corrupt police officers as impotent. It has lost all public confidence. It is seen as an apologist for the Police Force. Notably not one complaint of corruption has been made to the Police Complaints Tribunal.

Since this Inquiry revealed that the low public perception of the Tribunal's performance was quite justified, a determined effort to improve its image has been made under the current Chairman and his predecessor, each of whom was appointed for a limited period in a 'caretaker' role pending recommendations in this report with respect to the Tribunal's future.

There is no doubt that it should be abolished. It is ineradicably tarnished with a deservedly poor reputation, and, while its image can be, and to some extent has been, improved, that will, in time, only add to its problems. The lack of public confidence in its performance has assisted it to the extent that it has almost certainly reduced the number of complaints which have been made. Even so, in order for it to perform its 'caretaker' role in relation to a

backlog and new matters, the Tribunal has acquired considerable additional staff including four police inspectors and other professionals, and has worked on a full-time basis, effectively depriving the District court of one of its members because the Chairman of the Tribunal is a judge of that court.

In essence, despite its intended role, the Tribunal has, no doubt with the best of motives, recently set out to extend that role presumably with a view to perpetuating its existence.

The Tribunal is top heavy, its structure, functions and powers are misconceived, it is cumbersome and expensive, and its areas of concern are far too diverse, in some instances far too difficult for it and in other cases too trivial to justify the attention of such a body. Further, its role overlaps with tasks already performed elsewhere and, more importantly, will duplicate aspects of what will be better performed by the mechanisms recommended elsewhere in this report. There are indications already of resentment and rivalry, and the resources demanded by the Tribunal and the associated cost can be put to much better use. Undoubtedly, if the Tribunal is not disbanded, its perceived needs will increase to match its notion of its role, which has recently been described as “predominantly investigative and advisory” and consensual and, somewhat contradictorily, as “designed as an overview agency” in relation to the investigation of complaints against police.

The reality is neither activity is suited to a ‘tribunal’, especially one presided over by a serving judge, and otherwise composed of an unnecessary number of persons with backgrounds as judicial officers or present or former officers of the Justice or Police Departments.

## **9.2.4 Police Discipline**

### **(a) Criminal and Disciplinary Matters**

Complaints about police misconduct vary from the trivial, such as minor discourtesies, to the grave, such as complicity in serious criminal offences. It is necessary to identify priorities and realistic objectives, so as to conserve and apply resources properly in respect of official misconduct, as for any other area of law enforcement.

Despite difficulties of definition and areas of overlap, the law recognizes a distinction between criminal offences and disciplinary offences. The latter, although called offences and punishable, are merely breaches of a disciplinary code. Tribunals which deal with disciplinary offences are administrative, not judicial.

In a force of over 5,000 police officers there will obviously be an enormous number of disciplinary incidents. The bulk of these will not involve civilians and will never come to the attention of the public. The gravity of such incidents will range from mere inefficiency through insubordination and negligence to serious misconduct which nonetheless falls short of criminal conduct.

The distinction between criminal and disciplinary offences ought to be maintained in relation to the police.

### **(b) Disciplinary Matters**

#### **(i) The Present Rules**

The prescription of disciplinary offences for police is in urgent need of review. The Police Rules lack proper definition of the relative importance of different activities. For example, a police officer’s ill-treatment of a police horse or a police dog is put on the same plane as accepting or soliciting a bribe!

That problem is compounded by the Police Rules addressing both purely disciplinary and criminal matters. Under the Police Rules officers who take or solicit bribes are liable to a fine of not more than \$40. Elsewhere, the Rules make police who take bribes liable for dismissal. Meanwhile, the Criminal Code prescribes much heavier

penalties for the same conduct, and the Police Act provides for fines of \$2,000 and/or imprisonment for those who corrupt police.

Some Police Rules are vestigial and others are archaic or irrelevant in practice.

The Police Rules should be redrawn. In particular, the Police Rules should make plain whether and which particular types of misconduct are to be regarded as disciplinary or criminal.

A separate code of conduct, in plain language, is needed to supplement the ordinary law. Compliance with it should be enforced by disciplinary provisions in the re-drawn Police Rules.

## (ii) **The Mechanism for Dealing with Disciplinary Matters**

Subject to what is said later, disciplinary matters should be dealt with by commissioned officers in a simple, streamlined way. Complaints of a purely disciplinary nature should be dealt with at regional level by the Regional Commanders or their commissioned nominee.

The unnecessarily complex hearing mechanism used to date in reliance on the Police Rules should be abolished, as should the privilege against self-incrimination. The process should be inquisitorial and the police officer concerned obliged and required to answer questions and provide information.

There is no reason why a police officer against whom a complaint has been made should not have to answer questions about his conduct as a police officer or the performance of his duties.

A police officer is not in the same position as an ordinary citizen. He is bound to uphold the law and actively to enforce it. He is employed by the community to do that task. It is essential for public confidence in the Police Force that reasonable criticism, of or concern about police performance be addressed and met by full explanation. A police officers' obstinate silence is an unacceptable impediment to that.

A police officer's privilege against self-incrimination can be retained in respect of any subsequent criminal proceedings. Distinction must, however, be drawn between the considerations relevant to an individual's right to fair trial on a criminal charge, and the community's need to expose and remove bad police (whether or not they be ultimately convicted of a crime).

The present Police Rules require officers to answer questions and provide information about the performance of their duties. Refusal to do so, or lying while doing so, is itself misconduct warranting dismissal.

The practical difficulty of making dishonest police tell the truth must be recognized. A dishonest police officer can always lie, but when the lies are discovered, the liar should be instantly dismissed.

The present practice of focusing upon police officers who report misconduct as if they were complainants in a criminal court should be abolished.

The inquiry process should involve those police who might know about the alleged conduct, or be able to provide relevant information. Such officers also should be required to answer questions and provide information.

There is no reason why police should have the luxury of having every disciplinary complaint against them determined with the full panoply of an adversarial process including examination of witnesses upon oath, and the accused not having to make any statement or provide any explanation.

In some cases, there will be disputes which can only be resolved by a hearing and examination of witnesses, but even then there is no need for adoption of full adversarial process.

In many cases, if an officer is required to explain the circumstances of an allegation against him, no hearing will be needed. The explanation can itself be sufficiently discreditable to warrant disciplinary action on the grounds of misbehaviour or incompetence. On the other hand, in some circumstances, any proper administrative concern may be allayed by a credible explanation.

The requirement that the subject of a disciplinary complaint be required initially to state whether or not he disputes its validity should be retained. It is efficient. Indeed, it should be reinforced by any denials being obtained in the form of a statutory declaration.

Rules of evidence should not apply to police disciplinary investigations. The police officer concerned should be informed of the allegation and be allowed to see, comment on, and explain information or materials adverse to him and present information or material to refute the allegations.

The investigating officer should be empowered to determine whether a disciplinary offence has been committed, and to administer summary punishment.

### **(iii) Appeals**

A police officer aggrieved at disciplinary determination or penalty should be able to appeal to an independent body, mentioned later. That body may investigate the issues afresh, and exercise the investigating officer's power to determine and punish as appropriate.

It should not be bound by the rules of evidence and should proceed as an inquisitorial administrative body. Again, there is no need for the full panoply of an adversarial hearing. There should not be appeal from or review of its purely disciplinary review function.

### **(iv) Vexatious Complaints**

There is an acute need to reduce the amount of police time spent on investigations of minor disciplinary matters. Obviously from time to time vexatious or misconceived or mischievous complaints will be made against the Police.

A regional police commander (or equivalent) should be able to dismiss out of hand such vexatious complaints when they refer purely to disciplinary matters of no substance. A record of the fact of such complaint and of the reasons for dismissal of it summarily, and by whom, should be made and kept and notice of it given to an independent body.

All complainants, whether police or civilians, should be informed of any action taken upon and the outcome of their complaint. All complaints of equal gravity should be dealt with in the same way whether they arise internally or externally.

Police commanders should be instructed in the need for disciplinary matters to be dealt with fairly and firmly but as administrative matters. The approach of treating every complaint of police misconduct like another without regard to gravity or nature must end.

## **(c) More Serious Matters**

### **(i) Complaints**

All misconduct or suspected misconduct by police officers other than of purely disciplinary significance should be required to be reported to an independent body. All ranks should have an obligation to make such report.

No police officer should have a discretion whether or not to refer any allegation of police misconduct (other than of purely disciplinary significance) for investigation by the independent body.

## **(ii) Prosecution Considerations**

A mechanism is needed to deal with matters which are not merely disciplinary but in which decision is made, for proper reasons, not to prosecute. Methods also need to be devised to deal with matters which are the subject of failed criminal prosecutions or of pending prosecutions.

A considerable number of such matters will arise out of this Inquiry. For reasons which have already been explained, adverse findings have not been made against some individuals against whom some testimony of misconduct exists. For a variety of reasons, including lack of sufficient evidence, some will not be prosecuted. Others will be prosecuted, but, quite possibly, some prosecutions will fail.

There is an enormous problem created when police officers are acquitted of criminal offences, especially serious criminal offences. Not only does police culture probably enhance their prospects of an acquittal, but their powers and authorities are restored and their careers (and probably their extra-curricular activities) continue unabated, perhaps even aided by sympathy at their ordeal or by increased respect for their achievement in beating the charge.

When it is commonly believed that the police officer in question was guilty, the effect on the morale of honest police is devastating especially when, as has happened all too often, reinstatement is followed by rapid promotion.

Much has been said, loudly and often, by police, through their unions, about the entitlement of police officers to enjoy the same standing, protection and immunities as do other citizens.

That concept does not, however, justify the conclusion that if a police officer is acquitted in criminal proceedings, all allegations cease to be of any relevance to that officer's continuing in the Force.

A jury in a criminal trial is obliged unanimously to be satisfied beyond reasonable doubt of a defendant's guilt before it may convict. A guilty verdict has serious consequences for an accused. The need for undoubted proof of the commission of the offence reflects the gravity of that consequence.

The law, however, clearly and correctly recognizes that a person may be guilty of conduct amounting to a criminal offence, although the available evidence will not support a criminal conviction. This is because of the difficult, exceptionally stringent requirements which are, properly, applied to criminal trials. The accused does not have to incriminate himself: guilt must be proved beyond reasonable doubt.

Police and the Police Force can only be served by a disciplinary regime in which all matters affecting the suitability of any person to remain a police officer can be reviewed and in which discipline and efficiency is enforced quite independently of any other criminal or civil considerations.

Comparable regimes are common in employment of all sorts and in the professions, where high personal probity and standards of performance are expected to be maintained.

Dismissal for misconduct is also a severe consequence. It involves the loss of livelihood, the loss of security, the loss of expectation of retirement benefits, hardship until other employment is found (if it can be) and the stigma of dismissal.

Nonetheless it is short of criminal conviction and is not to be equated with that. Often in a variety of everyday circumstances, ordinary people are dismissed from

their employment. They may be dismissed on minimal notice and for no cause, with all the same consequences save the stigma.

There are, now, industrial ramifications to the decision to dismiss a police officer. Two mechanisms are normally available for making such decisions. They are civil proceedings in the established courts or a special tribunal (that is to say, a determinative body, not an one such as the misnamed Police Complaints Tribunal).

It would, however, be cumbersome and slow to have all such disputes determined in the courts and submitted to the delays of the ordinary lists.

The same body which reviews decisions on police disciplinary matters should also make original administrative decisions in relation to the more serious matters of police misconduct which do not result in charge of criminal offence or, if charges are laid, are undisposed of or result in acquittal.

All that body's original decisions should be open to judicial administrative review on the basis of want of natural justice or error of law.

In passing it should be recognised that whilst in the vast majority of circumstances any grounds for dismissal will first be examined by the above mechanisms, the Crown must retain its prerogative to dismiss any police officer in special circumstances.

#### **(d) Pending Investigations or Proceedings**

##### **(i) Introduction**

Whilst activity which has a real and distinct tendency to interfere in the administration of criminal justice must be avoided, there is no reason why Departmental administrative activity should cease, or why administrative action should not be taken while an official accused of misconduct is before the courts. There is no justification for deferring investigations or not gathering further evidence just because the misconduct concerned is the subject of criminal proceedings.

The idea that when criminal charges are laid, administrative or disciplinary activity in every case and in every aspect should cease is misconceived, wasteful, inefficient and fails to recognise that in many cases the verdict, whatever it is and whether or not against an official, will not resolve the issue of misconduct.

Care must be taken to ensure that an inferior administrative tribunal should not subvert or overlap the function of a superior court. Tribunals should not compel self-incriminating evidence (unless that be excluded from use in criminal proceedings) or otherwise impede the mounting of a proper defence in criminal proceedings. There should be no room left for argument about whether a fair trial has been possible.

Arrangements for administrative action must accordingly be formulated which are sensitive to any pending trial.

##### **(ii) Superannuation**

Since the passage of the Public Officers' Retirement Act, 1988, (and its successor) retirement can be temporarily blocked as part of a system designed to prevent anyone who has committed a 'prescribed offence' from being paid the public component of the superannuation to which they would otherwise be entitled. The Act does not extend to Members of the Legislative Assembly, who are not prevented from retiring and being paid their superannuation.

There are considerable problems with this legislation because it is based on suspension of the police officer or other public official without the need, in all cases, for pending charges.



As a matter of policy, this Commission was unwilling to provide information which could have led to the use of the Public Officers' Superannuation Benefits Recovery Act 1988 against a person who had not been charged. So far as is known, that has not occurred.

The concern that police officers and public officials should not be allowed to take advantage of unavoidable delays in preparing prosecutions by retiring quickly and taking with them benefits derived from public monies is understandable. The Government's understandable desire, however, to prevent any payment of publicly funded benefits to suspected police officers or public officials must be tempered by concern to avoid the risk of individual injustice, and, importantly, the desirability of encouraging corrupt police officers and public officials to retire.

Realistically, and despite the cost, the community is far better off with such people out of positions of authority, particularly since not all will be detected, and even fewer will be successfully prosecuted.

What has been said on this subject is not intended, however to reflect on the Commissioner of Police (Vacation of Office) Act, 1989, which was supported by all political parties as being appropriate to deal with the special position of Sir Terence Lewis.

### (iii) Suspensions

**It** is undesirable and unacceptable that a police officers remain armed, fully authorized, performing operational duties and still dealing with the people or activities involved in the allegation when their conduct is being investigated, particularly when they are suspected of official misconduct.

To date the only alternative generally used in the Police Force has been suspension. Police, through their respective unions, have for a long time claimed with some justification that suspension is quite unfair and leads to hardship, particularly when trials are delayed or protracted and the officer concerned is left without means. That is the more so if allegations prove unfounded.

Proper use of the discretionary power which exists to allow police to have second jobs can immediately relieve that problem. As well, dealing with complaints more quickly and efficiently, by the means addressed later in this report, can also alleviate the problem.

More importantly, there is a logical absurdity in the choice being restricted to suspension or retention on full duties. Even with the 'civilianized' balance to the Force mentioned elsewhere, there will remain plenty of uncontroversial police work which does not involve officers' dealing with the public, being armed or using special powers. There is no reason why a police officer on suspicion of misconduct cannot be retained on active duty and pay but 'stood down'.

The Rules should be amended to make this possible. 'Stood down' police officers, if for some reason otherwise allowed to wear plain clothes, should be uniformed when on duty and should not be entitled to bear arms. They should have their warrant cards withdrawn and their right to exercise powers of arrest and ancillary powers of investigation, detention, search and seizure (if any) suspended, save in respect of an immediate threat of physical harm to any person or to public safety or grave threat to property.

It does not follow that suspension is never justified until a charge has been laid. On the contrary, an occupant of a position of authority should obviously be deprived of that authority immediately there is any real basis for suspicion.

There is a need, however to identify relevant criteria and formulate policies and guidelines to apply them. A mechanism needs to be created to allow review of decisions on these matters, as with other disciplinary issues.

Some of the present problems with suspension are caused by the policy of leaving all consideration of whether a person should continue in the Force until the whole criminal prosecution process is complete. That is absurd.

### **(e) Pro-Active Policing**

In a general sense discipline should also be enforced in an indirect way by preventive policing leading to culprits running a real risk of being found out.

Such work will be one function of an independent body.

The confidence and comfort which dishonest police have taken from the 'brotherhood' and 'culture', the creaking and cumbersome Rules, the ineptitude if not the protection of the Internal Investigations Section and the facade of the Police Complaints Tribunal should be replaced by the very real risk that, without warning and from a quarter which is beyond their reach, investigation by an independent body will expose their corruption.

## **9.3 OTHER OFFICIAL MISCONDUCT**

The essential features of police misconduct similarly characterize other manifestations of official misconduct. The potential gravity of official misconduct is not limited to police misconduct or misconduct in and about the administration of criminal justice.

People are always reluctant to suspect their fellows in an organization, and are disappointed when their suspicions are confirmed. Co-workers tend to make excuses or cover up for each other. As discussed earlier, any organization's culture magnifies those common tendencies.

Public servants in records offices, registries, communications facilities, taxation and revenue offices, public works and security, for example, are targets for criminals. Official misconduct by a variety of public officers, in key roles and positions, assists and in some instances is essential to the success of criminals. The observations made with respect to police misconduct are therefore of general applicability and concern.

The manifestations of official misconduct other than police misconduct are more diffuse and although serious, pose problems of a different nature and order than does police misconduct. The particular significance of police misconduct being at the threshold of the administration of criminal justice is not equalled.

Detailed analysis of the various common instances of other prevalent official misconduct is not called for in this report. It is sufficient to record that the evidence before this Inquiry plainly established common and, apparently, growing manifestations of other official misconduct and its central importance in facilitating major and organized crime.

The seriousness of that other official misconduct must not be overlooked. Rather it is the plainest demonstration of the need for the researched and integrated approach to organized and major crime mentioned earlier in this report.

## **9.4 THE APPROACH TO BE TAKEN**

An important way to check and control official misconduct is to encourage honest officials who know of or suspect wrong-doing to report their knowledge or suspicions.

Just as witnesses and jurors in the ordinary criminal processes are protected from being suborned, intimidated or victimized, whether in their employment or privately, it is necessary that specific similar, and perhaps more extensive, protection be given to those whose information and testimony will be crucial to proving and punishing official misconduct.

Whilst police co-operation and help will be essential to the success of any new agency created to control official misconduct and initial opposition will have to be overcome by that agency, it is apparent that the Queensland Police Force cannot, in general, be made responsible for the control of a system to address

official misconduct. The agency will simply have to demonstrate, over time, an understanding of the difficulties of police work as well as firmness and fairness in its approach.

The problems should be addressed by laws which:

- ∞ provide for an independent body to investigate official misconduct;
- ∞ oblige public officials to report all official misconduct or any reasonable basis of suspicion of misconduct by any person;
- ∞ forbid any action by any person to disadvantage any other person because he disclosed official misconduct or reasonable suspicion of misconduct;
- ∞ require public officials to provide all reasonable help in investigations of misconduct;
- ∞∞ forbid the exercise of any official authority, discretion or use of public resources in relation to the investigation of any conduct by any complainant or potential witness in relation to the investigation of any suspected official misconduct (other than in respect of an investigation of such person which had previously been commenced) except with the written authority of a designated officer in charge of such investigation into suspected official misconduct.

While judicial misconduct falls squarely within the general concept of official misconduct, the special considerations applicable to the judiciary make it appropriate to subject that topic to separate later treatment.

## **9.5 ICAC-ONE POSSIBLE APPROACH**

### **9.5.1 Introduction**

The detection of official misconduct and punishment of those involved has become a matter of increasing concern worldwide in the last twenty years. Various approaches have been taken, with varying results.

Although slavish adherence to a particular model or unthinking importation of the experience of other places is not the answer, such models and experience can serve as a guide. It is not necessary here to analyze the experience of different mechanisms and different countries, but considerable research has been done on the topic, and has been taken into account in making recommendations in this report.

There has been much public clamour in many different quarters concerning an Independent Commission Against Corruption (ICAC).

The rationale for an ICAC typically has been in circumstances where the problems of organized crime and institutional corruption are immense, and ordinary means cannot overcome them. As a result, extraordinary powers have been given to an ICAC, similar to those normally given to Royal Commissions and Inquiries such as this.

Sometimes an ICAC or equivalent has been the consequence of a Royal Commission or Commission of Inquiry.

### **9.5.2 The Concept**

There is no magic in the initials ICAC. The name conveys the purpose.

An ICAC's central role is to detect and investigate corruption. It is therefore also concerned with organized crime.

An ICAC is a permanent structure which endeavors to identify patterns and trends in official misconduct and to expose root causes of crime and the crises and disruptions it causes in public administration. Its main concern is with these larger problems, but in addressing them it amasses evidence concerning individuals which is passed over to prosecution authorities for action.

It is inquisitorial, that is to say, it conducts hearings, usually closed, with a view to establishing facts and makes inquiries which involve questioning witnesses on oath, exercising powers of search and seizure, conducting covert surveillance and interceptions, compelling the production of documents and the provision of information and, sometimes, detaining people for interrogation and investigation.

It has its own investigators, including police and other specialist investigators, such as accountants, lawyers, bankers, analysts, statisticians, and computer operators. It is subject to obligations of confidentiality and secrecy. It is obliged to report generally on its activities, but not specifically on particular investigations. Some ICACs may be directed to investigate particular people or matters. Usually they cannot be directed not to investigate matters within their charter, but may have matters referred to them for investigation by the government.

An ICAC may also carry out community education and public relations exercises. It may conduct an information campaign aimed at public servants, businessmen and professional advisers. Such campaigns may contain information about what constitutes official misconduct in relation to tax evasion, stock exchange fraud and insurance fraud. This is done with a view to raising standards and increasing community awareness of the insidious impact of official corruption.

### **9.5.3 The Difficulties of Establishing an ICAC**

Whatever the structure and powers of an ICAC, it has to use police. It may have police officers seconded to it who work at its direction and are immune (at least theoretically) from countermand or obligation to report to the Police hierarchy, or it may use other police on an ad hoc basis, for example, in task forces on field operations. Any ICAC or equivalent body has to find and depend upon honest dedicated police officers.

ICACs are powerful bodies, which cannot be fully supervised in the same way as other parts of the criminal justice system. They are extremely controversial. Invariably setting one up has been accompanied by cogent and trenchant criticism. Control immediately becomes controversial. The government has a natural wish to control the appointment, resourcing and activities of an ICAC, whilst opposition and other interest groups have demanded that policy formulation and the overseeing of operational activities should be the domain of Parliamentary committees.

### **9.5.4 Difficulties of Accountability**

There are strong arguments on all sides, and the balancing of accountability with the need for independence is not easy. The balance is even more delicate when special powers are available to ICACs and because, unlike Royal Commissions and Inquiries, ICACs are usually permanent or semi-permanent bodies. An ICAC's powers are usually subject to fewer controls than is desirable and can be extreme. For example, on one model, people can be detained incommunicado for interrogation and investigation for long periods and without the right of appeal.

Another cause of concern is that ICACs sometimes have a quasi-adjudicative function, and are not confined to investigations. For example documents and information held by the ICAC can be prevented from being released merely by a certificate from the Chairman of the ICAC or the relevant Minister claiming that the release of the documents, even for private examination by a judge, would prejudice the operations of the ICAC. In consequence in criminal proceedings, public servants can over-ride the interests of justice in a fair trial.

An important further example of the potential for abuse of power is the conferment of authority on the Chairman of an ICAC to issue warrants for search, arrest and detention without any control over his power. With the best of goodwill and personal probity, the Chairman of an investigative body, knowing and sharing in the beliefs and suspicions which are part and parcel of the investigative process, will inevitably be susceptible to exercising subjective judgment rather than making objective assessment of the need for the exercise of invasive powers.

The same considerations apply to the powers of overriding legal professional privilege and directing secret inquiries into confidential records.

ICACs therefore involve some abandonment of judicial controls over extraordinary powers, and a simultaneous acceptance of dependence on police as the investigators.

There is the risk that any autonomous investigative body, particularly one infused by its own inevitable sense of importance and crusading zeal, may become increasingly insensitive to the delicate balance between conflicting public and private interests, which is traditionally and best struck by judges.

Apart from anything else, there must be concern that an ICAC, no matter how well-intentioned, may in time become part of the corruption problem, which means that criminals may then have access not only to enormous funds, but also to a powerful body well placed to intimidate people and pervert the process.

There has been a tendency elsewhere to provide a multiplicity of offences to coerce people to co-operate with the ICAC. These offences duplicate and contradict other substantive provisions. Some offences are necessary -for example, failure to produce documents. However, having a multiplicity of such coercive offences is bad legislative policy and introduces doubt and complexity into the criminal law.

It is increasingly common, and will undoubtedly become standard practice where enough is at stake, for those whose conduct is in question to impugn the motives and behaviour of those appointed to that task. No doubt there is ample scope for individual personal vituperation according to the circumstances, but orthodox allegations will include bias, unfairness, abuse and excess of authority most effectively in extravagantly pejorative terms such as 'witchhunt', 'McCarthyism' and so on.

Obviously, the media considers all such allegations extremely newsworthy and automatically entitled to wide publication. (The enormous power of the media is illustrated by its capacity to influence public sympathy and support in such circumstances.)

The phenomena described were visible in relation to the work of this Inquiry and the Parliamentary Judges Commission of Inquiry, both in the circumstances leading up to its constitution and the tirade of abuse levelled at counsel who assisted it.

The same phenomena also confirm the undesirability of granting permanent bodies which must perform such tasks, extensive powers, especially a mixture of investigative and quasi-judicial powers and functions which are not sufficiently subject to external control involving not only subsequent scrutiny to ensure compliance with the law and all policy directions, but also prior independent authorization.

Over and above the more obvious reasons for ensuring that there are adequate checks on the exercise of invasive powers, such controls serve not only to preserve vital public confidence in the bodies in question (and, indirectly, in authority generally) but also to protect those bodies and their personnel from unwarranted criticism and, in turn, reduce the disincentive to acceptance of such appointments.

## **9.5.5 Conclusion**

There is nothing in the experience, demonstrated capacities and structures of ICAC's which warrants the adoption of the approach in Queensland.

It may be possible to combat corruption by some other means than an autonomous institution. The difference between independence and autonomy must be understood. An independent body is needed, an autonomous one is not.

The idea of an autonomous body can at first be comforting, because it is beyond the control of those in power who may be corrupt. However, just as such a body is (theoretically at least) beyond the reach of illegitimate power, it is also beyond the reach of practical proper control. If accountability is to be effective, it must relate to the exercise of power in specific cases, not just overall explanations. Accountability in the political sense is different from the necessary every day accountability when investigative powers are being exercised.

It is necessary that an independent body exist with the resources and powers to investigate official misconduct. It should not be autonomous.

For Queensland the preferable solution is that such an independent body exist as part of a wider structure which not only addresses official misconduct but which operates an integrated cohesive criminal justice administration.



## **X. REFORMS IN CRIMINAL JUSTICE**

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## CHAPTER X

### REFORMS IN CRIMINAL JUSTICE

#### 10.1 INTRODUCTION

A major issue in criminal justice is what controls there should be over the administration, and to whom the controls should be entrusted.

Suspicion of impropriety in matters of public administration causes public scandal. If there is a pattern of such controversies, as has happened in Queensland, it compromises trust in democratic institutions and practices.

A response by Government to allegations of impropriety that action will be taken when evidence is produced is no more than a cynical exercise in public deception. Ordinary citizens commonly lack the powers and resources to produce such evidence.

Periodic reforms to the administration of criminal justice tend to provide for the introduction of substantially autonomous bodies, by which Parliament effectively places some matters beyond its control and the control of the Executive.

One mechanism which is sometimes adopted to retain a measure of control over such a body is the constitution of a parliamentary committee to monitor its operations.

Such a committee can provide an effective democratic mechanism to determine which controversies should be fully investigated to allay public concern.

This course has the advantage that it makes the members of the parliamentary committee (and their political parties) responsible for the body's activities. Any other approach puts at risk the reputation for independence and impartiality of the body, which will always be vulnerable to criticism for its inability to investigate every complaint or public controversy, particularly if it has limited staff and resources.

What is really at issue is the degree of control which can realistically be retained within the political system if improprieties in public administration are to be exposed and punished.

The administration of criminal justice should be independent of Executive controls. It is an apolitical, vital public function. Such administration must be accountable for its activities and should be open to public review and accountable to the Parliament.

Much of the focus of concern in this Inquiry and in this report has been upon the structural, organizational and cultural malaises of the Police Force. Existing causes of misconduct and other cultural aberrations must be eliminated and wrong-doers identified and excluded or neutralized. Barriers to reintroduction and expansion of misconduct must be erected. A new influential leadership must be established which is committed to excellent ethical performance and discipline.

Independence and impartiality are essential characteristics of an effective criminal justice system. Responsibility and authority for law enforcement should not be totally vested in the Police Force or in any other single faceted, self-regulatory and self-assessing body.

No powerful institution, especially one with the potential to injure innocent citizens, should have untrammelled responsibility and authority to determine its own policies and methods. Nor should it decide the principles concerning the confidentiality of its material or perform its own regulation.

Elsewhere, police boards have been created to govern the Police Force.

Whilst it may be possible to have a police board which works because of the eminence and commitment of its members, the risks are great.

The Police Force should not be unregulated or regulated only by an “internal” group of civilians who are more-or-less inexperienced in the criminal justice system, unfamiliar with police attitudes and practices, involved with police administration only on a part-time basis and participants in other time-consuming activities. Such a police board would inevitably become merely a captive of the police lobby and the victim of a need to support police performance in order to justify its own performance. It would be incapable of effective regulation. The addition of police representatives would only exacerbate the problem.

As the institution with the responsibility and authority for the enforcement of criminal law, the Police Force should be subjected to external overview and critical assessment. External review should be supported by effective internal delegation, spread of authority and responsibility, comprehensive and detailed internal reporting and regular inspections.

The external overview and critical assessment of the Police Force should not be regarded as an isolated exercise. It is an integral function of the administration of criminal justice. All the tasks which comprise the administration of criminal justice, and the overview and assessment of the working of the Police Force should be done by the one body which administers other aspects of the system.

## **10.2 THE CRIMINAL JUSTICE COMMISSION**

A new entity is recommended, to be known as the Criminal Justice Commission, (CJC). It will be permanently charged with the monitoring, reviewing, co-ordinating and initiating reform of the administration of criminal justice. It will also fulfill those criminal justice functions not appropriately carried out by the police or other agencies.

The CJC will report:

- ⚡ on a regular basis;
- ⚡ when instructed to do so;
- when it decides it is necessary to do so.

This report has already detailed some of the priorities for review by the CJC. The range of matters that require attention is broad, and a programme of review and reform needs to be drawn up as one of the CJC’s first tasks.

The permanent role of the CJC will include:

- ⚡ acquisition of the resources, skills, training and leadership necessary for the administration of criminal justice;
- ⚡ advising the Parliament on the implementation of the recommendations in this report relating to criminal justice and the Police Force, particularly those matters set out for the CJC’s consideration;
- ⚡ monitoring and reporting on the use and effectiveness of investigative powers;
- ⚡ providing Parliament with regular reports on the effectiveness of criminal justice administration, with particular reference to the incidence and prevention of crime with special emphasis on organized crime, and the efficiency of law enforcement by the Police Force;
- ⚡ monitoring the performance of the Police Force to ensure that the most appropriate policing methods are being used, consistent with trends in the nature and incidence of crime, and the ability of the Police Force to respond;
- ⚡ monitoring the use, suitability and sufficiency of law enforcement resources and the sufficiency of funding of law enforcement and criminal justice agencies (including the Director of Prosecutions and Public Defender’s respective offices);

- providing the Commissioner of Police with policy directives based on CJC research, investigation and analysis. These directives would cover law enforcement priorities, police education and training, revised methods of police operation and the optimum use of law enforcement resources;
- overseeing the reform of the Police Force;
- researching, generating and reporting to Parliament on proposals for reform of the criminal law and law relating to the enforcement of or the administration of criminal justice, including assessment of relevant initiatives and systems elsewhere;
- undertaking essential criminal justice functions which are not appropriately carried out by police or other agencies. Apart from research and co-ordination of criminal law reform processes, these would include witness protection and investigation of official misconduct in public institutions;
- overseeing criminal intelligence matters and managing criminal intelligence with specific significance to major crime, organized crime and official misconduct.

A standing parliamentary committee, not charged with any other responsibility and known as the “Criminal Justice Committee” should oversee the operations of the CJC. The membership of the committee should reflect the balance of power in the Legislative Assembly.

The Criminal Justice Committee should have the power to formulate policies and guidelines to be obeyed by the CJC, and to direct the CJC to initiate and pursue investigations or to report to the Parliament. Whilst the Criminal Justice Committee should be entitled to be informed of the basis on which any investigation or category of investigation is being undertaken, it should not have the power to prevent or hinder any investigation by the CJC, (or any of its organs or officers), or do more than require the CJC to review a decision to carry out any investigation.

The exclusion or reduction of party political considerations and processes from the decision-making process with respect to the administration of criminal justice is an important consideration underlying the establishment of the CJC. Accordingly, executive authority and connection with the CJC must be limited to what is necessary to finance it, provide administrative and resource needs, and that necessary for public financial and other accounting purposes. For those purposes, but not otherwise, a Minister should be responsible for the CJC. Subject to what is later said about transitional arrangements, which Minister should be responsible for the CJC depends upon adoption of the earlier recommendation in respect of the role and office of the Attorney-General. If the Attorney-General’s ministerial responsibilities are changed as recommended earlier in this report, the Attorney-General should be responsible for the CJC. Otherwise the Premier or a Minister assisting the Premier (with no other responsibility) should be responsible for the CJC.

The CJC should report to the Criminal Justice Committee.

In contrast to the position of the Electoral and Administrative Review Commission, many of the matters to be the subject of report by the CJC, including some of its operational priorities and methods and the subject matters of its concern, may need to be confidential. In consequence, the reporting of the CJC should not be to the Parliament in the first instance, and, in some cases, not at all.

The Criminal Justice Committee’s members should all be subject to specific obligations of confidentiality. The Criminal Justice Committee must have the power to conduct hearings in camera. It should decide what material matters reported to it can be reported to and tabled in the Parliament and when that is to be done. Some matters may never be tabled.

However, that should not prevent the necessary, effective and sufficient oversight of the operations, methods and priorities of the CJC being had by the Criminal Justice Committee, against the background of the constitution of the CJC and reinforced by the checks and balances within it.

### 10.2.1 Constitution

The CJC should consist of a Chairman and four community members. **Those** four community members should serve on a part-time basis. The demands and responsibilities of the Chairman’s office suggest that it will need to be a full-time office.

It will be necessary to attract persons of the highest calibre and expertise to membership of the CJC. Conditions of such membership must be attractive. That is particularly so for the Chairman. Flexibility will be required to attract the best available talent. The Chairman's position should be widely advertised and filled only after evaluation of and report upon all applicants by independent consultants. The Government should consult the Criminal Justice Committee about the appointment.

The Chairman of the CJC should be qualified for appointment as a judge of, or has been formerly a judge of, the High Court of Australia, the Federal Court of Australia or a Supreme Court in Australia. Legal considerations will be a significant part of many, if not most, of the multitude of problems and issues with which the CJC will have to deal. The Chairman may also have to preside over hearings.

The Chairman of the CJC should be appointed for a term of not less than two or more than five years. The first Chairman should not be appointed for more than three years. Each other member of the CJC should be appointed for a term of not less than two or more than five years. Upon the expiration of his or her term of office, each member of the CJC should be eligible for re-appointment, except for the initial Chairman who should not be re-appointed. No Chairman should be eligible to serve any term or terms of office which aggregate to more than five years.

Membership of the CJC should not be seen as an occasional pastime, and appointments to it should not be given as honorifics. Service as a member of the Commission should be seen to be an highly responsible public office, demanding and challenging, and constituting a valuable public service.

Alert energetic people will be needed to perform the demanding tasks which membership of the CJC will involve. The members of the CJC will not merely be "watchdogs" or overseers of performance. That will be but one of their responsibilities. Each member of the Board should be encouraged to lend professional and practical expertise and experience and to take active part in the functions of the CJC as a whole.

The community appointees to the CJC should be as follows:-

- (a) A practising lawyer with demonstrated interest in civil liberties, to be drawn from a panel of four; two to be nominated by each of the Bar Association of Queensland and the Queensland Law Society. The appointment need not be of a specialist in criminal law. Nor need the appointee be a member of the Queensland Council of Civil Liberties.
- (b) Three persons of proven ability in community affairs, one of whom must have proven senior managerial experience in a large organization.

A person should not be eligible to be appointed as Chairman or a member of the CJC if that person is a Judge, a Member of Parliament a public servant or Crown employee, a member or servant of any other statutory body or a police officer or has been a police officer in the previous five years.

It is to be hoped that the CJC will act, after advice and consultation, by consensus. Failing that it will act by resolution of a simple majority. In the case of equal division, the Chairman shall have a casting vote. The Chairman shall always have a deliberative vote.

The Director of Prosecutions and the Commissioner of Police will not be members of the CJC, but, at the discretion of the CJC, could be invited to attend meetings as advisers when matters affecting their areas of responsibility are under discussion.

## **10.2.2 Organization**

For administrative purposes the CJC will require the services of a competent secretariat. An Executive Director should be appointed to control the CJC's Secretariat and to co-ordinate the CJC's operational functions.

The Executive Director will not be a member of the CJC, but will be responsible to the Chairman for administration and direction of its functions.

The Executive Director will co-ordinate the activities of the CJC through Divisions, each headed by an appointed Director. Those will be:-

- ∴ the Official Misconduct Division;
- ∴ the Misconduct Tribunal;
- ∴ the Witness Protection Division;
- ∴ the Research and Co-ordination Division;
- ∴ the Intelligence Division.

Each Director (including the Director of the Official Misconduct Division) will be directly responsible to and directable by the CJC through its Chairman.

A chart of the proposed organization is attached as Figure 10.1

### 10.2.3 Official Misconduct Division

#### (a) Role

The proposed Official Misconduct Division will provide the means by which the investigative work of this Commission can be continued and the benefits passed on to the CJC.

Continuity of this Commission on an interim basis will facilitate a smooth handover of staff, data, and functions to the new body.

The Division will be responsible for independent investigations of any suspected official misconduct. It may investigate individual cases or conduct broader based inquiries into the incidence of official misconduct. Its Director will have to be legally qualified.

The Division's activities will not be open to examination by the Police Force or any other Government agency, save the Director of Prosecutions. Access to these activities will be limited to necessary liaison about prosecutions that are needed to facilitate the Misconduct Tribunal's operations.

Reports made by the Division as a result of complaints referred to it or as a result of matters initiated by it, can be directed to:

- The Director of Prosecutions for consideration of prosecution;

and/or

- ∴ The Misconduct Tribunal to determine whether official misconduct has occurred which should be dealt with administratively apart from any prosecution;

or

- ∴ The chief executives of various Government departments, agencies or statutory bodies, including the Police Commissioner if disciplinary action is thought necessary.

#### (b) Composition

The Official Misconduct Division will be served by police seconded to it for appropriate finite periods and on guidelines to be established by the Criminal Justice Committee. Police serving with the Official Misconduct Division will be relieved of any obligation to obey, provide information to or account to any other police officer save police posted to the Official Misconduct Division.

All secondments to serve in the Official Misconduct Division should be for a relatively short time of two to three years, and non-renewable save when necessary to complete particular investigations where continuity is essential.

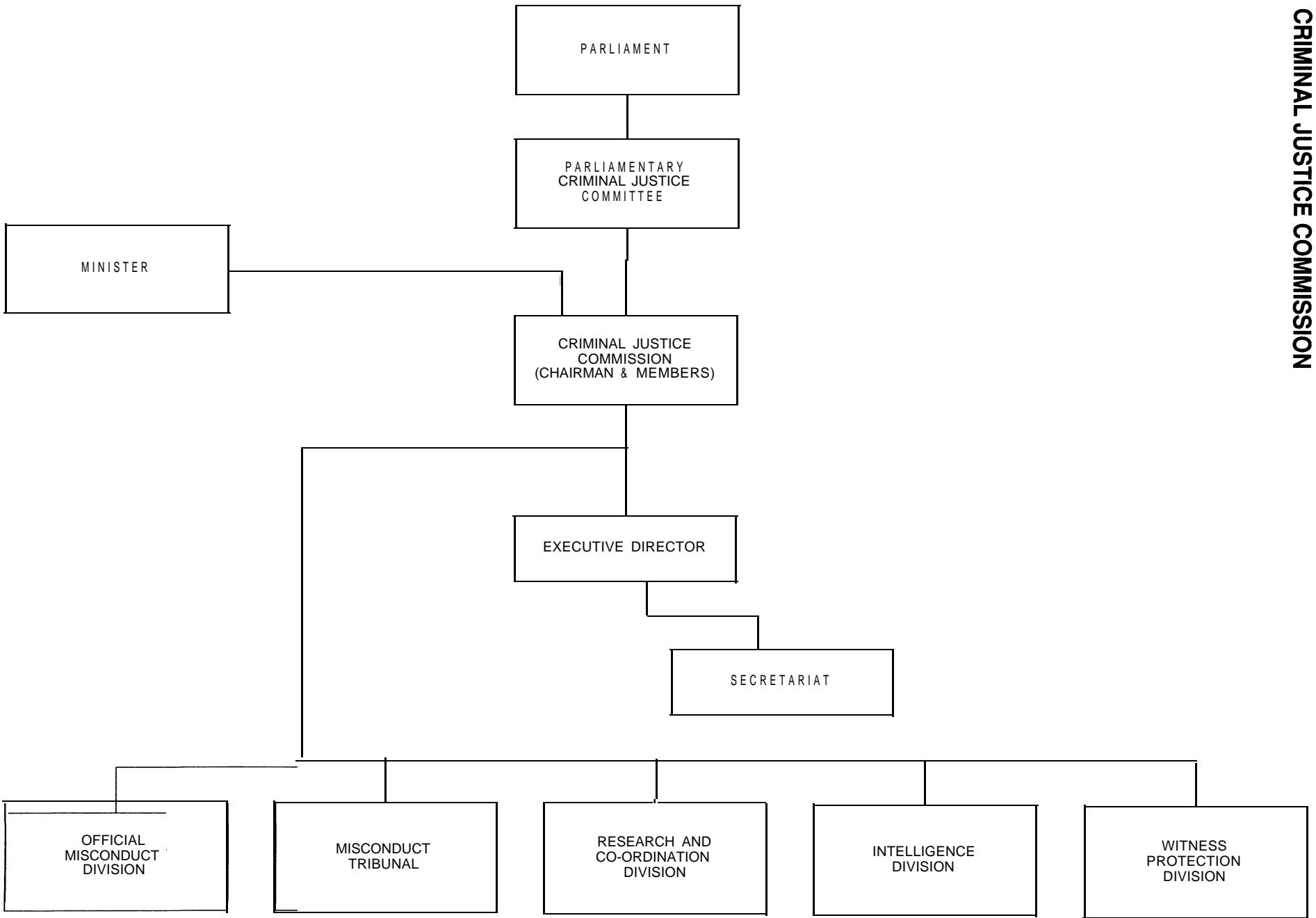


FIGURE 101

safeguards for matters of secrecy or sensitivity, judicial review should not be able to be used by the corrupt and misguided as a window on the Division's activities, but rather should act as a balance by allowing individuals affected by a specific activity to call it into question, and have it impartially reviewed. There are already statutory models elsewhere for this kind of review. It may sometimes be necessary for a judge to take evidence in camera, in the absence of the applicant or to make rulings about the dissemination of evidence and other information.

The composition of the Official Misconduct Division will have to be closely considered. This report cannot prescribe what the appropriate balance and size of establishment should be. In part that will have to be the product of experience in operations. However, the experiences of this Inquiry's task forces and the experience which has been gained in the Special Prosecutor's Office should be taken into account in determining the size and composition of the Official Misconduct Division.

To be effective, the Official Misconduct Division must have a wide variety of skilled staff and consultants. Those will have to include specially screened police of proven competence and experience, lawyers, accountants, finance consultants, linguists, computer programmers engineers and operators, electronics engineers, telecommunications specialists, computer operators, public administrators, statisticians, analysts, surveillance specialists and scientists.

### (c) Powers

The Official Misconduct Division will have to have some special powers in each case subject to strict judicial controls to be established by legislation. The powers likely to be required include:

- compel the production of documents and things and to attend and give evidence;
- cause interception of or intercept telecommunications and post;
- monitor other communications (including by electronic means);
- carry out surveillance (if otherwise illegal);
- search and seize in respect of suspected criminal offences and to seize evidence of other serious offences, not the subject of the search warrant, but which evidence is found while executing a search warrant;
- detain persons for specified times and purposes, and under specified conditions;
- take samples or specimens of all sorts and anything from the person of anyone detained or arrested;
- cause arrested or detained persons to undergo examinations and tests;
- take possession of passports and other travel documents and financial documents including instruments of title or securities;
- photograph, fingerprint, palmprint, footprint or voice print or take samples of handwriting from any person detained or arrested.

The Official Misconduct Division should be able to:

- instigate hearings (as mentioned later). The powers exercisable in such hearings will have to be considered by the CJC. The powers necessary for that process may approximate those of a commission of inquiry including the power to over-ride claim of privilege against self-incrimination with appropriate protections in respect of subsequent use of testimony obtained that way;
- obtain declarations on oath of property, financial transactions, movements of money and assets by any person in public office or any person associated with any person in public office;
- conduct secret investigations (which may not be reported to the subject of the investigations or any other person) including by access to bank records, financial details, public records and fiscal records and to copy any of those.

Consideration will have to be given to amending the substantive criminal law to provide for:

- proof of receipt of funds by any person by assets betterment analysis;
- presumption of illicit receipt of funds in the absence of proof, by the defendant on the balance of probabilities of legitimate receipt of funds;



the prohibition of offering or receiving gifts, favours or concessions to or by any public official, including parliamentarians and judges, where such gift is in circumstances as to give rise to a reasonable belief that the gift is given by reason of the official's position.

The Official Misconduct Division should be able, at its discretion and with circumspection, to investigate both anonymous and "stale" complaints.

#### **(d) Controls on Powers**

The Official Misconduct Division would have access to more powers than most investigative bodies. Each such power should only be able to be used by any member of the Official Misconduct Division on judicial authority. The standard of control on the exercise of those powers must be unreservedly high. The circumstances of and need for the exercise of the power must be recorded, even when it touches on confidential or sensitive matters. Where the matters are confidential, the record should be kept secret, to be viewed only by the leave of the court (on public interest immunity principles).

Even in circumstances of dire urgency, judicial authority should be mandatory.

The Official Misconduct Division and all its officers, including consultants and seconded police officers, must be obliged on pain of severe penalty to make known to the court or a judge all information relevant to the authorizing of the use of any such power. That information must include all that is known about the adverse effect which the use of that power would have upon an individual. The court or judge must have every chance to take competing considerations into account.

#### **(e) Initiating Investigations**

The Official Misconduct Division should be active on its own initiative, and not just respond to complaints. It should be able to institute investigations into and routinely monitor the activities, assets and associations of public officials of all sorts. It will liaise with the Intelligence Division at its own initiative as well as when investigating complaints of official misconduct.

Its activities will have to include periodic, unexpected and unheralded random investigations (subject to the controls mentioned elsewhere in respect of special powers), but otherwise in a way and upon terms to be prescribed.

The Division should also perform an educative or liaison role with other agencies and Departments and private institutions and auditors. It should give them advice and assistance in relation to preventing and detecting official misconduct, including how to improve their organizations and systems.

The Official Misconduct Division will not prosecute. It will be obliged, when investigations reveal the need for prosecution, to provide all materials pertinent to the investigation, including those potentially damaging to any prosecution case, to the Director of Prosecutions. The fundamental right of defendants to know of and have available to them all evidence potentially of assistance in their defence must be preserved.

On occasion some such information may damage a current operation, and systems must be devised to adjust the competing interests. Having regard to the timing of prosecutions and trials may be the simplest effective way of doing this.

#### **(f) Complaints Branch**

The Complaints Branch of the Official Misconduct Division will be available to receive complaints of misconduct or suspected misconduct by public officials, including the police, and any other complaints against police or other public officials. It should be able to give assurances of confidentiality to informants or complainants in its discretion and on guidelines to be established. That Branch should have the discretion, subject to guidelines to be established, to:

- dismiss frivolous or vexatious complaints summarily;

refer trivial or purely disciplinary matters to chief executives of departments or the Commissioner of Police to investigate and take appropriate action.

The role of the Branch involves initially screening matters including those anonymously reported, to determine substance before referring to other agencies.

The Commissioner of Police, on guidelines to be determined by the CJC, will be required to refer all internal or external complaints alleging misconduct by police officers to the Complaints Branch in the first place, for determination of the appropriate action to be taken in each case.

All other chief executives of Government departments, agencies and statutory authorities will be required:

promptly to notify the Complaints Branch of any complaint of official misconduct or suspicion of official misconduct;

to comply with all written directions of the Chairman of the CJC, including transfer of responsibility for the investigation of such complaint or suspicion.

### **(g) Review of Activities**

The activities of the Official Misconduct Division should be open to review by the judiciary on application. Public interest immunity rules, properly applied, are more than adequate safeguards for matters of secrecy or sensitivity. Judicial review should not be able to be used by the corrupt and misguided as a “window” on the Division’s activities, but rather should act as a balance by allowing individuals affected by a specific activity to call it into question and have it impartially reviewed. There are already statutory models elsewhere for this kind of review. It may sometimes be necessary for a judge to take evidence in camera, in the absence of the applicant or to make rulings about the dissemination of evidence and other information.

The operations of the Official Misconduct Division must also be open to review by the Parliamentary Criminal Justice Committee as earlier mentioned.

## **10.2.4 The Misconduct Tribunal**

The Misconduct Tribunal’s roles will be to review decisions on disciplinary matters within the Police Force, and to make original administrative decisions in relation to allegations of official misconduct on the part of police and such other officials as may be made subject to it by Order in Council. It will be subject to judicial review on the basis of natural justice and error of law in respect of its original decisions.

It must be demonstrably independent of Government agencies and the Police and include people of impeccable reputation, who have the experience and training to understand the proper administration of criminal justice.

Police representation on the Tribunal (whether by serving or former police) is both unnecessary and undesirable. When necessary, the Review Tribunal can have the advice of assessors, for example, retired commissioned rank police of good reputation, as to the significance of or implication of any particular infraction, as an aid in deciding the matter.

The Misconduct Tribunal should be comprised of one person at a time, appointed to a given matter, by the Executive Director, from a panel of three appointed part-time members. The members should be recommended by the CJC through the responsible Minister. Each member should be qualified for appointment as a Judge of a State Supreme Court or of the Federal Court of Australia, or be a retired Judge of the High Court of Australia, the Federal Court of Australia or the Supreme Court. Each such part-time appointee shall not have any other office in or connection with the CJC.

Appointment to the Misconduct Tribunal should be for fixed short terms with eligibility for re-appointment for a further term. Tenure of membership of the Misconduct Tribunal for anything longer than, say, an aggregate of six years is undesirable.

The Misconduct Tribunal will require its own small secretariat. The Tribunal should have protection in respect of the exercise of its functions equivalent to that of a Judge of the Supreme Court. The CJC should establish procedures and guidelines for it. Its existence and powers should be reflected in the legislation necessary to create the CJC.

The Tribunal should at least have the power to take evidence on oath, to dispense with the rules of evidence, to inform itself as it may think fit, to give directions in respect of its own proceedings, to impose sanctions including dismissal, reduction in rank, fines and forfeiture of benefits, to compel attendance of any person and the production of documents and things of all sorts and the provision of any information, and to override privilege against self-incrimination (with appropriate controls). Its process will be inquisitorial and administrative.

It must also be able to remit any matter to the Official Misconduct Division for investigation or further investigation. In some circumstances exercise of either its original administrative role or its disciplinary review role may reveal a need for investigation with a view to criminal proceedings.

### **10.2.5 Research and Co-ordination Division**

The administration of criminal justice involves dealing with deep and peculiar problems which are not addressed by ad hoc fragmented responses to issues by individual agencies.

There is need for continual review of the suitability of criminal law, the exercise of investigative powers, and the effective use of resources. Research is required into the changing nature and incidence of crime, the roles and methods of various agencies and how their efforts are best co-ordinated.

The distinguished and valuable service rendered by the Law Reform Commission has been noted elsewhere. It should be made plain that the recommendations in this report do not, impliedly or otherwise, recommend the abolition of or downgrading of the Law Reform Commission. The recommendations pre-suppose a continued (and, indeed, enhanced) functioning of the Law Reform Commission. Nevertheless the establishment of an independent agency to continually address matters relevant to the criminal law is vital. It is proposed that a Research and Co-ordination Division be formed in the CJC.

This Division would comprise a multi-disciplined group of professionals, including lawyers. The functions of the division to and through the CJC should be to:-

- define emerging trends in criminal activity including organized crime, identifying competing needs and establishing priorities for the allocation of law enforcement resources;
- develop compatible systems for and foster co-operation between law enforcement, prosecution, judicial, and corrective services agencies to promote optimum overall use of available resources;
- co-ordinate and develop procedures and systems for co-ordinating the activities of the CJC;
- provide information to the Parliament, judiciary, law enforcement and prosecution agencies in relation to criminal justice matters;
- co-ordinate with other Government departments with respect to criminal justice related issues;
- research and recommend law reform pertinent to criminal justice and reform of administrative processes to enforce criminal law;
- review the effectiveness of Police Department programmes and methods on a continuing basis, especially compliance with CJC recommendations or policy instruction, community policing, prevention of crime, and those related to selection, recruitment, training and career progression of police officers and supporting staff;
- review Police Department use or treatment of criminal intelligence including as required by the Intelligence Division;
- report to the CJC on all the above to aid its determinations and alert it as necessary.

Amongst its other activities the Division will prepare draft reports and directions for the CJC to the Commissioner of Police detailing the trends, opportunities or problems observed, and preferred courses of response or remedial action.

An important part of this process, will be the prompt and accurate identification of the extent and nature of resources required within the Police Department to carry out policing programmes considered essential in the community interest.

The Division will also provide reports to the CJC on implementation progress and impact of CJC directives within the Police Department to supplement direct reporting by the Commissioner of Police to the Criminal Justice Commission.

The Division's role will be flexible, may be expanded and may embrace liaison with similar research and co-ordination specialist bodies. For example, it could investigate the use of sharing research with the Australian Institute of Criminology.

Its role will be to supplement and complement research and the activities of other efficient, productive agencies elsewhere and relate that to State needs, rather than to duplicate or replicate their functions in Queensland.

### **10. 2. 6 Intelligence Division**

The Police information collection and storage system has become effectively the only repository of potential criminal intelligence material in Queensland. The Police information system is concerned with reactive policing suited to localized crime. It was designed for and embodies assumptions about a less complex and a more law abiding community.

Earlier, reference has been made to the central importance of information and criminal intelligence in respect of organized crime. Other complex criminal activities spread across borders or touch on social or commercial activities with which the Police Force is unfamiliar and at a disadvantage because of the authority or influence of those involved. Reference has also been made to a need for liaison with law enforcement agencies elsewhere, and other official bodies.

Mention has also been made of the need for an orderly flow of information about criminal justice into the political process and back to the general community. Apart from the questions of misconduct and inefficiency, a police information system is not and cannot be an effective means of providing information in a way suitable for the parliamentary process of reform or use by the general community.

A suitably equipped, professional and specialist criminal intelligence unit, independent of the Police Force is needed to meet the urgent needs of the criminal justice system.

An Intelligence Division should be formed within the CJC. It will provide an effective criminal intelligence service as an hub of an integrated approach to major crime, especially organized crime, and criminal activity transcending the normal boundaries associated with local policing. Its own intelligence data base and information gained from other sources, particularly the Official Misconduct Division, will be of the highest sensitivity, and must be carefully secured, to ensure only those individuals with a need to access the material are able to do so. It must have unqualified access to the whole gamut of intelligence sources of all sorts, including those of the Queensland Police and from inter-state and Commonwealth sources.

The Intelligence Division will oversee the role now performed by the Bureau of Criminal Intelligence of Queensland, part of the Police Department. It will also oversee the Police Department's liaison with all federal and other states bodies associated with law enforcement. It will similarly oversee liaison with the National Crime Authority, if that remains a police function.

The question of whether the NCA liaison should remain a police function or be taken over by the Intelligence Division should be addressed by the CJC, especially the Research and Co-ordination Division. If the Intelligence Division took over that liaison it could provide a further check on Police Force use of information and associated misconduct.

This Inquiry is aware of some complexities introduced by the role the Special Branch plays as the state correspondent of ASIO. In these circumstances, the CJC ought to consider whether activities which are presently a Special Branch responsibility should be done by some other law enforcement agency. The CJC should make a recommendation on this to the Criminal Justice Committee. Without pre-empting or compromising that consideration and recommendation, on the face of the matter the role of correspondent with ASIO for state purposes is one which could be conducted by the Intelligence Division.

The Police Force information and intelligence function will in the future be managed by expert civilians, subject to controls and oversight which should obviate the valid objections to the proposed course which history otherwise would justify.

The success of the recommendation allowing retention of an information and criminal intelligence function in the Police Force, depends upon the close and sensitive development of co-operative procedures and liaison between the CJC and the new leadership of the Force. The Police Force must accept the importance and worth of an integrated cross-checked and balanced approach to information collection and analysis and the assessing and use of criminal intelligence. That acceptance can and will only be the product of understanding and appreciation of the worth of an efficient criminal intelligence and information system by operational police, and of their proper role in fostering and improving it.

The revised approach will involve the need to repeal S.69C of the Police Act in train of other legislative action.

The issue of information collection has earlier been noted. The CJC, as high priority, should consider the need for the installation of systems for the efficient collection, analysis, collation, storage and distribution of information from all sources relevant to criminal intelligence. Legislation will be necessary and other states and the Commonwealth should be requested to act as necessary to help the state system and improve inter-state and national liaison.

The Intelligence Division should also take control of the data accumulated to date by this Commission. More is said of that later.

The Intelligence Division may also perform a role with the consent of the Criminal Justice Committee of reporting to the Government on matters pertinent to government considerations, policies or projects, for example, the sources of foreign investment funds or known connections of persons or bodies with organized crime.

## **10.2.7 Witness Protection Division**

The essential feature of witness protection is the assurance of safety for those upon whose information and testimony the criminal justice system depends. A professional witness protection unit is an essential component of a progressive criminal justice system.

Legislation is necessary to define the circumstances and terms upon which witnesses are provided with protection.

Witness protection raises many complex legal issues. People carrying out the protection will have to be protected from any liability in the event of the witness being harmed.

Provision will have to be made for the upkeep of witnesses, and for income replacement leading up to and during trials. The Witness Protection Unit will have to have access to funds which can be used to help witnesses re-establish themselves in their new lives. In cases where witnesses have their identities transformed or are relocated as part of the protection programme, other compensation may have to be considered.

Disputes are bound to arise between the witness and the protection authority, and a summary, confidential, independent dispute settling mechanism will have to be provided. That can be considered by the Criminal Justice Commission.

The circumstances in which and reasons for which witness protection may be withdrawn from a witness will have to be addressed. The obligations of the witness in relation to access to information, waivers of confidentiality, waivers of privilege, waivers of self-crimination, making of documents and authorities and co-operation generally will also have to be addressed.

Witness protection is a specialist function. In addition to the qualities listed below, those who provide it must be fit, alert, proficient with firearms, combat techniques and communications and be able to work in teams. From time to time, members of protection teams may need to exercise powers of arrest. Generally, their duties will be tedious and occasionally dangerous. For all these reasons, witness protection is best performed by honest, dedicated police.

The selection of witness protection personnel is vital. All applicants must be thoroughly screened (including by cross-checking voluntary disclosures of assets, interests and associations). Just as importantly, the psychological suitability of an applicant for Witness Protection Unit work must be assessed. Physical and mental toughness (which also suits other armed units) must be accompanied by intelligence, flexibility, subtlety, capacity for team-work and self-reliance, and be governed by self-discipline.

The Witness Protection Division should be separate from the rest of the Police Force, but those police who serve in it should be adequately compensated and maintain their opportunities for promotion and training.

The Witness Protection Division should not be answerable to any police officer, and its police members should be answerable only to their superiors in the Unit.

This division should be set apart from the rest of the Criminal Justice Commission, and the detail of its activities should be known only to a small number of its members, the Director of the Division, the Executive Director, and the Chairman of the Commission.

The Witness Protection Division's premises, vehicles, arms, communications equipment and other stores must be able to be maintained confidentially. Because of this, witness protection has its own peculiar administrative needs. A discrete small administrative cell (which may be civilian) should be made available to the Witness Protection Division to deal with day to day administration (leave, pay and so on), clerical work, co-ordination, rosters, witness complaints and counselling equipment, (including vehicles), acquisition and maintenance of premises (including safe-houses) and liaison.

The Witness Protection Division should have secure and fortified premises for use in emergencies and the means of urgently acquiring other premises for extended periods.

Witness protection is labor intensive and very costly. Australian Federal Police experience has resulted in a model in which police awards may be altered so that witness protection officers are fairly paid but at the same time avoids inordinate costs which the application of standard overtime rules otherwise generates. That issue can be addressed in implementing the recommendation of this report.

Apart from the general arguments for economy, witness protection must not be seen as making inroads on the available "pool" of police overtime. This argument has been used against the protection scheme run by this Commission. It is as fallacious as it is convenient to those who have reason to fear an efficient witness protection programme.

Those being protected have to cope with having armed guards watching their every move. Partly as a result, they are apt to be querulous and demanding. On the other hand, the witness may be a skilled manipulator of people, and play one officer off against another, or attempt to form personal friendships which eventually compromise the officers.

The officers providing the protection have to put up with the people they are protecting, and also have to remain alert through long periods of inactivity.

Witness protection is therefore extraordinarily psychologically demanding on both the protectors and the protected.

Any witness protection unit must have access to professional psychological counselling on a totally confidential basis. The selection staff (who must include the Unit's psychological expert) should regularly monitor the performance of Unit members.

Psychological factors must be considered if a witness is to be relocated. Quite apart from practical difficulties, which are discussed later, the psychological affect of being physically and socially uprooted, going through a change of identity and then trying to begin a new life can be almost insurmountable.

Some witnesses are positive in their attitudes but nonetheless need help and encouragement. Others are exploitative or demanding or self-pitying. Witnesses may need expert psychological assessment. Apart from individual attitudes and problems, re-located witnesses for a time may need to be counselled regularly both by an expert and a liaison officer of the Witness Protection Unit, to ensure the continuity of security.

The strains of witness protection on those who provide it must be recognized in training and duty programmes designed both to reinforce skills and discipline, and to relieve the monotony.

Witness Protection officers should also be used to provide VIP protection. This type of duty is similar in some ways to witness protection, but is less psychologically stressful. The rotation of duties would help relieve the tedium and stress of protecting witnesses.

It should be emphasized, however, that police involved in a particular witness protection programme should not be involved in VIP protection while that programme is still underway.

Although training Witness Protection police will be costly, their length of service in that role should be limited because of the extraordinary strains of the type of duty. The likelihood of misconduct will be reduced by rotation of police through the Unit. Trained police with Witness Protection experience on return to ordinary duties will both provide good role models for police, and be a reservoir of training and experience.

Witness protection raises other specific difficulties related to the transformation of identity and relocation. No witness protection system is effective unless witnesses can expect to live the rest of their lives in relative safety.

Generally, there is no point in relocating witnesses unless they are given new identities. Both relocation and identity changes raise problems. Witnesses must be able to contemplate a future which includes work and well being. It is also in the community interest that they live self-sufficiently rather than as pensioners.

When relocated witnesses seek work, they will naturally have to offer work histories which can be cross checked. The same problem arises when considering how qualifications, such as degrees or technical certificates, are to be provided.

Similarly the obtaining of credit is a bureaucratic business. For example, obtaining loans under tightened bank procedures, opening and operating bank accounts, financing of expensive consumer goods or a car, purchasing or renting a home and opening and operating ordinary credit card or credit account facilities, all involve the provision of personal particulars which must bear scrutiny.

Public registration requirements also pose a problem. No provisions exist to lawfully use assumed names for registration of motor vehicles, the issuing of birth certificates or marriage certificates with altered places and times of birth or marriage, the issuing of driver's licenses, the securing of electoral enrolment, taxation file number, medicare card or social security entitlement or benefit number, or a passport. There are sound reasons for existing laws which require careful consideration in the context of obtaining new identities for witnesses.

A law enforcement agency must, of course, act lawfully. To that end, provision will have to be made by statute for lawful changing of a transformed or re-located witness' personal details. This will have to be done, of course, in strict confidence. All state governments are presently considering the need for and conditions which might apply to a national witness protection programme. The Criminal Justice Commission and the responsible Minister will have a continuing role in these deliberations.

It has been noted earlier that one major concern in witness protection is to prevent the abuse of privileges by witnesses using their assumed identities to avoid responsibilities both criminal and civil.

A closed register available for Witness Protection Unit use only should be considered. This register could contain all present and former details of witnesses and allow, under certain circumstances, for notices and orders to be served through the Witness Protection Unit.

### 10.3 **ESTABLISHMENT AND ADMINISTRATION**

The CJC must have its own separate appropriations. The Chairman of the CJC will take budget estimates prepared by the Executive Director to the responsible Minister for annual appropriation. The Annual Report on the activities of the CJC will likewise be prepared by the Executive Director, at the direction of the CJC and furnished by the Chairman to the responsible Minister for presentation to Parliament in a specified time.

The Executive Director and each Director should be appointed on contract.

Each Division should have the power to engage appropriate experts and consultants to assist and supplement its staff as appropriate within the limits of its budget. When appropriate, inter-divisional and multi-disciplinary groups should be formed within the CJC. Civilian personnel should be able to be seconded to different Divisions within the CJC by the Chairman or in accordance with guidelines and procedures laid down by the CJC.

Members of the Police Force will need to be seconded to the CJC from time to time for such periods and such purposes as may be decided by the Chairman on the advice of the Executive Director. Necessary amendment should be made to Queensland legislation including amendments to the Police Act and the Director of Prosecutions Act. Legislation should be sought from the Commonwealth Government and the other States and Territories to facilitate the efficient operation of the CJC and its integration into an effective national system of criminal law enforcement.

The CJC should be created by separate legislation to reflect these recommendations. A draft Bill is currently in an advanced stage of preparation. The CJC should have responsibility for implementing the recommendations as to criminal justice in this report and in particular should have the power and responsibility to do the following:-

- (a) determine priorities;
- (b) determine an appropriate organizational structure for the CJC;
- (c) determine the number of staff required and their location;
- (d) determine qualifications for holding offices and duties attaching to offices within the CJC;
- (e) determine levels of salary of staff;
- (f) redesignate offices and officers;
- (g) select and recruit staff where necessary in conjunction with the Office of Public Service Personnel Management.

The Executive Director, CJC, will be responsible for:

- (a) developing recommendations covering the above matters for consideration by the CJC;
- (b) making recommendations to the CJC regarding staff appointments, promotions, demotions and terminations;
- (c) all aspects of personnel management including staff training, discipline, performance, deployment, and keeping of records;
- (d) overall co-ordination of the activities of the CJC to fulfil its objectives.

The CJC should be given the financial support and allowed the resources and conditions to attract appropriate staff. Those staff must be assured of and given freedom from political interference. So far as possible those staff should exhibit political neutrality.



It is important that the CJC attract appropriately independent and skilled senior people of high reputation. Apart from lending their skills to their primary functions, the attraction of such well reputed senior people will excite public confidence in the body, encourage informants and complainants to provide information and discourage the belief that reporting misconduct is repugnant. It will also have the flow-on effect of attracting suitable subordinate staff, who will assess the organization as an attractive career prospect.

Some staff may use service in the CJC as a career stepping-stone. Provided that they have skills and experience to lend in that service, that should not be discouraged. Any turnover in staff, if they are the right staff, is balanced by advantages of contribution by able and energetic personnel.

All CJC staff should be closely vetted to prevent infiltration, and their dedication to purpose should be reflected by a willingness to disclose assets, interests and associations and to submit to and understand the need for (and not take umbrage at) periodic and unannounced vetting.

The CJC should be independently housed and have exclusive use of facilities. Its facilities in its headquarters should include a secure hearing room.

## **10.4 HEARINGS**

The CJC will need to be able to conduct hearings of two types.

It should be able to conduct public hearings on matters of general significance with respect to the administration of criminal justice in the way law reform commissions from time to time conduct such hearings. Equivalent mechanisms should be provided to it.

The CJC from time to time may also need to conduct hearings for investigative purposes. Mention has earlier been made of the need for judicial control of that, along with other special powers. No such hearing should be possible without judicial leave.

It is not necessary again to treat here, in detail, the competing considerations of individual right to liberty and expectation and protection of individual privacy and of public interest in the detection and suppression of major crime. Whether and on what terms such an hearing ought be held and whether publicly or wholly or partly in private should be decided judicially upon application brought by the CJC. That application may be made, as necessary, ex parte and in camera. It may be expected that the applicant will seek such hearing to be in camera because of the disadvantage of open hearings to the investigative process. Whether a hearing should be held and whether the whole or any part of it should be in camera should be on the basis of all the circumstances of the matter and the particular balance between those considerations which the circumstances warrant in the unfettered discretion of a Judge of the Supreme Court. The Court should have the power to vary such leave or any conditions of such leave.

## **10.5 THE DIRECTOR OF PROSECUTIONS**

The Director of Prosecutions, although not a member of the Criminal Justice Commission, will report independently to the Attorney-General. The whole prosecution and legal advice function of the Police Force should be transferred from the present legal and prosecution sections of the Police Force to the Director of Prosecutions over a period consistent with orderly and proper transfer. The Police Department may seek legal advice from the Director of Prosecutions in respect of law enforcement issues. Such advice should extend to the timely involvement of Crown Prosecutors with investigations into allegations of serious offences, both to provide appropriate legal advice when necessary and better to prepare any resultant prosecution.

Police relations with the Director of Prosecutions staff, bound to adhere strictly to professional ethical standards, should be both instructive for police and conducive to improvement in ethical standards by the Police.

## 10.6 THE JUDICIARY

### 10.6.1 Introduction

It is desirable to introduce this discussion with a clear and unequivocal acknowledgement of the judiciary's deserved high standing in the community. The purpose of these observations is not to leave a cloud but to dispel any unjustified cause for concern and, at the same time, to identify some significant issues which remain for determination and must be resolved.

This Commission's extensive terms of reference included matters which touched at least the two judges in relation to whom the Parliamentary Judges Commission of Inquiry was later appointed, including their relationships with the then Commissioner of Police and with some of his political and other associates. One of those judges was also the Chairman of the Police Complaints Tribunal, which itself fell within the ambit of interest of this Inquiry, to which, it was rumoured, he had been considered for appointment as Chairman. There were also other potentially controversial matters which might arise and touch the judiciary, including matters related to the circumstances of some judicial appointments.

**At** least once the third Order-in-Council prescribing far wider terms of reference for this Inquiry was published on 25 August, 1988, there could be no question but that any misconduct with which a judge was associated fell within the ambit of this Inquiry. Until the Parliamentary Judges Commission of Inquiry was appointed, it was not only within the authority of this Inquiry to investigate those matters but its duty to do so.

Judges and politicians are not the only persons to whom privacy, reputation and other personal considerations are important or who wish to be excluded from investigations, especially inquisitorial proceedings, to have to answer only particularized allegations, or to have hearings in camera. However, sometimes wide-ranging inquiries, which must on occasions be conducted in public for reasons which are discussed elsewhere, are essential, however distasteful and whatever the disadvantages.

There are significant differences between a Commission of Inquiry which has within its terms of reference matters which may concern a judge or judges of which this is an example, and an inquiry, such as the Parliamentary Judges Commission of Inquiry, constituted to ascertain whether a particular judge ought to be removed from office. Whether or not an inquiry of the latter type is effectively adversarial, an inquiry like this one is strictly inquisitorial.

The objective of a Commission of Inquiry such as this is not to establish or reject a particular conclusion, but to delve as widely as necessary to determine the truth. Truth does not cease to be truth because prominent citizens are involved, and an investigation which aims to find the truth cannot be curtailed or circumscribed to exclude categories of persons from its purview. (Likewise, politicians and their parties cannot be placed beyond scrutiny because, inevitably, the resultant controversies, commonly escalated by those concerned, enable them to assert that the process is political).

It was not for this Commission, which was appointed by and must report to the Government, to recommend the removal of a judge, and it would never have done so.

Quite apart from the unsuitability of a single member of the Bar for such a task where better alternatives are available, it is for Parliament, not the Executive Government, to determine whether a judge should be removed from office, and if any body is to have responsibility for a recommendation with respect to such a question that should be a body appointed by Parliament and required to report to it. That it was correct to appoint the Parliamentary Judges Commission of Inquiry at the time when that occurred may be accepted. Independently of this Commission it had been concluded by then by the Government that there was sufficient cause for Parliament to question the suitability for office of the two judges whose conduct was referred to the Parliamentary Judges Commission of Inquiry to justify their temporary standing down while the issue of possible removal was decided.

**It** by no means follows that it would otherwise have been inappropriate for this Commission to continue with its investigations, notwithstanding that the activities of judges fell for scrutiny.

Any contention that any investigation (except an inquiry which has been appointed by the Parliament to recommend whether a judge should be removed) which comes up against some matter in which the behaviour or relationships of a judge arises for consideration should be abandoned or curtailed is unrealistic and untenable in practice.

While it may be appropriate to do whatever is feasible in the performance of a duty to inquire in order to protect the judiciary and to respect individual judges both as members of that institution and as the holders of public offices of dignity and prestige, those are not circumstances which can excuse a failure to perform that duty.

### **10.6.2 Judge Eric Charles Ernest Pratt Q.C.**

The Parliamentary Judges Commission of Inquiry is continuing its investigation of the conduct of His Honour Judge Pratt Q.C., and, subject to a point which will be noted later, it is proposed to make only one observation here which is referable to his Honour who provided a statement to this Inquiry.

Evidence was given at a public sittings that one police officer who was attempting to persuade another to become involved in corrupt activities falsely claimed, presumably to convey an impression that the risk of involvement was minimal, that Judge Pratt was one of those involved. Regrettably, the evidence of that conversation given at this Inquiry by the police officer to whom the bribe was offered was reported in some sections of the media as though it constituted evidence probative of misconduct by Judge Pratt. It did not, as was clearly explained. There is no occasion to recanvass here the unfortunate aspects of the circumstances which surround that evidence or the rulings which were made at that time (October 1987), which are reproduced in Appendix 15. However, a finding has already been publicly announced at the conclusion of the public sittings of the Inquiry that no evidence at any sittings of this Inquiry provide any basis whatever for a finding that Judge Pratt was involved in misconduct, and that finding is reaffirmed here and so incorporated formally into this report.

### **10.6.3 Mr. Angelo Vasta Q.C.**

Reference must also be made to Mr. Angelo Vasta Q.C., who has been removed from office as a judge of the Supreme Court of Queensland as a result of findings and recommendations by the Parliamentary Judges Commission of Inquiry.

Of course, it is not a function of this Commission to review those findings and that is not its purpose. However, it is important to note that, so far as related to this Inquiry, the Parliamentary Judges Commission of Inquiry was concerned only with Mr. Vasta's claimed state of belief, not what in fact occurred. Regrettably, the distinction may not always be clear to those who do not carefully read the whole of the report in relation to Mr. Vasta of the Parliamentary Judges Commission of Inquiry, which did not analyze his allegations in relation to the Chairman of this Commission separately from his allegations with respect to the Chairman's alleged co-conspirators, the then Chief Justice and the Attorney-General. The opportunity given to Mr. Vasta to appear before Parliament to show cause why he should not be removed from office was used to ventilate once again allegations against this Commission, despite the fact that, at the Parliamentary Judges Commission of Inquiry, he had withdrawn his claim and admitted that it was untrue. It is totally unsatisfactory to leave any possible shadow over this Commission and its staff based on Mr. Vasta's widely publicized attacks, or to leave his versions of events on the public record, uncorrected.

In late February, 1988, Mr. Vasta was one of a number of persons referred to in the diaries of Sir Terence Lewis who were given advance notification that those diaries were proposed to be tendered.

Some months later, in April 1988, a request for a statement was made to Mr. Vasta. The written request made of him was similar to that made to numerous persons who appeared to have a sufficient relationship with Sir Terence Lewis according to his diaries. No pressure was brought to bear upon Mr. Vasta who was contacted only on two occasions; the initial request in April, 1988, and a later written request toward the end of May for reconsideration of his refusal, politely pointing out that it was based upon a misapprehension and directing his attention to a material section in the Commissions of Inquiry Act. He ignored the second request, and the Commission took no further step to attempt to change his mind.

That remained the position until 17 October, 1988. To those unfamiliar with the Commission's workload, pressures, and methods, and the rate at which matters had to be prepared once it had been decided to process them to the point of evidence at public sittings, it may seem curious that no more had been done. But those were the circumstances under which operations were conducted for the full eighteen months of public sittings, with resources allocated according to priorities and then swung to other areas of investigation according to plans which were constantly modified to cope with emergencies or new priorities as additional information emerged. What, if anything, was to be done in relation to any of the judges to whom attention had been attracted remained fluid as at 17 October, 1988. The material to hand at that point and what, if any, further investigations were to be undertaken were under review as an aspect of the developing investigations with respect to the then Commissioner of Police, a number of former Ministers and other senior politicians, some of their associates, other public figures, and a variety of other persons and activities.

On 17 October, 1988, Mr. Vasta was given a notice by Senior Counsel Assisting the Commission that evidence might emerge which brought his conduct into question, and which particularly raised the truthfulness of sworn evidence which he had given on 10 September, 1986, in a hearing before a Master in the course of a defamation action which he had commenced as plaintiff in the Supreme Court of Queensland of which he was then a judge, including evidence of his relationship with Sir Terence Lewis.

At that hearing, Mr. Vasta's evidence had included the following passage:

“Is it a fact that you are a friend of Sir Joh, Sir Edward Lyons and Sir Terence Lewis? - They are acquaintances in the sense that I meet them on social occasions and at functions like opening of Parliament, but they are not friends in the sense as suggested in the article.

Is there any way that in the discharge of your judicial duties you have felt under some obligation from friendship towards the Commissioner of Police? - Absolutely not. There is no suggestion that the discharge of my duties is in any way compromised by my knowledge of the three persons mentioned in that article and, in particular, the Commissioner of Police.”

The evidence of Sir Terence Lewis at that hearing included the following question and answer:

“What degree of contact have you had with him over those 20 years? - I have not had close contact with him. I have had, I suppose, similar contact of most other working police officers quite a few years ago, and I had no more intimate contact with him than that.

How would you regard him now, in fact, in terms of personal relationship? Would you regard him as a friend, an acquaintance, a close friend? - I certainly regard him as a friend. I have probably seen more of him, since he became a judge, at various functions in our community, but no more so than, I would say, most of the other members of the judiciary.”

In evidence to this Inquiry, Sir Terence Lewis described his relationship with Mr. Vasta in markedly different terms. The exploration of their relationship was appropriate, and in the circumstances raised a possible issue as to the accuracy of evidence which Mr. Vasta had two years earlier given on oath in the Supreme Court. Hence the notice given him by Counsel Assisting this Commission.

On 18 or 19 October 1988, Mr. Vasta's son and then Associate interrupted Mr. Drummond Q.C., now the Special Prosecutor but then one of the Senior Counsel Assisting the Commission, during the course of his questioning of Sir Terence Lewis. That interrogation, and questions asked by the Chairman, were later unjustifiably criticized by Mr. Vasta

According to Mr. Vasta, Mr. Drummond told his son that Mr. Vasta's conduct was outside this Inquiry's terms of reference (which plainly it was not), and that Mr. Vasta was not the subject of allegations. It is perhaps possible to construe such a statement, had it been made, in more than one way. Mr. Drummond says that he made no such statement. Further, the position must have been clear, and Mr. Vasta can have been in no doubt of it, having regard to the notice which he had received two days earlier, on 17 October.

Rather than cause Mr. Vasta any embarrassment by public reference to the matter, Mr. Drummond raised the matter privately with the Chairman, and Mr. Crooke was directed to communicate with Mr. Vasta that it would be necessary for him to comply with the Commission's procedures. On the same day, Mr. Crooke confirmed the substance of that conversation in a letter which is reproduced in the statement made on 28 October which is part of Appendix 15. No suggestion was ever made that that letter was inaccurate in any particular, and no reply was received.

Despite the notice of 17 October and the letter of 19 October, Mr. Vasta made a central plank of his later allegations against this Commission an asserted belief, said to be based on what he had been told by this Commission, that his conduct was not in question.

Within 48 hours of the delivery of Mr. Crooke's letter to Mr. Vasta on 19 October, an approach was received from a barrister acting on his behalf. It was apparent that the barrister was unfamiliar with the history of what had occurred and he was told that there had been communications between Mr. Vasta and Mr. Crooke, to whom he was referred.

The policies, procedures and practices of this Commission involved Mr. Crooke, or another of the counsel or staff assisting the Commission, rather than the Chairman, participating directly in material contacts outside the public hearings with any potentially interested party or witness or the representatives of such a person. Neither Mr. Vasta's barrister nor anyone else was in a position of influence in relation to this Commission by virtue of some relationship which existed.

The purpose for which his barrister approached this Commission according to Mr. Vasta, that is to say to obtain some public statement exonerating him from suspicion, is difficult to reconcile with the communications between the Commission and Mr. Vasta on 17 and 19 October. Any suggestion of such a public statement by the Chairman of this Commission was totally at variance with the Commission's practices and procedures which were public and well-known, and patently impractical, as must have been evident, the more so if, as Mr. Vasta later claimed to believe, this Commission was intent on obtaining a statement from him: the contents of any such statement would surely need to be known before any question of public exoneration could arise. Obviously, any statement provided by Mr. Vasta would have included reference to the relationship between him and Sir Terence Lewis, and might have raised the accuracy of sworn evidence previously given by either or both of them.

By the time that Mr. Vasta sent his barrister to the Chairman and was referred on to Senior Counsel Assisting, a political furore had erupted and, the previous day, 20 October, a motion for the removal of Mr. Vasta from office as a judge of the Supreme Court of Queensland had been moved in Parliament by an Opposition (Australian Labor Party) member.

Early on the following morning, Friday, 21 October, the Premier had been informed in a telephone conversation which he initiated with the Chairman that the independence of the judiciary was so important that the Government should not even request Mr. Vasta to stand down temporarily as a judge but should leave the question whether he should continue to sit to the Chief Justice, and that no other action should be taken, whether by setting up a separate inquiry or otherwise, until there had been time for mature deliberation.

A few days later, on Monday, 21 October, Mr. Vasta stood down from judicial duties. In the statement which he made publicly at the time when he stood down from office, Mr. Vasta included no suggestion whatever of any of the allegations which he later made concerning this Commission, its Chairman or Counsel Assisting, and made no reference to any of the matters upon which he later claimed to base his allegations.

According to Mr. Vasta on the day on which he stood down his barrister told him that Mr. Crooke had again inquired whether Mr. Vasta was proposing to make a statement. Mr. Crooke says that no such inquiry was made, and in his evidence before the Parliamentary Judges Commission of Inquiry Mr. Vasta's barrister said that he did not tell Mr. Vasta otherwise.

On the day after he stood down, Mr. Vasta commenced a public campaign in the course of which, and in his subsequent evidence at the Parliamentary Judges Commission of Inquiry into his conduct and later still in his statements to Parliament, he made a variety of allegations against this Commission which had no involvement in the events concerning him other than what has been stated in this report. The complexion

of what this Commission did cannot be coloured by other contemporaneous or subsequent events over which it had no control and in which it had no involvement.

By the evening of Tuesday, 26 October, it was apparent that urgent action was needed or the judiciary might be damaged to a far greater extent than the consequences of any behaviour by a single judge, and arrangements were made by the Chairman of this Commission to see Sir Harry Gibbs, the former Chief Justice of the High Court of Australia, on the following day.

Following that meeting, the letter set out in Appendix 20, which was seen in draft by Sir Harry, was sent to the Premier, recommending the Parliamentary Judges Commission of Inquiry which was in fact constituted in response to that advice.

Although the suggestion made in that letter was adopted by the Government, Mr. Vasta's campaign did not cease.

A statement which was made at a public sittings of this Inquiry by the Chairman on Friday, 28 October is part of Appendix 15. Mr. Vasta still continued.

During that week, Mr. Vasta had had, and secretly tape-recorded, a number of telephone conversations with his own barrister, of which, of course, this Commission was totally unaware. Mr. Vasta has said that he wanted an accurate version of what he was being told, and that he also wanted to make sure that his own barrister told him the truth, and so did not tell him he was being taped in order to ensure that he spoke frankly. What was said between Mr. Vasta and his counsel was plainly a matter of which this Commission knew nothing and for which it could scarcely be responsible.

Mr. Vasta asserted persistently that there had been what he described as a "constant anxiety" by this Commission to obtain a statement from him. What had in fact occurred is detailed above. Further, as he well knew, if evidence from him was required, no more was necessary than to issue a summons to compel his attendance. Curiously, in seeming contradiction of his other statements, Mr. Vasta implied in the course of his address to Parliament that, had he been asked for a statement, he would have co-operated. He said:

"If only they had come to me and said, 'Judge, we know that you don't protect malefactors. Give us a statement'".

In the circumstances, including the publicity given to Mr. Vasta's claims, an attempt has been made to identify his various allegations in order to deal with them in one place.

- ∞ ~~∞∞∞~~ step was taken with the motive of bringing pressure to bear upon Mr. Vasta to provide a statement to this Commission or to apply for an indemnity.
- ∞ No step was taken to attempt to influence any representative of Mr. Vasta to persuade him to provide a statement or to apply for an indemnity.
- ∞ No attempt was made to obtain a statement from Mr. Vasta for the purpose of using it to the disadvantage of Sir Terence Lewis or any other person.
- No intention ever existed to provide an interim report to the Government that a prima facie case of a criminal offence existed against Sir Terence Lewis or any persons.
- ∞ No material was made available to any person or organization at any time for the purpose of embarrassing or placing pressure upon Mr. Vasta. Any material tendered in evidence before this Commission to which any person had access was openly provided in accordance with public rulings of general application which existed from time to time.
- ∞ No public statement was made during the course of the hearings of this Inquiry which was politically motivated. The public statement which was made concerning the Government's decision to suspend not dismiss Sir Terence Lewis on 5 September 1988 is part of Appendix 15. The reasons for that statement are apparent on its face and could not rationally lead to a conclusion that it was politically motivated.
- No statement was made to Mr. Vasta or any representative of Mr.                    that or to the effect that:
  - (a) his conduct was outside the terms of reference of this Inquiry;
  - (b) help would be provided to him;

- (c) help would be provided to him on some condition;
- (d) help would not be provided to him unless and until he co-operated with this Inquiry;
- (e) his help or co-operation was sought for some purpose associated with the activities of this Commission in relation to another person or persons; and/or
- (f) it was a purpose of this Commission to place pressure upon him to provide a statement to this Commission or to apply for an indemnity.

No foundation existed for any of Mr. Vasta's allegations, and no matter material to his allegations occurred which has not been mentioned above. Despite the Chairman's public statement after Mr. Vasta's allegations had initially been made without any foundation, and notwithstanding the release of the Chairman's letter to the Premier which had preceded Mr. Vasta's allegations and which provided the catalyst for constituting the Parliamentary Judges Commission of Inquiry (as he sought), Mr. Vasta maintained his allegations for some months until the commencement of the substantive hearings of the Parliamentary Judges Commission of Inquiry. He then withdrew and admitted his allegation of a conspiracy was untrue, but continued to seek to justify his conduct by unwarranted allegations against this Commission before both the Parliamentary Judges Commission of Inquiry and the Parliament.

It is no longer material whether or not the attempts by Mr. Vasta to extricate himself from this Inquiry were motivated to any degree by a desire to disrupt its activities, at least so far as he was concerned, or, more particularly, by concern to avoid a scrutiny of his conduct, affairs and relationships, which later took place before the Parliamentary Judges Commission of Inquiry.

Whatever was intended by Mr. Vasta the final two vital months of the public sittings of this Inquiry were disrupted by his campaign and its effects. A number of investigations were not fully pursued and questions concerning matters involving the judiciary were almost totally excluded from the questioning of important witnesses such as the former Premier, Sir Johannes Bjelke-Petersen, former Cabinet Ministers Lane and Hinze, former Police Commissioner Lewis and other prominent individuals such as Sir Edward Lyons.

This Commission took no part in the drafting of the Parliamentary Judges Commission of Inquiry Act except section 10, which was directed to ensuring that assistance could be provided to the Parliamentary Judges Commission of Inquiry but that each would otherwise be independent, with neither subordinate to the other. Pursuant to and in accordance with that section, assistance was furnished by this Commission to the Parliamentary Judges Commission of Inquiry at the level of Senior Counsel Assisting.

In the extremely difficult and volatile circumstances which existed, the separate functioning of two independent Commissions was probably the course which, overall, was most suitable in the public interest.

#### **10. 6. 4 The Judiciary and Commissions of Inquiry**

The judiciary is increasingly unwilling, and properly reluctant, to conduct inquiries. Although a Commission of Inquiry performs functions of a quasi-judicial nature, calling for the evaluation of material and the formation of opinions on matters for which judicial skills and experience are suitable, judicial principles, practices and procedures are not always fully applicable to inquiries, and the involvement of judges in administrative functions (other than those related to the exercise of judicial power) has serious disadvantages.

- The separation of judicial power from legislative and executive power is fundamental to the system of checks and balances designed to achieve a stable democracy. The distinction should not be blurred by those who perform judicial functions also engaging in superficially similar quasi-judicial functions on behalf of the Executive Government.
- ⚡ The essential independence and impartiality of the judiciary, or at least the almost equally important public acceptance of those judicial qualities, particularly in a social environment in which much litigation, and almost all criminal litigation, involves disputes between individual citizens and the State, should not be compromised by judicial officers mixing judicial functions with functions on behalf of the Executive, especially where the issues may attract political or other controversy.
- ⚡ The primary responsibility of the judicial system is the provision of speedy and efficient justice according to law, and its capacity to perform that function is diminished by any requirement that it perform other tasks on behalf of the Executive.

However, if judges should not conduct Commissions of Inquiry such as **this** -and clearly they should **not**- they, along with the remainder of the community, must accept that others must do so, with all of the ramifications involved, including the possibility that matters involving some judges and their activities will come under scrutiny as happened in this Inquiry.

### 10.6.5 Relations with the Official Misconduct Division

There are powerful reasons for discouraging complaints against judges. The issues sufficiently appear from a publication by the Australian Institute of Judicial Administration Incorporated entitled "The Accountability of the Australian Judiciary: Procedures for Dealing with Complaints Concerning Judicial Officers", which was published earlier this year.

However, it is unlikely that the community will accept that circumstances involving consideration of a judge's behaviour will never arise, and thus that there should be no body authorized to deal with complaints of judicial misconduct.

On balance, particularly since the appellate process provides a generally satisfactory method of dealing with many complaints of matters which bear upon the rights of litigants, it seems desirable at this stage of the community's social development to restrict the opportunity for complaints of official misconduct in relation to judges to any allegations which, if established, might warrant removal from office.

One possible mechanism might be for any such complaints concerning judges to be referred to a panel of other judges, but such a solution has many disadvantages. Elsewhere in this report, there is mention of the difficulties associated with self-regulation. Further, the judiciary has no means of investigating complaints. Investigations can be complex and difficult, and necessitate different resources, powers and techniques from those available to the judiciary. Again, and perhaps most importantly, dissatisfied complainants may ventilate their allegations publicly, with the possible result that what commences as a complaint against a single judge will escalate into a complaint against the panel of judges, with assertions of bias or "cover-up". The potential for damage to the judiciary as an institution is substantial.

It seems preferable for the Official Misconduct Division of the Criminal Justice Commission to have authority to investigate sufficiently serious complaints against judges subject to appropriate conditions and in accordance with appropriate procedures, which should be settled in consultation with the Chief Justice and should be designed to accommodate both the special risks to which judges are subject, their special position in the community, and the complex and competing issues which surround the need for public acceptance of judicial integrity and the vital importance of judicial independence.

As an additional safeguard for the judiciary, not only should complaints for investigation be confined to allegations which, if established, might warrant removal from office, but the authority of the Chairman of the Criminal Justice Commission should be required and, before granting that authority, the Chairman should consult with the Chief Justice and the Attorney-General.

It may also be desirable to ensure that either the Chief Justice (or some other nominated judge or judges) is kept informed and is able to indicate his views on actions which should or should not be taken.

Provided that the guidelines are clear and comprehensive and publicly announced, the necessity for ad hoc decisions in circumstances of pressure, such as existed after Mr. Vasta stood down, and the risk of public controversy and disquiet, should be able to be minimized. Further, if the guidelines are practical and operate efficiently, the incentive for malicious complaints will be reduced.

The unenviable position of those who must perform the necessary tasks is also improved if what they are doing accords with established procedures. Persons of authority and influence are better able than most to resist investigation or harm the investigators.

Nothing which has been said is intended to indicate that the removal of a judge should ever be based upon any report by the Official Misconduct Division. It would be unsuitable for such a recommendation to be made or acted upon.



However, if what was ascertained provided a proper basis for doing so, it would be permissible for the Official Misconduct Division to report its findings to enable a decision to be made whether or not to move Parliament to initiate a Parliamentary Inquiry to determine whether a judge should be removed from office and whether or not a prosecution ought be launched in respect of any offence which might have been committed.

A government would ordinarily need to have its own preliminary investigation conducted in relation to a sufficiently serious allegation against a judge in order to enable it to decide what, if any, course it should adopt, and, in particular, whether sufficient ground existed to have Parliament consider the removal of the judge and, if it chose, appoint a body to report to it for that purpose.

Such a course, involving two stages, would often be the most satisfactory means of proceeding, and preferable, especially for the judiciary, to a one stage process involving a motion for removal leading to the appointment of a Parliamentary Inquiry whenever a sufficiently serious allegation was made against a judge.

In summary, what is proposed is that the Official Misconduct Division carry out the first stage when called for in accordance with the conditions and procedures envisaged.

There is another reason for the course which has been suggested. The discussion to this point in this report, and much of the other discussion on this topic which has occurred in recent years, has been based upon the assumption that any consideration of judicial conduct will be initiated by a complaint and will relate to one or more discrete incidents unrelated to possible misconduct by any other individual or individuals. However, that is by no means necessarily so.

Unpalatable though it may be, the harsh reality must be faced that a community, especially an affluent and quite widely corruptible community, may occasionally throw up a corrupt judge. The mechanisms for preventing and detecting official misconduct must be able to operate in such regrettable circumstances, and must not be obstructed by some approach which places judges effectively above and beyond any scrutiny.

As has been observed elsewhere, law enforcement processes, especially where organized crime and associated misconduct are concerned, are dependent upon a capacity to inquire widely and assemble information untrammelled by constraints which artificially narrow and distort the pattern of events. Clandestine misconduct, such as corruption, is much more likely to be discovered from such investigations than to arise as a result of a complaint, and will quite possibly only be known to the participants. There is no purpose to be served in totally rejecting the possibility, however slim, that a law enforcement agency may encounter conduct which merits investigation in which a judge may be (or appear to be) involved, and it may even be necessary to question a judge.

Clear guidelines again need to be established to indicate the course to be followed. Procedures must be found which are satisfactory not only for the vast majority of judges of exemplary probity but also any tiny minority who may, from time to time, misbehave. Publicly announced procedures for dealing with any such problems will ensure that public confidence in the independence and integrity of the judiciary is maintained at the excellent level which has traditionally existed and justifiably continues throughout Australia.

What has been said ought not be taken to indicate that there is a present demonstrated need for the scrutiny of judicial conduct. The integrity and reputation of the judiciary within the legal profession is extraordinarily high. Nonetheless, it is no longer entirely satisfactory merely to point to the absence of any instance of proven corruption of a judge of a Supreme Court in Australia this century. It is reasonable to conclude that the community wishes to be ensured that, were any such instance to occur, it would not escape detection merely because of structures and systems unable to deal with clandestine crime by a person holding judicial office. An unwillingness to ensure that mechanisms are available because of a refusal even to acknowledge the possibility that the problem could arise is not in the interests of either the judiciary or the general community.

## **10.7 REVIEW PRIORITIES**

It has already been observed but bears repetition, that the problems of the administration of criminal justice disclosed by this Inquiry make the whole issue of law enforcement powers, control of the use of powers

and authorities and supervision essential concerns. There are also matters relating to the laws of evidence that should be addressed in the future by the CJC.

### **10.7.1 Records of “Verballing” and other Misconduct**

Allegations of police misconduct in respect of interrogation and investigation in particular are frequent, widespread and often justified. Such allegations and public concern as to the frequency and nature of those allegations have been abroad for a long time.

Although the powers of investigation available to law enforcement agencies are arguably not adequate to combat major crime, particularly organized crime, there is legitimate cause for concern that law enforcement officers already abuse their present powers systematically and frequently.

The most common complaints illustrate where the real difficulties lie. Some of these complaints have already been reflected in the 1977 Lucas Committee Report. The evidence to this Inquiry reinforced the reality of the problems.

The problems are deep-rooted and have not been successfully tackled in the past.

Juries have become increasingly sceptical of police evidence. Defendants commonly allege that they were “verballed”, that firearms or drugs were “planted” on them by police, and that police got them to sign false statements by coercion and intimidation or violence.

Such complaints are frequently reflected in juries’ finding a defendant not guilty sometimes notwithstanding the presentation of other evidence which, if not for the taint of police misconduct, could have sustained a guilty verdict.

In some cases it has been demonstrated that police have resorted to fabricating evidence even when there was perfectly good evidence of various sorts, including circumstantial evidence, which could have been obtained by competent investigation and which would probably have obtained a conviction.

Other complaints of unjustified search of premises or vehicles, of unjustified detention or arrest are common.

Few if any records have been kept of allegations of misconduct against investigating police in the courts. None have been kept systematically.

Unscrupulous and desperate defendants, who have been properly and fairly charged by competent investigators, will and do make false allegations against the investigators in an attempt to discredit them.

Nonetheless, such allegations, when they are accepted by juries, should be compiled and analyzed. Of course some acquittals will be made for reasons other than the allegations against police. However, a compilation of allegations could still be analyzed. Trends may be observed. If people not connected with each other, and with no reason to lie, regularly make similar allegations which seem to lead to their acquittal, there might well be reasons for serious concerns about individual police officers.

Such scrutiny, and prompt action on any area of concern by the CJC would help restore public confidence in the Police Force. So would improved regulation of the circumstances in which the powers of questioning, search, seizure and arrest are used.

### **10.7.2 Recording Confessions**

The audio or video taping of interviews between suspects and police is an old issue. It is not proposed here to recite the arguments for or against audio or visual taping. It is clearly essential that some reliable, independent record of such an interview is made and available at a trial.

There may be occasions, of course, when statements may be made by a person, who is later charged with an offence which cannot be taped or video recorded. A person may voluntarily and spontaneously confess

when apprehended at the scene of an offence or make some other statement which is of potential evidentiary significance, for example, a false denial or an account inconsistent with his later testimony. How those occasions should be balanced against the need for reliable evidence of confessions is unresolved. Models elsewhere have addressed the question in different ways including the exclusion of any alleged confession not recorded as specified save in exceptional and rare circumstances.

Recently funds have been allocated for acquisition of electronic video and audio taping of confessions. Whilst not criticizing that course, it should not be assumed that what has been recommended in the past, or is being done, is an adequate response to the whole issue of controls of police malpractice or is of universal utility in any event.

To take but one example—a growing and respectable body of research shows that Aborigines are susceptible of “gratuitous concurrence”; the giving of an answer or response judged likely best to please the questioner. That tendency is well known to some police who are apt unfairly to exploit it. Others, not intending to be unfair at all may not be conscious of it or unaware how to deal with it. It exemplifies, once again, the need for comprehensive objective review of particular needs.

The CJC, as a high priority should review, and propose reform of guidelines for and controls on police practices in respect of interviews.

### **10.7.3 Investigating Allegations of “Verballing”**

Allegations have been made during the course of this Inquiry that some convictions have been made because of police “verballing”. Police and former police have admitted instance of it. The practice of verballing, or fabrication of evidence and perjury by police cannot be tolerated.

A review of trials over a sufficient period would produce a pattern of verballing allegations and concerns and, quite likely, identification of individual police officers who are, or were, the subjects of repeated allegations and persistent suspicious conduct.

However, like so many of the effects of past misconduct, trying to right the wrongs which may have resulted from verballing is difficult to the point of impossibility. Many who were convicted may have been both “verballled” and guilty. Witnesses and evidence will now be difficult to find and reassess, and there are innumerable other difficulties, not least the volume of cases which, rightly or wrongly, might be put forward for reassessment.

As in other areas, it is impossible to undo or deal exhaustively with the past.

Although the community may have to accept that some past injustices will go uncorrected, special consideration should be given for a review of the convictions of any who have previously raised allegations of “verballing” with this Commission or with the Government, who are still in prison and who do not have current appeals. The CJC should consider the method by which that could be done; perhaps, for instance by a retired judge.

### **10.7.4 Lies**

Lies told to Parliament concerning matters into which it is inquiring and lies told by public officials about matters pertinent to their office are not of themselves criminal offences. The former may be contempt of Parliament, although that often admits of argument. Each constitutes an impediment to proper investigation of public affairs. The obligation of public officials to be accountable for their activities under colour of their office and the obligation of all to be accountable in respect of public affairs should be reinforced by the prescription of criminal offences constituted by:

- ⚡ the holder of any public office lying in connection with that office;
- ⚡ any person lying to Parliament in respect of any matter relating to personal conduct, (of any person).

That recommendation does not detract from the retention of right against self-incrimination subject to the discussion of that consideration earlier in this report.

### **10.7.5 Parliamentary Privilege**

Parliamentary privilege in respect of Hansard can unnecessarily fetter proper and necessary examination of issues in courts and tribunals and inquiries. Allowing interrogation upon statements reported in Hansard should be considered. The circumstances in which and terms upon which they should be allowed is a matter fit to be considered by the CJC and for its advice in the matter to the Criminal Justice Committee.

### **10.7.6 Oaths**

The giving of evidence or making of affidavits or declarations on oath should be reviewed. Whilst many people of all faiths still hold and express deep religious convictions, the significance of the oath as a coercion to tell the truth has been diluted to the point where it is, for many people, a mere formality and, to some, quite irrelevant. Certainly it has not inhibited those minded to perjure themselves.

It may be and, seems to be, no longer of any practical utility. Experience has not shown that it has any better or greater effect than an affirmation. The CJC should consider where retention of the oath serves any useful purpose.

In any event such is the apparent frequency of perjury, often quite arrogant and casual, that the significance of false evidence should be reinforced by severe penalties for perjury. The CJC should review the sufficiency of the present penalties.

### **10.7.7 Conflicts of Interest and Duty**

A common feature of official misconduct is its association with conflict of interest and duty. Often that is the genesis of it. Statutory models exist directed to preventing conflict of interest and duty.

It is necessary that conflict of official duty and private interest (or private duty) be prevented and, where it occurs, detected.

At the least, the failure to disclose such conflict publicly should be punished: that is not to suggest that such conflict is tolerable. However the topic is not one to be disposed of by general prescription. The CJC should consider the necessity for law to prevent, facilitate the detection of and punish officials who act when private interest conflicts with their official duty.

### **10.7.8 Disposal of Seized Property**

On many occasions, property is seized and held in the course of law enforcement. Sometimes, property is confiscated. All property seized in the course of law enforcement whether illegally owned contraband or otherwise, should be registered.

It is necessary to prevent illicit benefit being gained through the disposal of property which is confiscated, whether by buying or selling. Rules in respect of the disposal or acquisition of property seized in the course of law enforcement and forfeited to the Crown or confiscated should be considered by the CJC. It should consider corresponding necessities for adequate audit and supervision of such seizure and disposal of property.

### **10.7.9 The Generic “Commission of Inquiry”**

A common statutory device is to make tribunals of many different types “Commissions of Inquiry”. As a general consideration, such device is often unnecessary. That necessity (and its current applications) should be reviewed by the CJC. In any event, it will be necessary to review the Commissions of Inquiry Act and

the CJC should consider its amendment to make it most suitable for ordinary use. It is a valuable instrument. The powers required for a task such as this however are not to be assumed as necessary for all applications of the Act.

## **10.8 MATTERS OUTSIDE THE CONCERN OF THE INQUIRY**

### **10.8.1 G.P. Hallahan**

Mr. Glen Patrick Hallahan, a former police officer and employee of Suncorp Insurance Limited, was suspended from his employment during this Inquiry. The Commission did not request that and had no involvement in that.

Specific reference to Hallahan is necessary because public statement was made that he was being suspended until this report was delivered. The implication in that was that this report would make findings relevant to his continued employment.

Hallahan is in no different position, as regards this Commission, from that of any person mentioned adversely in evidence to it. This report has already detailed the approach taken to findings. No finding or recommendation adverse to Hallahan is made in this report. It is a matter for the Special Prosecutor whether Hallahan is charged with any offence. It is a matter for Hallahan's employer, Suncorp, whether he is reinstated. Hallahan's future employment and any entitlement he may have to compensation are matters for his employer.

### **10.8.2 Costs**

In the circumstances of this Inquiry it is not proposed to make any recommendation on any of the very few applications and submissions in respect of costs which it received. The question of costs incurred by any person or organization which was represented before the Inquiry is one entirely for the Government. It remains open for any person or organization to make any submission to the Government as to costs.

# **XI TRANSITIONAL ARRANGEMENTS**

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# CHAPTER XI

## TRANSITIONAL ARRANGEMENTS

### 11.1 INTRODUCTION

The reforms which this report recommends will result in fundamental changes to the organization and operation of the machinery of Government and the criminal justice system, including the Police Force. The implementation process will be lengthy and will need constant management and oversight to ensure that reforms are achieved. This chapter outlines transitional arrangements for the Police Force and the process to be followed in establishing the Criminal Justice Commission and the Electoral and Administrative Review Commission.

### 11.2 THE POLICE FORCE

The recommendations in chapter VIII of this report provide the foundations of reform, but the details of the reforms must be developed by interim leaders, appointed as outlined below. The reforms must be implemented without delay.

The transitional phase may be realistically expected to last until December 1992. The major initiatives recommended should be achievable in that time. A staged approach to reform is needed so change can be systematic, efficient and cause a minimum of disruption.

Changes introduced in this transitional phase will not complete the process of reform, given the magnitude of the problems to be addressed. It may be many years before new generations of police officers, imbued with new values, are in positions of influence within the Force. For this reason, particular attention must be given to establishing interim leadership arrangements.

#### 11.2.1 Interim Leadership of the Police Force

The future leadership of the Queensland Police Force is of the greatest importance. Attention has now been focused on the deficiencies in the Police Force and the unacceptably high crime rate. It is now acknowledged generally that the problems are dreadful. Some expect the problems to be resolved immediately. That expectation cannot be fulfilled.

Rushed solutions would be popular failures, although the fact that they had failed would not emerge until later. The unpalatable reality is that effective improvements will take time and patience and that some disruption and unsatisfactory performance will continue in the meantime.

The rehabilitation of the Police Force must rely in large part on existing personnel, who have been immersed in the present institutional culture, organizational structures and techniques of the Police Force. As stressed earlier, many police officers in positions of authority and influence are unable to perceive, or unwilling to accept, that existing arrangements are unsatisfactory.

Obviously a Commissioner of Police and some other senior officers of appropriate rank will have to be appointed without delay, and consequential vacancies also filled promptly by the appointment of other commissioned officers and senior non-commissioned officers. Most of those positions will have to be filled from within the Police Force.

There will be no, or very little, opportunity to introduce significant numbers of outside personnel into the Police Force for some time to come. Any outsiders who are appointed on merit will inevitably be drawn from other police forces, some of which may have their own institutional defects.

One of the many deficiencies in the Police Force has been the absence of proper records of individual officers' experience, qualifications, abilities and performance. That means that a suitable selection process, particularly for appointments of commissioned officers, is difficult if not impossible.

A period of transition in the leadership of the Queensland Police Force is therefore imperative.

It is vital that appropriate candidates for senior positions in the Force are identified and selected. Until selection and record systems are developed so as to produce leaders committed to excellence and integrity, appointments should not be made on other than an interim basis.

The unique opportunity to gain outstanding police leadership must not be lost through political expediency, misconceived community or media pressures or lobbying by interested groups and individuals. It would be disastrous if the senior ranks were filled by permanent appointees as vacancies become available, without close scrutiny and stringent testing of all possible candidates.

Care will be needed during the transitional period to avoid excessive loss of stability, continuity, skills and experience. Individual police officers must be treated as fairly as is practical in the circumstances. Care must also be taken not to increase the influence of the bad habits and attitudes of disgruntled or disinterested senior police whose careers are drawing to a close.

The significance of any temporary void in senior ranks within the Police Force should not be over-emphasised. Commissioned staff are often not used effectively. Exaggerated concerns and false claims of despair should be ignored.

Commissioned officers and senior non-commissioned officers are critical, as they are in a position to help or obstruct reform.

Under the present system, all commissioned officers are drawn from the lower ranks. Most spend comparatively little time as commissioned officers. Those who rise higher than inspector generally have only a short period of service at more senior rank.

Senior non-commissioned officers, (senior sergeants and sergeants first class) are younger and greater in number than the commissioned officers. They will therefore continue as police officers for longer, have more direct contact with junior ranks, and exercise more immediate supervision and control.

With few exceptions, superintendents and inspectors of police are aged between 45 and 55 years and have been in the Police Force for 25 to 35 years. Most senior sergeants of police have about 5 years less police service and most Sergeants First Class about a further 5 years less still. Superintendents, inspectors and sergeants are thoroughly indoctrinated in the institutional culture of the Police Force and are enormously influential in that culture's endurance and transmission to more junior ranks.

It is essential to select only those commissioned and senior non-commissioned officers who will support reform.

Recognition of merit, incentives, competition and the introduction of some suitable new personnel will all contribute to suitable leadership within the senior ranks of the Police Force. These measures will also erode the Force's institutional culture, which has been supported by the exclusion of outsiders and the use of seniority to the exclusion of competitive merit as the basis for promotion.

It is desirable to create leadership opportunities, and make them available to suitable personnel at younger ages.

The proposals below may disadvantage a limited number of police officers, but others will benefit, and so will the Police Force and the general community.

Accepting that a transitional period is needed, the ensuing course of events, instead of the usual denials or minimization of problems with ad hoc solutions and claims of success, will send a clear message to police officers, including those with most cause for concern, that the proposed reforms are intended to be effected, no matter what opposition is mounted.



## **(a) Natural Vacancies**

The opportunity created for establishing new leadership within the Force must be handled wisely, with an absolute determination not to repeat or perpetuate past mistakes.

That opportunity should not be prejudiced by actions which may seem more attractive because of short-term considerations.

The Deputy Commissioner and Acting Commissioner, Ronald Joseph Redmond is eligible to retire and more is said of him later. All the Assistant Commissioners (with one possible exception) are about to retire. Nothing further need be said about this group.

There are now 28 superintendents of police, in various grades. All except two will have reached minimum retiring age at least by the end of 1992, and the three years and some months until then seems a realistic time for a period of transition.

In the course of this transitional period, the position of each of those who is currently a superintendent would be carefully reviewed and only those who are appropriate should be encouraged to remain beyond the end of that period, with others encouraged to retire or resign. Any who seek to retire or resign during the transitional period should be permitted to do so unless there are special circumstances. In each case a flexible approach should be adopted to provide any compensation which is fair and reasonable.

Special mention is warranted with reference to Detective Inspector James Patrick O'Sullivan. This officer jeopardized his career when he accepted appointment as the senior police officer seconded to assist this Commission in the circumstances which then existed and served in that role with distinction throughout the Inquiry.

Inspector O'Sullivan is 50 years of age, and his immediate promotion to the senior grade within the rank of Superintendent would be fitting recognition of his contribution to the Police Force and not discordant having regard to the ages of other Superintendents.

Of the other Superintendents of Police, 13 will reach the minimum retiring age by the end of 1989, 4 by the end of 1990, a further 5 will do so by the end of 1991, and the remaining 4 will reach the minimum retiring age before the end of 1992.

The one hundred and thirty-six current inspectors of police are presently classified into three grades. Within this total group 48 are due to reach retirement age by the end of 1992, with a considerable number of the remaining 88 inspectors due to leave in the following 2-3 years.

While it would be impractical to attempt to create a general vacancy in the rank of inspector as well as the more senior commissioned officers by the end of 1992, the scope for new appointments is considerable. At the same time, it would be folly to ignore the enormous influence which the current inspectors have upon other police officers.

Once again, what is attempted should focus on long term, not short-term, benefits.

Even more obviously, there cannot be a general vacancy created in the ranks of senior non-commissioned officers by the end of 1992. Of the six hundred senior and first class sergeants, some 100 will reach minimum retirement age by 1992. From the remaining 500 will come many and perhaps most of the future commissioned officers who will lead the Police Force in the latter years of this century.

One of the key recommendations to be implemented during the transitional phase is the introduction of a simpler rank and grade structure, with the linking of rank to specified levels of responsibility. At senior levels, rank may reflect a specific position such as the Commander in charge of a region. At lower levels, general levels of responsibility and salary

will be assigned to rank. This will provide new emphasis on operational command which together with the merit system should form the altered basis of establishing the operational command structure during the transitional period and beyond.

## **(b) Commissioner and Support Group**

The first priority during the transition period will be the appointment of an interim Commissioner of Police. The present Deputy Commissioner, Redmond, has co-operated with this Inquiry while Acting Commissioner and should be requested to continue for a limited period to preserve continuity until a new Commissioner is appointed. A positive response will be an important gesture of encouragement and support to the Police Force which he has led, to his credit, through a most difficult phase. Redmond ought then be encouraged to retire to enable a totally new senior administration to start upon the process of reform and the creation of a new culture within the Police Force.

Initially, a Commissioner should be appointed by contract, for the duration of the transitional period, that is, about three years to the end of 1992.

The possibility of any renewal of such a contract should be left entirely open, to provide the interim Commissioner with an appropriate incentive to perform. Others should also be encouraged to seek appointment as the Commissioner who will lead an invigorated Police Force in the challenging era which will follow the period of transition.

The choice of a Commissioner for the transitional period should be made by joint recommendation by the Police Minister and the Chairman of the Criminal Justice Commission on the basis of independent advice, which is discussed further below.

Competitive applications should be sought both from within and outside the Police Force by private consultants who should assess the qualifications of applicants for the position. Qualifications must include a demonstrated commitment to excellence, integrity, and public ethics and a declared willingness to pursue recommended reforms with diligence.

It will be necessary to compile an attractive package of remuneration and other benefits, and there should be considerable flexibility to ensure that there is no unnecessary obstacle to obtaining the best possible appointee. Candidates drawn by the challenge must nonetheless be convinced that any career or financial detriment will be sympathetically compensated.

For reasons more fully discussed below in relation to the appointment of additional commissioned officers or other ranks, an effective vetting process will be needed for the appointment of Commissioner. This will extend to inquiries concerning the ability and reputation of applicants, including inquiries within the Police Force and of other law enforcement agencies.

It is worth noting that this sensitive vetting task is one of a kind which was frequently and professionally performed by O'Sullivan during his two years with the Commission of Inquiry. This period of service provides an added advantage of proven independence from the current Police Force hierarchy. O'Sullivan is therefore uniquely placed and qualified to assist the selection panel to perform its task. There is another compelling factor in recommending that O'Sullivan be charged with this and other roles later mentioned. He will be both symbolically and actually in a position to safeguard the interests of honest and capable police whom he has commanded for this Inquiry, and who have been made vulnerable by their association with this Commission.

O'Sullivan is in a better position than others to draw on the experience of other honest police and former police. He will be a valuable consultant able to provide seasoned guidance

to an interim Commissioner. This is especially relevant when the Commissioner chooses an immediate support group to commence the process of reform.

Even with determination, reforms will not be fully achieved during the transitional period.

Very little will be achieved, even by the most able Commissioner, if this position becomes isolated and deprived of support and co-operation, especially during the first year or eighteen months when much will be unfamiliar, especially if the appointee is not currently a member of the Queensland Police Force.

Other current superintendents besides O'Sullivan (if he is promoted and used in this consultative role) may well be totally trustworthy, able and experienced, but not all necessarily are. It is impossible to differentiate without a careful scrutiny of each of them and their past activities, which is impractical in the circumstances and the limited time available.

It has been implicitly assumed in what has been stated that O'Sullivan will not apply for the position of interim Commissioner of Police. That assumption is continued in later proposals, but is not intended to prevent his applying, to exclude him from consideration, or diminish his prospects.

In the event that he does apply, he should be distanced from the interim Commissioner's appointment process.

### **(c) Superintendents**

As well as an interim Commissioner, at least ten and perhaps as many as fifteen additional superintendents should be immediately engaged on an interim basis. It is necessary to appoint senior officers for the duration of the transitional period to replace the Deputy Commissioner and Assistant Commissioners, and any of the current superintendents who retire, resign or die within the first twelve to eighteen months. The workload and need for leadership of the Police Force are such that an immediate increase in the number of superintendents is called for.

Interim appointments should be made to whatever grade within the rank of superintendent is appropriate, or to the new rank of superintendent if and when a revised rank structure comes into effect.

Similarly the process should include upgrading of existing superintendents to a superior grade on an interim basis when that is called for.

Subject to two qualifications, an identical process with the same material considerations to that adopted to find and appoint an interim Commissioner should be contemporaneously followed to obtain additional interim superintendents. Quite possibly, some people will apply for both positions.

One qualification concerns the appropriate period for interim appointments. While the interim Commissioner should not be appointed for more than the transitional period, and it is desirable that that also be the period for interim appointments to the rank of superintendent, more flexibility is appropriate in the latter case if a longer contract is needed to obtain the services of an outstanding applicant from outside the Police Force.

The other major difference concerns the need to recognize that, while an interim Commissioner could not later continue in the Police Force at a lower rank with dignity, an interim

superintendent who is not reappointed to that rank after the expiration of the transitional period should not be disadvantaged by the fact that he accepted an interim appointment, and should be subject to the same considerations as would have applied had he not accepted appointment as an interim superintendent, including reversion to any previous rank which he would have been entitled to retain in such circumstances.

While a broadly similar result might be achieved with acting appointments provided that appropriate conditions were attached, contractual appointments for limited terms better suit the tenor of a scheme based on a transitional period, and appear to provide benefits to the appointees who will have the status of confirmed, although possibly temporary, superior rank.

#### **(d) Interim Selection**

As was indicated earlier, the interim appointments should be made by contract with statutory facilitation as necessary on the basis of independent advice. That proposal needs brief elaboration.

It is difficult for civilians to comprehend the Police Force or its institutional culture and they are generally easy prey to deceptions.

Civilian experts appointed to select senior police officers will also be confronted by the lack of an existing suitable selection process and a dearth of data on members of the Force.

Inevitably, they will also be without any knowledge of the practices, attitudes or reputations of those whose applications must be considered.

On the other hand, trustworthy, able, experienced senior commissioned officers might reasonably be expected to have such information concerning any police officers with serious claims to consideration.

The assessments made by the independent experts should not include recommendations and should be provided to O'Sullivan, who should review assessments, make any appropriate inquiries, including inquiries of other law enforcement agencies, and make recommendations to the Minister.

Appointments made during the transitional period will not demonstrate complete confidence or approval, but will be correctly viewed as a practical response in a difficult situation. It is obviously unrealistic to attempt to avoid any appointments in a large public organization in the course of a period of transition.

What is proposed places considerable responsibilities upon O'Sullivan and is susceptible to objections. A more open process of hearings and appeals or at least the opportunity to rebut or comment on what is relied on might be fairer, and there is a risk that O'Sullivan could be biased, at least subconsciously, or mistaken.

The reality is that all the appointments which have been made to similar positions since at least 1976 are vulnerable to the same criticisms and much worse, and there is no practical alternative in the present circumstances, given the urgency which exists.

Indeed, some of the promotions, upgradings and appointments made during the course of the Inquiry were quite startling. The lack of proper leadership appears to have been reinforced by the circular logic that no account may be taken of suspicions or unproved allegations

and, since police do not investigate police, suspicions cannot be established or allegations proved.

The difficulties and objectives associated with what is proposed support the desirability of interim appointments which are confined to the transitional period. The disadvantages can be somewhat alleviated by ensuring that the consultants' assessments and O'Sullivan's recommendations are the only documentation used and that no records are brought into existence which can be used, or misused, against applicants in the future or to embarrass participants in the selection process.

### **(e) Inspectors and Senior Non-commissioned Officers**

The appointment of a significant number of interim superintendents from within the Police Force will deplete the ranks of inspectors, and the appointment of additional inspectors will deplete the ranks of senior non-commissioned officers.

The flow-on effect which has been described, and the number of positions of authority and influence involved, confirm the critical importance of interim appointments. It would be calamitous to make a significant number of inappropriate appointments on a more permanent basis, and the urgency and lack of a satisfactory selection basis and insufficient data combine to create the risk that appointments initially made will not universally be the best possible or even entirely suitable.

An identical process, with the same material considerations to that appointed to find and appoint interim superintendents, should be contemporaneously followed to obtain additional interim inspectors from those otherwise qualified for commissioned rank.

A sufficient number of such additional interim inspectors should be appointed immediately to replace not only those who are immediately appointed as interim superintendents but also to replace any current inspectors who may retire, resign or die before, say, the end of 1990.

A similar programme, with any desirable modifications, could be applied to replenish the ranks of senior sergeants and, for that matter, could logically be extended down through the ranks.

However, on balance, it would be preferable not to do so. Officers can be permanently appointed to the rank of sergeant without impeding the pending restructuring. There is no real concern that there would be too many senior non-commissioned officers if some who are given interim appointments as commissioned officers revert to their former rank after the transitional period.

Vacancies caused by the interim appointment of senior non-commissioned officers to commissioned officer rank, and consequential vacancies caused within the ranks of non-commissioned officers or within grades of those ranks, should be filled on a permanent basis, contemporaneously with the selection and appointment of an interim Commissioner and interim superintendents and inspectors.

While applicants from outside the Police Force should not be totally excluded from consideration, no positive campaign to attract external applicants for appointment as non-commissioned officers should be undertaken. For a variety of reasons, including the general nature of the work of non-commissioned police officers, any external applicants would almost certainly be former members of the Police Force or serving or previous members of some other law enforcement agency.

There will be limited opportunity to conduct proper scrutiny of external applicants for positions as non-commissioned officers. The risk involved in introducing significant numbers of senior non-commissioned officers on a permanent basis when they have not been fully vetted is unacceptable.

The initial process of selecting replacement senior non-commissioned officers and re-ranking non-commissioned officers should accompany the selection of interim commissioned officers, and the same considerations should be material.

Contemporaneously, and on the basis of the same considerations, promotions should also occur within the lower ranks.

O'Sullivan should have responsibility for the process described in respect of non-commissioned officers with the assistance of the Promotions Board, which by this stage may comprise some of the interim superintendents previously appointed.

Internal appellate processes related to promotions and transfers should be suspended during this first stage of transitional arrangements and interim appointments. The primary objective is to provide a better, more reliable leadership during the next three years.

The determinations made must involve subjective assessments based on a primary objective of allowing some, but, for the moment, limited career advancement for those of known integrity. That objective must not be allowed to be defeated by established deficiencies, including the inefficiency of any promotional barriers intended to obstruct unsuitable personnel, or because of the institutional culture and the lack of effective selection criteria, systems and data.

#### **(f) The Next Phase**

The essential concern to this point has related to the initial replenishment of the immediate leadership vacuum in the early part of the period of transition. For the next phase of the transitional period, the Criminal Justice Commission and a new, interim police leadership will be in place. It seems generally appropriate to leave the appointments to be made in that remaining phase of the transitional period to procedures designed by the Criminal Justice Commission in consultation with the Commissioner of Police, but some suggestions may assist.

Obviously, but importantly, appointments to commissioned officer rank during that phase must continue to be on an interim basis, or, perhaps, an acting basis if that is considered more appropriate in the closing stages. Similarly, in the latter stages of the transitional period, acting appointments may also be more appropriate in relation to promotions to senior non-commissioned officer ranks.

In so far as practical, the procedure during the first phase should be continued, including competitive applications for appointments as commissioned officers, the continued involvement of O'Sullivan in relation to promotions and transfers, and the suspension of the internal appellate system.

It will be for the Criminal Justice Commission to determine whether, or if so at what point, O'Sullivan's role should alter, but it should be emphasised that his proposed personnel function is vitally important.

A practical matter which must be considered concerns the motivation of commissioned officers and senior non-commissioned officers during the transition.

Any commissioned officers who are given interim appointments will perform in the hope of continued or additional career benefits during and after the transitional period. Some, especially those approaching or passing minimum retiring age, may view the position differently. The contractual interim appointments should be conditioned on satisfactory discharge of duties and responsibilities.

What is satisfactory should be related both to personal practices and attitudes and the general standards of those holding equivalent rank and of those eligible for appointment. Conversely, the remuneration and other conditions of interim appointment should adequately reflect the responsibilities and duties involved. Obviously, comparable conditions to those provided to interim appointees, subject to any modifications appropriate to reflect the temporary nature of interim appointments, must be provided to other commissioned officers of similar ranks and grades.

All of the current superintendents and a substantial number of the current inspectors, who will not be the subject of interim contracts, will attain the minimum retiring age during the transitional period.

Some, but not all, will desire to continue to the end of the transitional period, and some may wish to continue thereafter. Any current superintendents, for example, who are suitable and willing to assist in the essential reform of the Police Force could make a significant contribution.

All current commissioned officers who are not engaged on interim contracts who will attain the minimum retiring age should have their continued engagements thereafter initially limited to the transitional period and subjected to similar conditions, including satisfactory performance, to those applicable to interim appointees. This is so that any further engagement after the transitional period of those who have passed minimum retiring age is dependent upon competitive selection for contractual appointment as later discussed.

Similar conditions with respect to satisfactory performance should apply in relation to those current inspectors who will not attain minimum retiring age and are not promoted or upgraded during the transitional period and whose engagement will therefore not terminate upon its expiration.

The importance of ensuring that those commissioned officers who will be entitled to continue after the transitional period are suitable for positions of authority and influence in a police force undergoing reform needs no explanation. Consistently, where any such commissioned officers later reach the minimum retiring age and seek to continue within the Police Force, their continued engagement can appropriately then be made dependent upon competitive selection for contractual appointment as later discussed.

A consequence of what has been proposed may be that, after the transitional period, some currently serving commissioned police officers will be unable to continue beyond minimum retiring age because more suitable personnel are available. The Criminal Justice Commission should develop a policy to cover this situation in consultation with the Commissioner of Police.

## **11.2.2 Reformed Leadership and Staffing**

The steps available to obtain a leadership which is dedicated to excellence and integrity by the end of the transitional period include:

- (a) competitive applications from both within and outside the Police Force for the position of Commissioner of Police and the positions of Commanders mentioned earlier, all positions

as Superintendents of Police and all vacant positions as Inspectors of Police as from the expiration of the transitional period;

- (b) selection criteria for those appointments which emphasize excellence and integrity and take account of qualifications, skills, experience and past and current practices and attitudes, including disapproval of the present culture of the Queensland Police Force and willingness to change it utterly by precept and example;
- (c) contract appointments for fixed periods with appropriate conditions to ensure performance and to provide for improved remuneration and other terms of engagement commensurate with the duties and responsibilities involved.

Contractual appointments for fixed periods, insulated from political or other inappropriate influences are preferable to permanent tenure because they allow regular fundamental re-assessments of performance. They also allow for appointment of the most suitable applicants without interference with accrued rights.

A contractual appointment is neither more nor less conducive to misconduct, or inhibitory of disclosure of misconduct than the present police system. The critical element in either case is the availability of an independent body to receive complaints, and appropriate monitoring of activity concerning "whistle-blowers".

Different ranges of periods of appointment may be appropriate for different ranks. Five and ten year periods were offered earlier as a guide. Other factors, such as the age and other personal attributes of proposed appointees may help in the selection of a suitable period for a particular appointment, from the range applicable to the rank.

**It** is desirable that the Commissioner of Police who is appointed after the transitional period has the opportunity to serve for a period which is sufficient to achieve major progress towards essential reform but nonetheless is limited to ensure that his successor will, in turn, have the opportunity to instil new ideas and enthusiasm and inhibit the growth of any bad attitudes or practices. The first appointment of a Commissioner of Police after the transitional period should be for not less than 3 nor more than 5 years.

A scheme based on contractual appointments to a particular position or rank must, of necessity, make provision for any appropriate financial adjustment upon the expiry of a contract of time where no further appointment follows.

The development during the transitional period of data and material selection criteria and processes, including vetting systems for use in the appointment of commissioned officers at the end of that time and subsequently, will be a task of primary importance.

Improved programmes to collect, collate and analyze personnel information and the acquisition of suitable computer storage and analysis facilities will be necessary.

The maximum opportunities should be provided during the transitional period to as many non-commissioned police officers as possible to obtain any essential or desirable qualifications to enable them to participate in the competitive selections for appointment to commissioned rank in the large scale appointments at the expiration of that period.

During that period, there will also be opportunity to review the junior rank structures within the Police Force, and the numbers of police officers of each rank required.

Nothing has been said to this point of rank and file recruitment and training during the transitiona l period.

Initially, there will be no practical alternative but to pursue the existing systems of recruitment and training to maintain at least the current number of police officers. This is considerably less than the number needed, as the Police Force is presently organized and deployed. This is more fully discussed in Chapter VIII. (The consolidation of cadet and probationary training into one programme as described earlier would be a logical first step as soon as this can be practically achieved.)



On the other hand, there should be no attempt at a significant increase in overall numbers during that time, for a number of reasons including the following:

- ⚡ no greater number of additional police officers than is necessary should be recruited and trained under the present inadequate systems;
- ⚡ the transfer of functions from police to civilian personnel will dramatically alter the number of police officers required and the appropriate training and skills needed;
- the transfer of functions will also affect the recruiting balance between civilians and police personnel requirements;
- ⚡ the functional re-organization and further regionalization within the Police Force will affect both recruitment and training; and
- there is need to assess numbers of police needed, and the appropriate ranks and functions.

Nothing has been said yet of general recruitment, training, promotions and transfers after the transitional period concludes.

As a matter of practicality the detailed development of satisfactory systems and processes must be left to the expertise and experience which will be acquired during the transitional period by the Police Department and the Criminal Justice Commission. The Criminal Justice Commission must research, develop and recommend suitable systems and processes of recruitment, training, promotion and transfers during the transitional period. There will always be scope for modification and improvement.

### **11.2.3 Other Immediate Initiatives**

Several initiatives need to occur concurrently with the interim leadership changes outlined above.

An immediate priority should be an amendment to the Police Act, to allow for lateral entry, interim appointment, and contract appointment. This amendment may need to precede the redrafting of the legislation which has been also recommended. It is also essential that external consultants be promptly engaged, to review existing rank, grade and salary arrangements, and positions and corresponding duties in the Police Department. During this process, and in consultation with relevant unions, the current police award shall be reviewed to ensure policing is re-established as an essential around-the-clock community service with fair market rates of salary.

An important part of this review will be the identification of all positions which might best be civilianized, and the progressive appointment of appropriate personnel to these jobs. Because of the important priority placed on appointments in the first year of the transitional arrangement, it would be of great advantage if the civilian directors in the support services command were recruited as soon after the appointment of the interim Commissioner as possible.

Another outcome of the salary and position review will be the detailed command and operational structure which should apply in police districts and divisions under the new arrangements. It is only after this review, that the appropriate number of commissioned and non-commissioned leadership roles within the Force can be determined. By then the Criminal Justice Commission should have been established. It must assess the review and, in light of that, implement the recommendations of this report.

It would be desirable to commence the formal restructure of the Force as soon as possible after that review. By then (estimated mid-1990) sufficient work will have been done to enable decentralization of many of the current special squads, establishment of the new Task Force Division, regional command structure, and the remaining appointment of civilians.

## **11.3 PROCESS OF ESTABLISHMENT-CRIMINAL JUSTICE COMMISSION**

This Commission has recommended the establishment of a permanent statutory body to be known as the Criminal Justice Commission (CJC) which will carry forward the process of reform initiated by this Inquiry and establish an effectively regulated system of criminal justice.

A smooth transfer of functions from this Inquiry will be a critical element of the establishment process for the CJC. During this transition it is essential to:

- provide for a continuation of investigations into official misconduct within Queensland public institutions;
- z preserve and manage the information base accumulated during the course of this Inquiry;
- z retain the use of specialized accommodation and information storage and retrieval systems acquired by this Commission;
- z retain the knowledge and expertise of those currently engaged by this Commission who would be willing to continue in a similar capacity and who meet the needs of the CJC.

To facilitate a timely handover of control of the information system and its accommodation and to ensure continuity of the investigative process it will be necessary for this Commission of Inquiry to remain functional until the CJC and its essential elements are established and capable of providing continuity of operations.

The CJC should be established as soon as possible. A suggested order of procedures is as follows:

#### **(a) Legislation**

Introduction of draft legislation setting up a Criminal Justice Commission as recommended by this Commission should proceed as soon as possible after consideration of this report. A parliamentary committee, to be known as the Criminal Justice Committee, should also be formed as soon as possible.

#### **(b) The Minister**

The Premier should be the Minister responsible unless, by then, the ministerial responsibilities of the Attorney-General have been altered as suggested before, in which event the Attorney-General could be the responsible Minister.

#### **(c) Preliminary Budget**

A budget allocation will be required at an early stage to cover appointments and establishment expenditure.

#### **(d) Appointments**

The Government will appoint the first Chairman by engaging independent consultants to widely advertise the position and report on all applicants, followed by consultation with the Criminal Justice Committee. If the Criminal Justice Committee has not then been formed, the Leader of each Opposition Party should be consulted in lieu of that committee in the first instance. The members of the CJC should be similarly appointed.

#### **(e) Appointment of Executive Director**

An Executive Director would be appointed by the CJC

#### **(f) Determination of Structure**

The Executive Director would be required to initiate the necessary processes, with the help of consultants, to formulate proposals including Commission structure, staff requirements, job descriptions, qualifications, duties, salary structure, accommodation, office equipment and transport requirements.

### **(g) Appointment of Staff**

Subject to acceptance of structural and organizational proposals by the Commission, appointment of staff would proceed in two stages:

- (i) appointment of Directors of Divisions;
- (ii) appointment of Divisional staff, with major input to the selection process by Directors.

### **(h) Transfer of Investigative Role and Data Base**

Following appointment of at least a minimum core of Divisional staff, the investigative and data base functions of this Commission can be handed over to the respective Directors of the Official Misconduct Division and the Intelligence Division of the CJC.

#### **(i) Winding down the Commission of Inquiry**

This Commission should continue to function until the investigation and information roles have been effectively transferred to an operative CJC. The time scale to achieve this goal is difficult to estimate but a minimum of nine months would be required to allow for introduction and implementation of legislation and completion of the necessary establishment processes.

In practice, somewhat longer may be required.

## **11.4 ESTABLISHMENT OF AN ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION**

The establishment of an Electoral and Administrative Review Commission (EARC) would follow a similar process to that described for the Criminal Justice Commission, that is:

- ∞ The Premier to introduce draft legislation as proposed by this Commission. The parliamentary committee should be formed as soon as possible. The Committee or the leaders of the Opposition parties should be consulted in respect of initial appointments to the Commission;
- ∞∞ Preliminary budget allocation;
- ∞ Advertisement and independent assessment of applicants for Chairman. Appointment of Chairman and members after advice and consultation;
- ∞∞ Appointment of Executive Director;
- ∞ Determination of operating structure and appointment of additional necessary staff.

Although no handover of operative functions is involved in the establishment of EARC, that Commission will inherit from this inquiry the responsibility for progressing administrative reform on a significant scale in many areas of public administration.

It is highly desirable that the Commission becomes functional as soon as possible.

## **11.5 ESTABLISHMENT OF AN IMPLEMENTATION UNIT**

There are matters of urgency arising from the recommendations of this report which cannot await the formal establishment of the CJC.

It is therefore essential that immediate action is initiated to establish a small consulting cell reporting to the Premier to function as an implementation unit for urgent activities, in particular those which will eventually become the responsibility of the Research and Co-ordination Division of the CJC.

Among other matters, urgent action is required to:

- review management of the CJC data base and its interaction with police information systems and other agencies (a prompt decision on new hardware will ensure a smooth transition from this Commission's data base, which has reached saturation level);
- commence review of police organizational and salary structures;
- commence review of police recruitment, selection and training processes.

The implementation unit would complete its functions by eventually handing over all matters in hand to the appropriate elements in the CJC as they become operative.

## 11.6 THIS COMMISSION'S INFORMATION AND MATERIALS

### 11.6.1 The Problem

The holdings of this Commission include the store of documentation, tape recordings and other real evidence acquired by the Commission during its investigations. This has come from many sources. Some of it has been volunteered by members of the public. Some has been taken under compulsion by process issued by the Commission. Some of it has been given to the Commission by other law enforcement agencies who cooperate with the Commission. Some emanates from raids conducted by the Commission. Certain of the material held by the Commission is subject to constraints. Some of the law enforcement agencies choose to label some documentation 'secret' or 'confidential'. Other law enforcement agencies (such as the NCA), pursuant to the statute under which it operates, released documentation to the Commission without conditions.

Other types of documentation held by the Commission, such as material supplied by the Australian Taxation Office or some material made available from the records of Telecom, is subject to statutory constraints and, in some cases, secrecy.

Material held by the Commission includes documentation of a most sensitive nature. Much of it comes under the category of 'intelligence' which is often from an anonymous source and cannot specifically be proved or disproved by investigation. Some of it may disclose the names of informants. Some material includes details and names of customers of brothels. Other particularly confidential material makes reference to the identity of some donors to political parties. Some of the material volunteered to the Commission has been on the request that the identity of the informant be kept confidential. The above is, of course, far from an exhaustive catalogue of the types of material held by the Commission. Suffice it to say that, even on the broadest principles, it could not be validly argued that such material ought to be available generally to the public.

It was a fundamental tenet of the conduct of the Commission that its proceedings should be conducted in public and that material produced at public hearings should be available for public scrutiny. There had to be some constraints placed upon this policy because much of the material was open to abuse if it had come into the wrong hands.

The question of confidentiality had the potential to create real difficulty. Persons who approached the Commission were often frightened, and sought some iron clad assurance of confidentiality, usually as to their identity, but not infrequently as to the information or material which they provided. It was not possible to give these informants a blanket undertaking, not only because of the obligations and duties imposed by the terms of reference but also because of the operation of legal process which could in some circumstances compel an officer of the Commission in possession of documentation to produce it before a Court.

In these circumstances, the Commission adopted a policy that confidentiality would be provided by telling those who came to deal with it requesting confidentiality that such confidentiality would be provided as follows:

"Confidentiality is assured with regard to the identity of persons who assist the Commission and the information and documents which they provide, in so far as that is appropriate and consistent with the discharge of the Commission's functions."

The question of accessibility to documentation, exhibits and evidence produced at public hearings has been addressed by Commission rulings (Appendix 15) which attempted to balance the public interest in obtaining accessibility to material produced before the Commission in open hearings against abuse of such material to the detriment of an individual's rights or reputation.

These rulings, of course, referred to material produced as exhibits before the Commission or to evidence given at the public sittings of the Commission. For practical purposes demand for access to these materials has become obsolete, having regard to the termination of the Commission's public hearings. It could hardly be said that any party could claim to want to inspect any exhibit at this stage on the basis that it was related to his or her appearance before the Commission.

There is, however, a much more difficult category of material that has to be the subject of careful policy decisions. From time to time, the Commission received requests from members of the community wishing to peruse documentation held by the Commission but not produced at any public sitting or alternatively, to seek information from the Commission as to certain matters which were not disclosed at any public hearing. Members of the public enquired as to whether or not they or somebody known to them was being investigated by the Commission. Employers asked similar questions as to employees. From time to time a senior officer in a Government Department might enquire whether or not a person in that Department perhaps being considered for promotion was in any way adversely referred to in material held by the Commission. Requests were made by the Police Department to comment upon whether or not the Commission held any material beyond what was disclosed at its public sittings which might affect the Department's decision to make a transfer or promotion, to allow a resignation or grant an early retirement. Again, examples multiplied but, again, the Commission adopted a steadfast attitude that its holdings, other than those put in evidence at public hearings of the Commission, would not be made available to outside inquirers and this included a prohibition against disclosing any summary or precis of a particular matter.

What then was the principle underlying this approach? What have been developments to date? And what should the policy or attitude be in the future?

A Commission of Inquiry is a body with extraordinary powers set up to cope with an extraordinary situation. The justification for its existence is a crisis of public confidence, and to allay this crisis the public must be informed as to what is occurring. The extraordinary powers of the Commission include the power to acquire documentation and other evidence which goes far beyond the power given to more conventional law enforcement agencies. Much of the Commission's documentation came from the issue of process or the conducting of interrogation consequent upon the powers which were granted to it. A good proportion of its documentation was acquired without formal use of process but conditions of confidentiality were attached by the person providing the material or, alternatively, were implied by the Commission's assurance in its public advertisements. Further people handling material to the Commission without the compulsion of any formal process could arguably have been said to do so on the basis that if they did not co-operate they could expect such process to issue. In these circumstances, there is much to be said for the contention that documentation obtained by, or collateral to, the use of these extraordinary powers should only be used for a confined and specific purpose, namely the purposes of the Commission and for no wider purpose.

The Commonwealth Royal Commissions Act 1902 until the 1982 Amendment, provided for no ability in the Commission itself to disclose its holdings not made public, to any outside body. The 1981 Amendment permitted such disclosure to other law enforcement agencies.

The statutory limits on disclosure of information by a Commonwealth Royal Commission cannot be affected by any Queensland Act and are sufficient to exclude persons outside the Commission of Inquiry, including the Parliamentary Judges Commission of Inquiry and the Special Prosecutor, from access to that information.

Upon the termination of a Commonwealth Royal Commission, the documentation was, unless statute otherwise provided, handed to the Prime Minister's Department who would adopt policy guidelines restrictive of its availability to outside agencies. In 1982, the Freedom of Information Act was passed followed in 1983 by the Archives Act which contained provisions essentially parallel to those found in the Freedom of Information Act relating to the availability and accessibility of information in general but which excludes information held following the determination of a Royal Commission. The basic philosophy of these Acts was that documentation should be freely available unless it came within a category of stated exceptions.

It is to be noted that documents and records of Royal Commissions other than those that have been archived under the Archives Act are exempted from the provisions of the Freedom of Information Act. Under the Archives Act custody of documents and records of Royal Commissions is denied to the archives, except those records which the Minister administering the Royal Commission Act directs are to be placed in the custody of the archives and only when the records are no longer required by the Royal Commission.

There is a clear legislative policy that access ought not freely be given to records of a Royal Commission.

This Commission, in fact, has sought and obtained access to the records of some Commonwealth Royal Commissions because the Prime Minister's Department, which holds them, has a discretion as to whether or not the records will be released. Enquiries show that there is no specific guideline as to the release or otherwise of this information, each case depending on its own circumstances. However, it is considered that guidance is given by the provisions of the Archives Act and the Freedom of Information Act. As previously mentioned, these Acts do not apply to material collated by a Royal Commission (subject to an exception where the responsible Minister directs that records be placed in archives whereupon after 30 years from the time when the record came into existence, access may be achieved).

The approach of the legislation is, however, to begin from the standpoint of accessibility to documentation and to catalogue exemptions when the primary policy will not apply. For the purposes of this discussion, it is convenient to catalogue these exemptions as they appear in S.33 of the Archives Act echoing S.33 of Freedom of Information Act.

- (a) Information the disclosure of which could reasonably be expected to cause damage to the security defence or international relations of the Commonwealth.
- (b) Information communicated in confidence by or on behalf of a foreign government.
- (c) Information the disclosure of which would have substantial adverse effect on the financial property interests of the Commonwealth and would not on balance be in the public interest.
- (d) Information disclosure of which constitutes a breach of confidence.
- (e) (i) Information which could reasonably be expected to prejudice the conduct of an investigation of a breach or possible breach of the law or prejudice the enforcement of proper administration of the law in a particular instance.
  - (ii) Information which would disclose the existence or identification of a confidential source of information in relation to the administration of the law.
  - (iii) Information which would endanger the life or physical safety of any person.
- (f) (i) Information which, if disclosed, would prejudice the fair trial of a person or the impartial adjudication of a particular case.
  - (ii) Information which would disclose lawful methods or procedures for prevention, detecting, investigating or dealing with matters arising out of the breach of the law, and which would be likely to prejudice the effectiveness of those methods or procedures.
  - (iii) Information which would prejudice the maintenance or enforcement of lawful methods for the protection of public safety.
- (g) Information which would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).
- (h) Information or matter relating to trade secrets.
- (i) Information concerning a person in respect of any business or professional affairs which would unreasonably affect that person adversely in respect of lawful business or professional affairs.

## 11.6.2 The Approach

An inverse approach is considered more appropriate in the case of documentation held by the Commission. The fundamental principle ought to be that such documentation which has not been produced at public

hearings is not available to persons or agencies outside the Commission. This having been established, consideration must then be given as to whether any and what exceptions apply.

The only provisions of the Commissions of Inquiry Act 19504989 which deal specifically with the power to deal with documentation or other material in the Commission's holdings are S. 19( 1) and S. 19B which are here set out:

“19.( 1) If a Chairman is satisfied by evidence upon oath (or by affirmation or declaration instead of upon oath where, if the evidence were given by a witness before the Commission, such evidence may be given by affirmation or declaration instead of upon oath), which oath, affirmation or declaration the chairman is hereby authorised to administer or take, as the case may be, that there is reasonable ground for suspecting that there is in any place, building, vehicle, aircraft or vessel -

(a) any book, document, writing, or record or property or thing of whatever description relevant to the Commission's Inquiry, with respect to which an offence has been or is suspected on reasonable grounds to have been committed;

or

(b) any book, document, writing or record or property or thing of whatever description relevant to the Commission's Inquiry, whether animate or inanimate and whether living or dead, as to which there are reasonable grounds for believing that it would, of itself, or by or on scientific examination, afford evidence of the commission of an offence;

or

(c) any book, document, writing or record or property or thing of whatever description relevant to the Commission's Inquiry as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing an offence,

the Chairman may issue a warrant addressed to all members of the Police Force or to any member or members thereof named in the warrant, which shall authorise each person to whom it is addressed to enter (using such force as is necessary) and to search such place, building, vehicle, aircraft or vessel and all persons found therein and to seize any such book, document, writing or record or property or thing found therein and to bring it before the Commission.”

“19B Commission's custody of books etc. (1) The Chairman may cause any book, document, writing or record or property or thing of whatever description produced to a Commission, whether or not it is tendered in evidence, to be kept in such custody as he directs (he, taking reasonable care for its preservation) ▪

(a) until the Commission has completed its inquiry and report and thereafter for a time reasonable for the purpose of establishing whether paragraph (b) is or is likely to be relevant to the case;

and

(b) if a person is committed for trial for an offence committed with respect to such book, document, writing, record, property or thing or an offence committed in such circumstances that the book, document, writing, record, property or thing would be likely to afford evidence at the trial, until it is produced in evidence at the trial.”

The Commissions of Inquiry Act 19504989 is therefore silent as to power and ability of the Commission to release information. The topic was dealt with by the Special Prosecutor Act 1988, and the Parliamentary (Judges) Commission of Inquiry Act (1988). It will be seen that if documentation or other holdings of the Commission are to be kept in the custody of a continuing body, statutory provision for that to occur will be necessary.

The provisions of the Special Prosecutor Act dealt in large measure with the legislative attitude towards Commission documentation. The philosophy embodied in S20 of that Act was that the holdings of the Commission were not subject to production under any process before any Court. Nor was any person

assisting the Commission (which did not include the Commissioner or a Deputy) permitted, except in the course of duty, to disclose Commission holdings to any person in any circumstances. Guidelines issued by the Commission curtailed the ability of Commission staff to release information themselves. This was only to be done in the case of the Special Prosecutor at the level of Senior Counsel Assisting, and in any other case, by the Deputy to the Commission supervising investigations.

The basic approach of the legislation therefore was closely to confine and restrict release of Commission information, save to the Special Prosecutor, although on its face the Special Prosecutor Act gives an unfettered discretion to the Commissioner or a Deputy to release information because they are not bound by any restrictions imposed by the Act.

The question of availability of information to an accused person is dealt with in S.21, the scheme being that when information is released by the Commission to the Special Prosecutor, subject to certain qualifications, the Special Prosecutor has the usual professional duty reposed in prosecutors to make available material to the defence if it is appropriate to ensuring a fair trial. This is the primary strategy that is relied upon and, if the accused is not satisfied with what is supplied, the accused may take the matter before a court for determination. The Commission may impose conditions upon documentation given to the Special Prosecutor, including a condition that it never be produced in evidence or shown to any other person outside the Special Prosecutor's organization. This condition can be challenged in a court, but the court cannot order that the material be handed over by the Special Prosecutor in disobedience of the condition but only that in such a case the proceedings be stayed.

Codes, therefore, have been established for the circumstances in which Commission holdings may be made available to an accused person.

Under and in accordance with the Parliamentary (Judges) Commission of Inquiry Act (1988) and at the request of that Commission's presiding member, (and subject to restrictions imposed by Commonwealth statutes) the Inquiry has had made available to it documents, material and information relevant to the matters into which it was inquiring. Those documents ultimately will pass to the custody of the Speaker of the Legislative Assembly, to be dealt with according to law.

Those Acts purport to cover no other circumstances. What is left is an ability in the Commissioner or a Deputy to make available Commission information by direction or order.

### 11.63 Other Agencies

It is considered that information should be made available, either spontaneously to, or in answer to a request from, other law enforcement agencies. On some occasions it might be necessary to impose conditions of confidentiality. In accordance with well-established principles, in any event, other law enforcement agencies should respect the confidentiality of the identity of an informant without any specific condition being imposed. Sometimes, however, it might be necessary to impose further specific conditions because, for the example, for the other agency to act overtly on receipt of the information might prejudice an on-going Commission operation.

The principle for allowing material to be released to other law enforcement agencies is basically one of co-operation between them, having regard to the fact that such co-operation is necessary to combat criminal conduct.

Broadly speaking, it could be said that the information is collected to combat crime and its use will be minimized if it is confined to a narrow area in the broad spectrum of law enforcement agencies.

Because the Commission is to a large extent investigating activities within the Queensland Police Force, the holdings of the Commission are basically kept secret from this Force. However, there are not infrequent exceptions where matters come to the attention of the Commission outside its terms of reference that have no suggestion of police impropriety or corruption and were accordingly referred to the Police Department to be dealt with in the conventional manner.

One exception to the basic principle is therefore established-Commission holdings can be made available to other law enforcement agencies.



Should there be any further exception? Recently in Queensland legislation was passed which enabled the Crown by action under the statute to recover monies or other assets which would prove to be the proceeds of crime. In this regard it should be noted that quite extraordinary powers are given to police investigating matters under that Act to obtain information from financial and other institutions. What if the Crown Solicitor requested the Commission for any of its holdings which might assist in the preparation of a case against the convicted person in order to recover the monies for public revenue? Alternatively, what if the Government brought civil proceedings against a corrupt police officer claiming return of monies corruptly received by him on the basis that he held those monies as a trustee and the Crown Solicitor again requested the Commission for information that would assist in the preparation of that case? On the other hand, what if a citizen brought proceedings against a Minister of the Crown for damages allegedly caused by the Minister's abuse of public office and that citizen asked the Commission for access to its holdings in the preparation of the case? What if a citizen involved in defamation proceedings in which factual issues dealt with by the Commission were relevant requested the Commission to make available its holdings in this field available?

As has been noticed, the provisions of the Special Prosecutor Act most certainly protect the Commission from issue of any process in any of the above cases to oblige it to produce documentation. Arguably this is a warrant from the legislature to decline to produce it. As a matter of principle, however, should any of the above examples, or even other situations, admit of an exception to a basic policy of non-disclosure? If one were to revert to basic principles and postulate the absence of S20 of the Special Prosecutor Act, the Commission, if issued with a summons, would be obliged to produce documentation unless it could show some legal justification for not doing so. Matters of policy decide this issue. Essentially, one would expect that in order to avoid disclosure of material, the Commission would have to claim public interest immunity. The matters which give rise to such claim are in large part set out in the provisions of the Commonwealth Archives Act 1983. An option would be to consider each request on its merits and to test the request against the criteria set out in s. 33 of that Act. Having regard, however, to the special position of a Commission and to the extraordinary way in which documentation has been obtained, it is considered that it is not appropriate to entertain any wide ambit for requests for documentation.

Release of such information by the Commissioner or a Deputy might lead to exposure to defamation proceedings. The absolute privilege provided by S20(2) of the Commissions of Inquiry Act relates to releasing information in good faith in respect of any matter arising in or out of the Inquiry and any act done in relation to the Inquiry. If the Inquiry relates to specific matters mentioned in the terms of reference, release of information outside those terms of reference might arguably fall outside the absolute privilege and qualified privilege would have to be relied upon. For practical purposes, qualified privilege would seem to provide a reasonably secure defence so that this ought not to be a consideration of great moment.

In considering the whole matter, regard must be had by way of analogy to the position of the Police Department, the Director of Prosecutions or, indeed, the Special Prosecutor who might be called upon by summons to produce material in civil proceedings. On many occasions, they might find it hard to resist production of their holdings if it could be shown to be relevant to the issue before the Court in the civil proceedings. This being acknowledged, it is considered that there is a sufficient difference in the nature of material constituting the unpublished holdings of a Commission of Inquiry from that which is held by the previously mentioned bodies. The difference is related to the special nature of the Commission and its powers which enabled it to acquire the documentation and this difference calls for much restricted availability of this material.

In accordance with its terms of reference, the Commission is obliged to report to the Governor in Council and this report may contain some information relevant to proceedings of the nature postulated in the previous example. It is anticipated, however, that by legislation necessarily to be passed, Commission documentation will be held either by the present Commission or the Criminal Justice Commission to be appointed and will not become the property of the Crown to deal with as it chooses. In such circumstances, it seems the Crown ought not to be placed in a privileged position as opposed to a citizen and the same broad principle should apply.

A suggestion has been made by the present director of the Australian Bureau of Criminal Intelligence that all information in the Commission's holdings would be of intrinsic value to that organization, which would process it and make it available to other Australian Police Forces and law enforcement agencies. It would appear that for the immediate future, the physical documentation and other material held by the Commission ought to remain in Queensland because it is likely to be required for on-going investigations or court

hearings. This Commission already has access to the ABCI data base and the question of whether the ABCI ought not to be granted access to the Commission's main information computer data base, either by way of electronic link or through copies of disks being forwarded, should be given most serious consideration.

It is the perception of the Commission that one of the areas in which criminals appear to have a decided advantage is that there are difficulties in jurisdiction and co-operation between different law enforcement agencies. One of the things that seem to have been quite apparent in the past was a reluctance to part with information on the basis that this could lead to a diminution in perceived achievement if another law enforcement agency brought a matter to completion. Philosophically, there is much to recommend the making available of such information to an institution such as the ABCI which strictly monitors the availability of its holdings and would give the information collected a much wider potential to assist in the battle against organized crime. It is considered that the ABCI comes within the concept of 'law enforcement agency' as discussed previously and thus within the exception to the otherwise strict rule.

Most certainly, information such as that obtained from the Australian Taxation Office and from Telecom would have to be dealt with as a separate category and would not without further statutory amendment be able to be conveyed to such a body. Other specific matters appearing on the Commission's data base may for particular reasons need to be withheld. Fundamentally, however, there does seem to be good reason to support the widening of availability of Commission information to law enforcement agencies through release to the ABCI. Such an action may well of itself promote the concept that there is much to be gained by law enforcement agencies in co-operation and sharing of information. It might be mentioned that this reluctance to share information is a trait recognised as being not uncommon in law enforcement agencies in many parts of the world.



## SUMMARY

This Inquiry began with comparatively narrow terms of reference, which were expanded as it became clear that police corruption was widespread, and part of a bigger problem. As the trail of alleged misconduct led into new areas, it was apparent that the Inquiry could not hope to exhaust its terms of reference. Instead, the Inquiry's public hearings became a means by which society could be informed about what had taken place and, more importantly, gain some insight into why it had occurred.

With this in mind, the hearings were conducted with an emphasis on providing a cross-section of problems and misconduct in our society, rather than determining the role or guilt of any individuals. This method, although the only one possible in the circumstances, meant that at the end of public sittings there were many unresolved allegations against individuals.

The most important thing about the evidence before this Commission is not the truth or falsity of any particular allegation, or the guilt or innocence of any individual, but the pattern, nature and scope of the misconduct that has occurred, and the lesson that it contains for the future. In any case, when misconduct has become institutionalized, guilt and innocence are not matters of black and white. The entire community must take some of the responsibility both for the problem and for its solution.

Although detailed and far reaching recommendations in this report would be popular, they would probably not achieve lasting change. It is no solution to the deep-seated problems which have occurred to simply replace one set of imposed ideas and approaches to administration with another.

This Commission is not a replacement for the democratic process, but an adjunct to it. It is not infallible or omniscient and has had limited time to consider many complex topics. The Commission has no mandate to impose its opinions on the community.

The report is therefore aimed at allowing permanent institutions and systems to operate in the ways intended in a democratic society. Solutions can then be found, improved and reviewed through the democratic process.

Wherever possible, this report makes no adverse or favourable findings about individuals. All are entitled to the presumption of innocence. It would in any case have been impossible for this Inquiry to sift and assess the vast amount of evidence concerning individuals. That task now belongs to the Special Prosecutor.

Instead this report seeks to become a catalyst and platform for continuing reform, by which public confidence in the administration can be restored, and political processes improved. It addresses changes to the administration of criminal justice, including but not confined to the Police Force. The focus is on the future, not the past.

Chapter II of the report is a summary of the evidence as it was presented to the Commission. Findings have not been made, and the summary is far from exhaustive. What has been attempted is to give a broad idea of the pattern of events to provide a basis for the discussion and recommendations in the rest of the report.

Some recurring themes in the report concern the need to strike a balance between competing legitimate considerations. For example, the need to find a workable balance between the free flow of information within a democratic society and the individual's right to privacy.

Privacy can in some cases become secrecy, which can allow corruption to flourish. One aspect of such secrecy is self-regulation, which is sought by many institutions, but which is the antithesis of accountability.

Another case of conflicting public and private interests is that between law enforcement and civil rights and liberties. If crime is to be combatted and the nature of our society preserved, balances have to be struck between these considerations.

All sides must recognize that there may be need for compromise when principles conflict. It is vital that decisions in such areas are based on mature, comprehensive and dispassionate analysis, backed up by research.

To this end, this report recommends the setting up of two new bodies:

- The Electoral and Administrative Review Commission;
- The Criminal Justice Commission.

These bodies will provide research and analysis to inform the debate on lasting reform, as well as making recommendations to Parliament, overseeing the reform of the Police Department, implementing the changes recommended in this report and continuing the work of this Commission.

However, reform will not work if attitudes do not change. It is informed public opinion which will ensure the maintenance of political will to implement this report. The community cannot afford to be complacent, or lapse into self-fulfilling cynicism.

This Commission has now almost run its course, but its work has not been completed. The future must be left to politicians and the political process. It must be remembered that in a democratic society, that process does not only include politicians and their parties and other pressure groups, but also ordinary people, provided they are willing to become involved and insist that their voices be heard.

## **THE POLITICAL CONTEXT**

Good Government is more likely to result if opposition, criticism and rational debate are allowed to take place, appropriate checks and balances are placed on the use of power and the administration is open to new ideas, opposing points of view and public scrutiny.

This is even more important in areas which affect the whole of society. Law enforcement and the administration of criminal justice are two such areas, since crime threatens the whole of the community. These issues should therefore transcend party political loyalties.

A pattern of misconduct is much less likely to occur if the political processes of public debate and opposition are allowed to operate.

Public opinion can be an important check on the powerful. It is a fundamental tenet of a democratic system that public opinion is given effect in regular free and fair elections. But public opinion must be informed to be effective. Parliament and the media are two of the most important means by which information about the operations of Government reaches the public.

Parliament is traditionally the forum for rational debate by those with opposing views and for scrutiny of Government administration. The Opposition is dependent for information on the Government's own reporting to the House. The Auditor-General reports to Parliament, but self-imposed limitations have limited the effectiveness of that office.

In a modern society, many matters are too complex to be properly dealt with by the whole of Parliament in the time available. In other jurisdictions, parliamentary committees have been formed to provide an independent forum for investigation and debate. Some important parliamentary committees have recently been set up in the Queensland Parliament, but a comprehensive system has not been developed.

In Queensland, Cabinet has become involved in the detail of administration. This can mean that the boundary between formulation and implementation of policy can become blurred. When Cabinet formulates policy, political considerations can legitimately be taken into account, but such considerations have no place in making decisions which implement policy.

Cabinet secrecy can be used to prevent the disclosure of information unfavourable to the Government. Depending on the scope of matters considered by Cabinet, the principle of Cabinet secrecy may operate

more widely than necessary, and it is possible for illegitimate considerations to be taken into account without that fact being disclosed.

The line between creation and implementation of policy can be further blurred by politicization of the administration. This also affects the quality and type of advice given to Ministers. New ideas and information about problems might be rejected if they do not fit in with established policies. Misconduct is less likely to be uncovered and honest public servants have no recourse if they wish to report suspected misconduct, and can be penalized for doing so. Apart from alliances based on mutual self-interest, the involvement of Ministers in public servants' career progression adds to politicization.

Unlike in other jurisdictions, in Queensland there is no general means for external review of decisions made by the administration. **As** well, the lack of Freedom of Information legislation limits the amount of information available to the public on the workings of the administration.

It is imperative in a democracy that decision-making be seen to be impartial and objective. There are limited mechanisms in place requiring Ministers and other parliamentarians to declare their financial interests. They do not cover chief executives and the chairmen of statutory authorities. The same considerations might apply to political donations, since some suspect that these might also influence Government decisions. Individuals have a right to privacy which should not necessarily be swept aside, but weighed in the balance against the public interest in manifestly fair decision-making.

The amalgamation of the offices of Attorney-General and Minister for Justice in Queensland has led to a greater risk of partiality in the exercise of the Attorney-General's powers. Ministers who have held this post have come to greatly rely on departmental advisers. The inappropriate involvement of these advisers in the political process has limited the independence and scope of the advice to Government and critical appraisal of new laws.

Politicians in any case tend to pass legislation as a "solution" to complex problems, rather than as part of a reasoned and practical process of law reform. New legislation should be carefully considered. Parliament needs to have information and a basis for critical debate, and measures should be independently assessed and reviewed on an ongoing basis.

The fairness of the electoral laws is widely questioned in Queensland. Public confidence in the fairness of the electoral system is important to a restoration of social cohesion and respect for authority. The institutional culture of public administration risks degeneration if a Government's activities cease to be moderated by concern at the possibility of losing power.

People of differing opinions have the right to express those opinions and engage in peaceful criticism and dissent. It is highly questionable whether the Government or the police should have any role in regulating such expression, including the holding of street marches and demonstrations.

The media played a part in exposing corruption, but as one of the powerful institutions in our society must also share the blame for its growth. Journalist's uncritical dependence on their sources, orchestrated Government leaks and the operations of publically funded Government media units and press secretaries have reduced the independent perspective of the media and can lead to it becoming a mouthpiece for vested interests.

## **ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION**

Administrative laws and processes in Queensland need independent and comprehensive review, as does the electoral system. Enduring solutions are needed. For this reason, a properly authorized and satisfactorily resourced Electoral and Administrative Review Commission (EARC) must be appointed which reports directly to a Parliamentary Select Committee.

Matters of priority to be considered by the EARC include:

- a review of electoral boundaries;
- a review of the powers and composition of tribunals and boards;

- the provision of independent administrative appeals and of simpler procedures for obtaining judicial review of administrative decisions;
- a review of the laws relating to public assembly, including demonstrations and street marches;
- a determination of appropriate guidelines for appointments to senior public positions;
- introduction of a system of parliamentary committees;
- review of resources required by the Auditor-General to effectively check the use of public money;
- the need for Freedom of Information legislation;
- a revision of guidelines relating to the disclosure of pecuniary interests of Ministers, and Parliamentarians; and
- determination of the provisions which should apply to the declaration of donations to political parties.

The Electoral and Administrative Review Commission and the parliamentary committee to which it reports should be established by legislation. The Electoral and Administrative Review Commission should have five members, appointed by the Governor on nomination by the Premier after advertisement, independent advice and consultation with the parliamentary committee.

## **CRIME AND LAW ENFORCEMENT**

Australia has an enormous and growing crime problem. Statistics show that the growth of crime is well ahead of population growth and has not been contained by the Police Force.

The administration of criminal justice is difficult, and reform is politically controversial. The issues tend to be side-stepped, or ignored, or discussed in a maze of confusion and inadequate information. Yet the problem is urgent and solutions must be found which meet the problem without themselves unnecessarily threatening the nature of our society. It is a question of balance.

Organized crime is an especial threat, since it leads to the perversion and corruption of the basic institutions of our society. Its sophistication, adaptability and wealth make it extraordinarily difficult to combat.

Organized crime cannot exist on the scale which it does without the knowledge and help of otherwise honest citizens, both individual and corporate. Organized crime can afford the best in equipment, technology and advice, sometimes provided by unethical professionals. Information on crime is often held by banks, financial institutions and the Taxation Office, but all are bound by statutory or other confidentiality.

The proceeds of organized crime are often channelled back into legitimate investments and enterprises. Sometimes criminal businesses compete with legitimate business, perhaps forcing the legitimate competitor out of the market place. The principals of organized crime can gain influence in the political and business world, sometimes using this influence to further criminal ends.

Meanwhile, law enforcement agencies are disorganized. There is a plethora of them in Australia, as well as other agencies which have responsibilities for aspects of law enforcement, or hold information relevant to law enforcement. The national system for sharing and acting on intelligence is inadequate, and is a major comfort to organized crime.

## **POWERS**

Law enforcement confronts competing public interests. The powers needed for effective law enforcement can encroach on individual rights and liberties, but it must be remembered that the individual also has a right to protection from the State. Civil liberties are available to criminals along with the rest of society, and can be abused by them. Civil liberties are of limited worth if society is so altered by crime that they cannot be properly exercised or enjoyed.

The issue is one of competing public interests, but that tends to be forgotten. To date, debate has been highly emotional with both sides claiming the high moral ground.

Present laws have not led to the control of organized crime and corruption. Special powers and punishments may be needed to combat such crimes. At the same time, some powers already available to law enforcement agencies, including coercive powers, are subject to inadequate and haphazard internal and external controls. These controls need review and improvement. Better controls, stringently applied, will have to be used to balance any new powers.

The granting of powers, to whom they should be given and for what purpose is a difficult issue. Powers should not be considered in isolation but in the context of how their exercise might best be controlled, and whether this should be done within an agency, or by an external body.

The importance of the power to obtain information has been increased by the advent of the computer age, which greatly increases the opportunities for use and abuse of information held by Government, as well as private organizations. To date, most concern has focused on the potential for abuse. The result has been that legislation and procedures have tended to address only one side of the problem, and have limited the degree to which government-held information can be used for law enforcement.

One of the problems with granting powers to law enforcement agencies, including the power to access information, has been that the powers were then available to each and every member of the agency, including the irresponsible and corrupt. The exercise of powers should only be authorized on the basis of need. Individual law enforcement officers should have access to powers and information only to the extent necessary for their work.

Special measures may be needed to combat corruption, which is a manifestation of organized crime. Some which might be considered are:

- obliging officials to report suspicion of misconduct, on pain of penalties;
- provision of punishment for incompetence in relation to officials who should have known about misconduct, but did nothing; and
- provision to charge criminals with greater or lesser offences, depending on whether or not they are willing to give information about the principals of criminal organizations.

All these questions need careful thought and research. Competing issues must be weighed in the balance.

Criminal justice law reform should be removed as far as possible from sectional political interests. Any body making recommendations on these matters should be constituted so as to avoid bias, and the issues should be reassessed on a continual basis as social conditions alter.

## **RESOURCES AND LAW ENFORCEMENT**

The present ad hoc approach to legislation means that more is constantly being demanded of the Police Force, with no consideration being given to priorities and whether or not the resources exist to enforce new laws without causing an unacceptable shortfall elsewhere. Available resources are therefore spread more and more thinly.

The crime problem is such that this approach to the use and allocation of precious resources cannot be tolerated. Laws must be considered for their impact on the entire criminal justice system.

Reorganization and more efficient use of resources is part of the answer, but will not solve the problem. Consideration must also be given to the priorities for law enforcement, and a review of the criminal law.

Laws may be futile when they fail to address the problems caused by certain conduct, or when they are inadequately enforced. Laws should reflect social need, not moral repugnance. The use of scarce police resources on enforcing laws which prohibit conduct on which the community is divided, and which does not threaten the community, is questionable. This is especially so if such enforcement diverts resources from the policing of other activity which truly threatens society and against which the community is more or less united.



Care must be taken. What may seem to be innocuous behaviour may have other implications, such as the involvement of organized crime. Broad social implications have to be considered and properly researched. At present, there is no mechanism for such research and consideration.

The criminal law should be reviewed. Considerable resources are used to detect and prosecute minor offences. The burden is then passed from the Police Department to the court system and prisons. There seems little social purpose to much of this process and alternatives to criminal sanctions should be considered.

The vast majority of breaches of the law are simple offences. A considerable number of those are breaches of regulatory law, where the conduct itself is not illegal. In these cases there is no clear need for criminal sanctions. Non-criminal offences could be the subject of civil pecuniary penalties. More appropriate legal procedures could then be adopted, with consequent savings in the court system.

If criminal sanctions did not apply to some minor breaches of the law, police resources could be conserved by entrusting enforcement to the Government agency with the main interest in regulating the conduct. Pecuniary penalties could be used by that agency to employ enforcement staff. Each department could set its own priorities on law enforcement. Some laws would probably be more rigorously enforced than at present, with benefits for public revenue. Others may not be worth enforcing at all, which would have implications for law reform.

Prostitution, other voluntary sexual behaviour, s.p. bookmaking, illegal gambling and the illicit sale of alcohol and drugs are presently criminal offences, but the laws concerning them are not effectively enforced. From a resources point of view, there are arguments for decriminalization and regulation of some of these types of conduct. However, not enough is known about the involvement of organized crime in these areas, and the likely affect of decriminalization on such involvement. Without this knowledge, and in spite of considerable research, this Commission cannot make recommendations on these matters, in spite of the expectation that it will do so.

Methods of making areas of law enforcement self-funding should be examined. For example, the proceeds of crime could be confiscated and used by law enforcement agencies. Stamp duty on motor vehicle insurance policies could be increased and a levy paid towards law enforcement in relation to motor vehicle theft. Banking and financial institutions could be asked to contribute to programmes for reducing fraud.

This report does not make a final recommendation on decriminalization of any offences, or on the other suggestions mentioned above, but sees them as priorities for review by an independent but accountable body later recommended called the Criminal Justice Commission (CJC).

## **POLICE CULTURE**

Like other institutions, the Police Force has its own culture. This culture is of great significance for the rest of the community because of the role of the Force in the criminal justice system, and the power and authority held by police.

What might have been positive aspects of the police culture have over time become distorted. The culture now incorporates and nurtures the problems of the Force, including misconduct, inefficiency and a contempt for the criminal justice system. An elite of influential and senior officers helps to impose and perpetuate the culture, and manipulates it to its own ends.

An important element of police culture is the unwritten police code, which effectively makes police immune from the law. In conflicts between the code and the law, the code prevails. Under the code:

- ∞ loyalty to fellow police officers is paramount;
- it is impermissible to criticise fellow police, particularly to outsiders;
- critical activities of police, including contact with informants, are exempt from scrutiny;
- police do not enforce the law against, or carry out surveillance on other police; and
- those who breach the code can be punished and ostracised.

Moves should be made to recruit more mature people, and there are compelling arguments for scrapping the present cadet system. Lateral entry should be allowed to enable the Force to acquire more specialist skills, attract more highly qualified young people and encourage members of the Force to better themselves.

Not all adherents to the code are necessarily involved in misconduct, but the code's operation has meant that honest police have often not reported knowledge of corruption, either because of loyalty to the corrupt, or because they were unsure whether the senior officers who denied problems existed were themselves involved in corruption. Police suspected of misconduct, or even those charged and acquitted, have not been impeded in their careers, while those making allegations have been punished and held back.

The operation of the code means that police reject criticism and external supervision. The Force then counters criticism with misinformation and deceit. Reforms are said to be bad for "morale". Those who make allegations against police often themselves become the subject of abuse, criticism or allegations.

Problems are denied or minimized, which makes planning difficult and increases the cynicism of the community about the Force.

The natural tension which exists between the community and any powerful group or institution is exacerbated in the case of the Police Force because of its insular nature, the attitudes of the public to the Force and the nature of police work. Police enter the Force when young and inexperienced and quickly become inculcated in the culture of the Force, to the exclusion of the values of the outside community.

As a result, the Force has become alienated from much of the community which it serves, and officers often feel more loyalty to the Force than to the public.

Police training, management and recruitment practices mean that police are exposed to few role models outside the Force, and new ideas and attitudes rarely penetrate. The Police Unions, which are exclusively made up of police, intermingle industrial considerations with other aspects of the police culture.

There are two main types of police misconduct enmeshed within police culture. They are interlinked, and both involve a rejection of the application of law to police. Verballing, or the fabrication with or tampering with evidence, arises out of frustration and contempt for the criminal justice system. It is common, and engaged in by many officers who are otherwise honest. The practice reduces the effect of the presumption of innocence.

Verballing can also be used to protect officers who are themselves the subject of charges, or to attack those who are seen as the enemies of the Force.

Corruption, or the taking of bribes or other illicitly earned money, is the other type of misconduct. **It can** occur on either a local or a major level. The boundaries between what is permissible and impermissible for police are blurred and some corruption, such as the taking of gifts or discounts, can be cloaked in self-justification. Other types of corruption are clearly improper.

Officers are faced with constant temptation, and work in the knowledge that the police code will protect them if they engage in misconduct.

The existing culture will not be rejected by the elite, but the attitudes of other officers can be changed over time by fresh leadership, better training and education and better recruitment practices, including lateral entry.

The culture must be combatted if misconduct is to be controlled and the Police Force is to develop a mutually supportive relationship with the rest of the community.

## **THE POLICE FORCE**

The present Police Force is centralized and hierarchical. Most of its work is reactive rather than preventive. At the same time, the organization of the Force, its decision-making and management are unwieldy and complex, reducing the ability of the organization to change with society and respond to new problems and ideas.

Changes in emphasis and organization are at least as important to the effectiveness of the Force as resources. The report proposes reorganization of the Force to:

- emphasize crime prevention;
- ✧ involve the community in crime prevention and other programmes;
- ✧ make the Force less hierarchical and more responsive to change;
- ✧ decentralize the Force;
- ✧ use resources more efficiently;
- “flatten” rank structures, clarify lines of communication, specify responsibility and devolve authority; and
- ✧ improve recruitment training, and promotion procedures.

A new departmental organizational structure is proposed which incorporates regionalization and delegations of authority and determination of responsibility throughout the organization. It gives greater levels of authority to regional commanding officers and is as non-hierarchical as possible to permit the management of the organization to be aware of and supervise activities of officers in the field. Particular attention has been paid to designing a structure with as few organizational levels as practicable between the Commissioner and operational police officers to aid communication, expedite decision-making and ensure policies are relevant. A simplified system of police ranks is also proposed.

Community involvement in police work will result both from specific programmes and from an increased emphasis on local police as members of their neighborhoods and communities. Police regions, districts and local stations must therefore be given an expanded role.

The need for efficient use of resources makes it clear that the role of civilians in the Department must be reviewed and expanded. Police should only be used where their training and powers are necessary.

Specialized policing activities, including special squads, must be reviewed. In many cases the wisdom and efficiency of police carrying out such work, rather than civilians, is questionable. There is in most cases no reason to suppose that the use of special squads is necessarily the most effective way of solving policing problems. Much of the work could be better done by community based police. Where specialist skills are needed, they should be available on a regional basis.

At present, the centralization of criminal investigations means that regional superintendents fill a mainly administrative role. With regionalization, the regional commanders will assume more control and responsibility over operations.

The Force should be organized into three commands.

- ✧ The Regional Command will be a locally based community police service, with general responsibility for law enforcement and an emphasis on community involvement.
- ✧ The Task Force Command will be responsible for major and organized crime, will assist Regional Command on particular operations and will include permanent task forces in particular areas as well as others set up according to need and co-ordinated in Brisbane. Regions would co-operate and liaise between themselves and central headquarters, particularly in relation to organized crime.
- ✧ The Support Services Command comprises scientific and technical services, information and intelligence, administration, finance and personnel.

At present recruitment and selection is subjective and restrictive. All police are recruited at base grade, and entry to the Force is regarded as the beginning of a lifetime career.

A proper, professional and appropriate assessment process must be implemented to replace the existing subjective and restrictive process. Recruitment campaigns should target graduates and others with special skills, and restrictions on the percentage intake of women recruits should be abandoned. The emphasis should be on selecting the people best suited to the crime prevention emphasis of the Force, irrespective of sex, race or religion.

Moves should be made to recruit more mature people, and there are compelling arguments for scrapping the present cadet system. Lateral entry should be allowed to enable the Force to acquire more specialist skills, attract more highly qualified young people and encourage members of the Force to better themselves.

All aspects of police education and training should be reviewed by a professional unit to be established within the Criminal Justice Commission. There are arguments for reforming the cadet and probationary programmes into a single, better designed course.

Training and operating standards at the Police Academy should be vested in an independent authority, and not be interfered with by the Commissioner or other senior officers. Input from non-police educators should be increased. All training should include an ethical component. New recruits must also be better supervised by officers with demonstrated integrity and commitment to the principles of reform.

Police need more education to cope with their increasingly complex role. Officers should be encouraged to undertake higher 'education in colleges of advanced education and other tertiary institutions along with students from other disciplines. There should be a long term move to recruit **more graduates**.

There is also need for change to the system of in-service training. More refresher training is needed, as is more emphasis on management and supervision skills. Specialist skills will have to be more widely taught to fit in with the increased emphasis on community based policing.

Present systems which promote officers primarily upon seniority must be replaced by merit based promotion. All vacancies should be advertised. Senior positions should be advertised inside and outside the Force.

Proper performance appraisals should be instituted in accord with modern management practices to form a basis for making appointments, promotions and transfers. The present cumbersome, legalistic appeal process should be simplified.

The transfer system, which has been abused to punish troublemakers, should be formalized and regionalized, informed by adequate data on officers abilities and aptitudes. Transfers should not be used as punishments.

Police pay and conditions are marginally above those of the "average" Australian working person and comparable with those of interstate police forces. However, the system of pay, overtime and allowances is complex and pay rates and allowances are generally at the lower levels of interstate ranges. A new award which consolidates allowances and determines fair salaries is required. Review of rank structure and determination of work value of police positions within the Force should also occur as part of this process.

Management and support systems within the Department are deficient. Computer systems are now essential to the operational capability of the Force but are poorly integrated and used. They need professional management, operation and review.

People with demonstrated management skills must be recruited from both inside and outside the Force to provide it with leadership.

Supervisors and managers must be accountable, and have clearly delineated areas of authority. Management style, at present authoritarian and guided by written rules, must be modified to allow greater flexibility and efficiency.

The police inspectorate should be restored and given the role of internally monitoring operations, procedures, performance and standards, as well as administering the proposed promotional appeal process.

Information systems within the Department are inefficient. These systems are poorly integrated and lack adequate controls to ensure the integrity of the data and regulated access. Dissemination of necessary operational information is also inadequate.

The Information Bureau and the Bureau of Criminal Intelligence Queensland are ineffective and require review and improvement. A new professionally managed Information Bureau is needed, subject to oversight and access by the Criminal Justice Commission.

## OFFICIAL MISCONDUCT

Official misconduct is a broad term describing the misuse of authority and abuse of office by public officials. Various mechanisms have been proposed, both here and overseas, to deal with different types of misconduct.

In Queensland, the Internal Investigations Section and the Police Complaints Tribunal have both failed to combat police misconduct. The Internal Investigations Section has lacked will, competence and resources. The Police Complaints Tribunal, in spite of well-meaning efforts, has lost public confidence and therefore effectiveness. Both bodies should be abolished.

Elsewhere, misconduct has been addressed by the setting up of Independent Commissions Against Corruption (ICACs), which have been given many powers and made more or less autonomous. Such bodies are understandably controversial in a democratic society, where those with power are usually held to be accountable for its exercise. Independence is essential to a body charged with investigating misconduct, but autonomy is not necessary for effectiveness.

This report recommends new procedures for dealing with police misconduct, including changes to the Police Rules and clarifying and emphasizing the distinction between disciplinary offences, which can be dealt with internally in the first instance without the need for adversarial proceedings, and more serious misconduct, to be referred to a division of the Criminal Justice Commission for investigation. At present, the distinction between disciplinary and criminal matters is not adequately made, resulting in a welter of confusion and many minor matters receiving the same penalties as more serious ones.

A method is also outlined for dealing administratively with police who are the subject of failed or pending prosecutions, or unresolved allegations of misconduct. The fact that allegations cannot or have not been proved beyond reasonable doubt does not mean that all departmental action in relation to the case need be suspended.

## REFORMS IN CRIMINAL JUSTICE

The administration of criminal justice should be independent of Executive controls. It is an apolitical, vital public function. However, it should be open to public review and accountable to Parliament. One mechanism which satisfies these requirements is an all party parliamentary committee.

The overview and assessment of the Police Force should not be regarded as an isolated exercise, since it is an integral function of the criminal justice administration.

A Criminal Justice Commission is recommended to be permanently charged with the reviewing, co-ordinating and initiating reform to the criminal justice administration. The Criminal Justice Commission will report to a standing parliamentary committee initiating reforms to the criminal justice administration known as the Criminal Justice Committee. The Commission's role will include:

- ∞ acquiring resources for criminal justice administration;
- advising Parliament on the implementation of this report;
- ∞ keeping Parliament informed on the effectiveness of the criminal justice system;
- monitoring the performance of the Police Force;
- ∞ providing the Commissioner of Police with policy directives based on CJC research, analysis and investigation;
- ∞ researching, generating and reporting to Parliament on proposals for reform of the criminal law;
- ∞ undertaking criminal justice functions not appropriately carried out by the Police Force, including:
  - witness protection
  - ∞ investigation of official misconduct; and
  - overseeing criminal intelligence matters and managing criminal intelligence with special significance to major crime and organized crime.

should be on selecting the people best suited to the crime prevention emphasis of the Force, irrespective of sex, race or religion.

The CJC will consist of a chairman and four community members, with the chairman being a person eligible for appointment as a judge of, or a former judge of the High Court of Australia, the Federal Court of Australia or a Supreme Court in Australia.

The CJC will comprise the following divisions:

- the Official Misconduct Division, which will continue the work of this Inquiry and make investigations as it sees fit. Its composition, powers and their control are specified;
- the Misconduct Tribunal, which will review decisions on disciplinary matters within the Police Force, and make original administrative decisions in relation to allegations of misconduct on the part of police and other officials;
- the Witness Protection Division, which will provide a complete system for witness protection. Special legislative difficulties and provisions for confidentiality are outlined;
- ⚡ the Research and Co-ordination Division, which will continually review the suitability of the criminal law, the exercise of investigative powers and the effective use of resources; and
- ⚡ the Intelligence Division, which will provide a central repository for criminal intelligence as a hub to an integrated approach to major crime, especially organized crime.

## **TRANSITIONAL ARRANGEMENTS**

The recommendations in this report entail substantial changes to the machinery of Government and the Police Force. Effective and lasting improvement will take time. It is vital that the opportunity to make such improvements, and especially to gain excellent new leadership for the Police Force, is not lost by premature and ill-considered action. The report recommends that arrangements are made for a transition period, expected to last until the end of 1992.

The arrangements include:

- ⚡ the establishment of an implementation unit within the Premier's Department to handle urgent reforms during the transition, including the setting up of the Criminal Justice Commission and the Electoral and Administrative Review Commission;
- ⚡ a procedure for the speedy setting up of the Criminal Justice Commission and the Electoral and Administrative Review Commission, and the handover of this Commission's information and materials;
- ⚡ the appointment of an interim Commissioner of Police;
- ⚡ the introduction of a system of interim appointments, subject to a "vetting" process, for the Police Force, until proper recruitment and selection procedures can be set in place. By this time, it is anticipated that many natural vacancies will have occurred in the senior ranks of the Force and can be filled by candidates with a commitment to integrity and reform.
- ⚡ the engagement of external consultants to review the detailed command and operational structure of the Police Force which should apply under the new arrangements, as well as reviewing existing salary arrangements and consulting with the relevant unions over the Police Award. This review should also determine which positions should be civilianized.



# **RECOMMENDATIONS**

## **A. ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION**

## **B. CRIMINAL JUSTICE COMMISSION**

### **I. ESTABLISHMENT AND FUNCTIONS**

### **II. REVIEW PROGRAMME**

## **C. POLICE**

### **I. ORGANIZATION AND MANAGEMENT**

### **II. DISCIPLINE**

### **III. TRANSITION**



# RECOMMENDATIONS

## A. ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION

This Commission recommends that:

1. a properly authorized and satisfactorily resourced Electoral and Administrative Review Commission (“the Commission”) which reports directly to a Parliamentary Select Committee on Electoral and Administrative Review be established by legislation to provide independent and comprehensive review of administrative and electoral laws and processes;
2. the Commission provide an enduring independent process to review and recommend the necessary electoral and administrative laws and guidelines and procedures;
3. the Commission consist of a chairman and four other members, who will direct and view reports from specialist consultants on the various matters requiring attention. Part-time membership is envisaged, but at least in the initial stages, the need for a full-time chairman is apparent;
4. the members of the Commission be appointed for set terms of between two to five years;
5. members of the Commission be selected to find a balance of people from academic, public or private administrative, legal, and industrial backgrounds;
6. the appointment process for all members include advertisement of the vacancy, assessment by consultants, and consultation by the Minister responsible with the members of the Parliamentary Committee.
7. the Minister responsible be the Premier.
8. the Commission be empowered to engage staff and consultants as it may think fit;
9. the Commission conduct an open independent inquiry into and make recommendations in respect of existing electoral boundaries in Queensland, including, but not limited to:
  - (j) whether there is a genuine justification for a zonal system
  - (ii) if there is a justification for the present system, what zones ought to exist and what (if any) special considerations should obtain in respect of each zoneand any legislation required to give effect to the Commission’s report be enacted without delay;
10. the Commission implement and supervise the electoral and administrative reforms recommended in this report, and including:
  - (a) preparation of legislation for protecting any person making public statements bona fide about misconduct, inefficiency or other problems within public instrumentalities, and providing penalties against knowingly making false public statements
  - (b) review of the statutory necessity for the assent or consent of a Minister or the Governor in Council to any given action or undertaking or in respect of any benefit
  - (c) formulation of codes of conduct for public officials
  - (d) establishment of guidelines in respect of Ministers involvement with public service appointments, promotions, transfers and discipline
  - (e) establishment of guidelines to govern the appointment of all chief executive or equivalent positions in Government service (including statutory authorities and instrumentalities), and judicial appointments
  - (f) review of the advertising of vacancies and the appointment and appeals against the appointment of people to positions within the public service

- (g) detailed audit by the Auditor-General of all ministerial expenditure at least annually, to ensure compliance with published guidelines and to report on that audit to Parliament
  - (h) formulation of guidelines for monitoring the costs and activities of ministerial and departmental media units and press secretaries by an all-party Parliamentary Committee
  - (i) introduction of a comprehensive system of Parliamentary Committees
  - (j) provision of non-government Parliamentary members with appropriate resources of staff and equipment, and proper access to information in respect of Government activities
  - (k) review of the laws relating to public assembly including demonstrations and street marches
  - (l) review of the resources required to enable the Auditor-General to effectively check the use of public money
  - (m) (i) separation of the offices of Attorney-General and Minister for Justice, and,  
(ii) re-establishment of the independent role of the office of Attorney-General
  - (n) consideration of the administrative independence of the Judiciary, in consultation with the Chief Justice
  - (o) monitoring the sufficiency of the Law Reform Commission's resources;
11. the Commission consider and, where appropriate, make recommendations for electoral and administrative reform otherwise identified in or arising out of this report, including:
- (a) the preparation and enactment of legislation on:
    - (i) freedom of information
    - (ii) administrative appeals
    - (iii) judicial review of administrative decisions
  - (b) review of the Public Accounts Committee Act 1988
  - (c) the establishment of a public register of donors to all political parties, or of such donations in excess of a minimum amount
  - (d) review of the Elections Act 1983-85
  - (e) review of the constitution and powers of tribunals, boards and courts
  - (f) review of the role and functions of the Parliamentary Counsel
  - (g) review of the effectiveness of internal audit services within Government departments and instrumentalities
  - (h) review of the guidelines for registration and disclosure of Parliamentarians', Ministers' and their respective families' financial interests
12. the Electoral and Administrative Review Commission be established following the order of procedure set out in Section 11.4 of this report.

# RECOMMENDATIONS

## B. CRIMINAL JUSTICE COMMISSION

### I. ESTABLISHMENT AND FUNCTIONS

This Commission recommends that:

1. a Criminal Justice Commission (CJC) be established charged with:
  - (a) monitoring, reviewing, co-ordinating and initiating reform of the administration of criminal justice in Queensland on an ongoing and permanent basis
  - (b) discharging those criminal justice functions not appropriately to be carried out by the Police Department or other agencies;
2. the permanent role of the CJC include:
  - (a) acquisition of the resources, skills, training and leadership necessary for the administration of criminal justice
  - (b) advising the Parliament on the implementation of the recommendations in this report relating to criminal justice, and the Police Force, particularly those matters set out for the CJC's consideration
  - (c) monitoring and reporting on the use and effectiveness of investigative powers
  - (d) providing Parliament with regular reports on the effectiveness of criminal justice administration, with particular reference to the incidence and prevention of crime with special emphasis on organized crime and the efficiency of law enforcement by the Police Force
  - (e) monitoring the performance of the Police Force to ensure that the most appropriate policing methods are being used, consistent with trends in the nature and incidence of crime, and the ability of the Police Force to respond
  - (f) monitoring the use, suitability and sufficiency of law enforcement resources and the sufficiency of funding of law enforcement and criminal justice agencies (including the Director of Prosecutions and Public Defender's respective offices)
  - (g) providing the Commissioner of Police with policy directives based on CJC research, investigation and analysis. These directives would cover law enforcement priorities, revised methods of police operation and the optimum use of law enforcement resources
  - (h) overseeing reform of the Police Force
  - (i) researching, generating and reporting to Parliament on proposals for reform of the criminal law and law relating to the enforcement of or the administration of criminal justice, including assessment of relevant initiatives and systems elsewhere
  - (j) undertaking essential criminal justice functions which are not appropriately carried out by police or other agencies. Apart from research and co-ordination of criminal law reform processes, these would include witness protection and investigation of official misconduct in public institutions
  - (k) overseeing criminal intelligence matters and managing criminal intelligence with specific significance to major crime, organized crime and official misconduct;
3. a standing Parliamentary Committee, not charged with any other responsibility, and known as the "Criminal Justice Committee", with membership reflecting the balance of power in the Legislative Assembly, be constituted to oversee the operations of the CJC;
4. subject to the implementation of recommendations made elsewhere in this report in respect of the role and office of the Attorney-General, the Attorney-General be the Minister responsible for

the CJC. Otherwise and in the interim, the Premier, or a Minister assisting the Premier should be responsible for the CJC;

5. the CJC consist of a full-time chairman and four part-time community members selected on the following basis:
  - (a) the Chairman be qualified for appointment as a judge of, or have been formerly a judge of the High Court or Federal Court of Australia, or a Supreme Court in Australia
  - (b) the Chairman be appointed for a term of not less than two or more than five years, with the first Chairman being appointed for not more than three years
  - (c) the Chairman's position be widely advertised and filled only after evaluation of and report upon all applicants by independent consultants and consultation with the Criminal Justice Committee
  - (d) the community appointees to the CJC comprise:
    - (i) a practising lawyer with demonstrated interest in civil liberties, to be drawn from a panel of four, two to be nominated by each of the Bar Association of Queensland and the Queensland Law Society. The appointee need not be a specialist in criminal law, nor a member of the Queensland Council of Civil Liberties
    - (ii) three persons of proven ability in community affairs, one of whom must have proven senior managerial experience in a large organization
  - Ⓣ a person not be eligible to be appointed as Chairman or member of the CJC if that person is a Judge, a Member of Parliament, a public servant or crown employee, a member or servant of any other statutory body, or a police officer, or has been a police officer in the previous five years;
6. the CJC act by resolution of a simple majority. The Chairman will have a deliberative vote, and, in the case of equal division, a casting vote;
7. an Executive Director be appointed to control the CJC's secretariat and co-ordinate the CJC's operational functions;
8. the Executive Director not be a member of the CJC but be responsible to the Chairman for administration and direction of its functions;
9. the Executive Director co-ordinate the activities of the CJC through divisions, each headed by an appointed Director. These will be:
  - ⌘ the Official Misconduct Division
  - ⌘ the Misconduct Tribunal
  - ⌘ the Witness Protection Division
  - ⌘ the Research and Co-ordination Division
  - ⌘ the Intelligence Division;
10. the Official Misconduct Division function as follows:
  - (a) its Director to have legal qualifications
  - (b) the Division conduct independent investigations into any suspected official misconduct. It may investigate individual cases or conduct broader based inquiries into the incidence of official misconduct
  - (c) the Division direct reports of its investigations to:
    - (i) the Director of Prosecutions for consideration of prosecution, and/or
    - (ii) the Misconduct Tribunal to determine whether official misconduct has occurred, which should be dealt with administratively apart from any prosecution, or

- (iii) the Chief Executives of Government departments, agencies, or statutory bodies, including the Commissioner of Police if disciplinary action is thought necessary
- (d) the Division be staffed by police seconded to it for appropriate finite periods on guidelines to be established by the CJC, and a wide variety of skilled civilian staff and consultants
- (e) the Division have extensive special powers of investigation established by legislation, which it will exercise subject to strict judicial controls on the use of each power by any member of the Division
- (f) the Division, in addition to responding to complaints, act on its own initiative to:
  - (i) conduct investigations
  - (ii) perform an educative or liaison role with other agencies, departments, and private institutions and auditors in relation to preventing and detecting official misconduct
- (g) a Complaints Branch be established within the Official Misconduct Division to receive complaints of misconduct or suspected misconduct by public officials, including police, and any other complaints against police or other public officials. The Branch will have discretion, subject to guidelines to be established, to:
  - (i) dismiss frivolous or vexatious complaints summarily
  - (ii) refer trivial or purely disciplinary matters to Chief Executives of Departments or the Commissioner of Police to investigate and take appropriate action
- (h) the Commissioner of Police, on guidelines to be determined by the CJC, be required to refer all internal and external complaints alleging misconduct by police officers to the Complaints Branch in the first place for determination of the appropriate action to be taken in each case
- (i) all other Chief Executives of Government departments, agencies and statutory authorities be required to:
  - (i) notify the Complaints Branch promptly of any complaint of official misconduct or suspicion of misconduct
  - (ii) comply with all written directions of the Chairman of the CJC including transfer of the responsibility for the investigation of such complaint or suspicion
- (j) the Official Misconduct Division, subject to authorization by the Chairman of the CJC to investigate complaints of official misconduct in relation to Judges which are sufficiently serious to warrant removal from office, if established, subject to appropriate conditions, and in accordance with appropriate procedures, settled in consultation with the Chief Justice
- (k) the activities of the Official Misconduct Division be open to review by the Parliamentary Criminal Justice Committee and to review by the judiciary on application;

11. the Misconduct Tribunal function as follows:

- (a) the Tribunal's roles will be:
  - (i) to review decisions on disciplinary matters within the Police Force
  - (ii) to make original administrative decisions in relation to allegations of official misconduct on the part of police and such other officials as may be made subject to it by Order in Council
- (b) the Tribunal will comprise one person at a time, appointed to a given matter, by the Executive Director, from a panel of three appointed part-time members. The members will be recommended by the CJC through the responsible Minister. Each member will be qualified for appointment as a Judge of the State Supreme Court, or of the Federal Court of Australia, or be a retired Judge of the High Court of Australia, the Federal Court of Australia, or the Supreme Court. Each such part-time appointee shall not have any other office in or connection with the CJC
- (c) appointment to the Tribunal will be for fixed short terms, with eligibility for re-appointment for a further term. Tenure in excess of an aggregate of more than six years would be undesirable

- (d) the Tribunal will have the same protection in respect of the exercise of its functions as a Judge of the Supreme Court. Its existence and powers will be reflected in the legislation necessary to create the **CJC**
  - (e) the Tribunal's process will be inquisitorial and administrative
  - (f) the Tribunal will be able to remit any matter to the Official Misconduct Division for investigation or further investigation;
- 12.** the Research and Co-ordination Division be required to:
- (a) define emerging trends in criminal activity including organized crime, identifying competing needs and establishing priorities for the allocation of law enforcement resources
  - (b) develop compatible systems for and foster co-operation between law enforcement, prosecution, judicial, and corrective services agencies to promote optimum overall use of available resources
  - (c) co-ordinate and develop procedures and systems for the activities of the CJC
  - (d) provide information to the Parliament, Judiciary, law enforcement and prosecution agencies in relation to criminal justice matters
  - (e) co-ordinate with other Government departments with respect to criminal justice related issues
  - (f) research and recommend law reform pertinent to criminal justice and reform of administrative processes to enforce criminal law
  - (g) review the effectiveness of Police Department programmes and methods on a continuing basis, especially compliance with CJC recommendations or policy instruction, community policing, prevention of crime, and those related to recruitment, selection, training and career progression of police officers and supporting staff
  - (h) review Police Department use or treatment of criminal intelligence including as required by the Intelligence Division
  - (j) report to the CJC on all the above to aid its determinations and alert it as necessary;
- 13.** the Intelligence Division be established as a suitably equipped, professional and specialist criminal intelligence unit, independent of the Police Force, with the following functions:
- (a) to provide an effective criminal intelligence service as the hub of an integrated approach to major crime, especially organized crime, and criminal activity transcending the normal boundaries associated with local policing
  - (b) to build up an intelligence data base using its own information, and information from other sources including the Official Misconduct Division, the Queensland Police Force and all interstate and Commonwealth sources
  - (c) to carefully secure the data base to ensure only those individuals with a need to access the material are able to do so
  - (d) to oversee the role now performed by the Bureau of Criminal Intelligence of Queensland, part of the Police Department, including the Police Department's liaison with other Federal and State law enforcement agencies and the National Crime Authority
  - (e) to take control of the data accumulated to date by this Commission
  - (f) to report to the Government, subject to CJC consent, on criminal intelligence matters pertinent to Government considerations, policies or projects;
- 14.** the Witness Protection Division be established within the CJC;
- 15.** other States and the Commonwealth be requested to act as necessary to facilitate Queensland criminal intelligence service requirements, improve interstate and national liaison in the field, devise appropriate laws to facilitate witness protection requirements, to facilitate the efficient operation of the CJC and its effective integration into a national system of criminal law enforcement;

16. the CJC be created by separate legislation to reflect these recommendations, be given adequate support and resources, be independently housed, with exclusive use of facilities, including a secure hearing room;
17. the CJC have responsibility for implementing the recommendations as to criminal justice in this report and in particular have the power and responsibility to:
  - (a) determine priorities
  - (b) determine an appropriate organizational structure for its operation
  - (c) determine the number of staff required and their location
  - (d) determine qualifications for holding offices and duties attaching to offices within the CJC
  - (e) determine levels of salary of its staff
  - (f) redesignate offices and officers
  - (g) select and recruit staff where necessary in conjunction with the Office of Public Service Personnel Management;
18. the Executive Director of the CJC be responsible for:
  - (a) developing recommendations covering matters listed in recommendation 17 for consideration by the CJC
  - (b) making recommendations to the CJC regarding staff appointments, promotions, demotions and terminations
  - (c) all aspects of personnel management, including staff training, discipline, performance, deployment, and keeping of records
  - (d) overall co-ordination of the activities of the CJC to fulfil its objectives;
19. the CJC be able to conduct public hearings on matters of general significance with respect to the administration of criminal justice;
20. the CJC be established as soon as possible following the order of procedure set out in section 11.3 of this report;
21. this Commission of Inquiry remain functional until the CJC and its essential elements are established and capable of providing continuity of operations and have effectively taken over the investigation and information roles of this Commission, a process expected to take a minimum of 9 months;
22. immediate action be initiated to establish a small consulting cell reporting to the Premier to function as an implementation unit for urgent activities arising from this report, in particular those which will eventually become the responsibility of the Research and Co-ordination Division of the CJC, and including urgent examination of:
  - (a) management of the CJC data base and its interaction with police information systems and other agencies (a decision on new hardware is required to ensure a smooth transition from this Commission's data base)
  - (b) police organization and salary structures
  - (c) police recruitment, selection and training processes.

# RECOMMENDATIONS

## B. CRIMINAL JUSTICE COMMISSION

### II REVIEW PROGRAMME

This Commission recommends that the Criminal Justice Commission, as an essential part of its immediate functions, undertake investigation, review, reform, and consideration of criminal justice matters arising from this report, including:

1. general review of regulatory laws aimed at the regulating or licensing of essentially legal activities, to:
  - (a) identify activities which could be legalized or decriminalized
  - (b) introduce pecuniary penalties as an effective way of punishing minor breaches of law which are not essentially criminal
  - (c) establish whether such legislation could cease to be the administrative responsibility of the Police Department and be administered by the Government department or agency most concerned with the area
  - (d) establish whether responsible departments or agencies could have their own enforcement staff and develop their own enforcement priorities and strategies on a self-funding basis;
2. general review of the criminal law, including laws relating to voluntary sexual or sex-related behaviour, s.p. bookmaking, illegal gambling, and illicit drugs, to determine:
  - (a) the extent and nature of the involvement of organized crime in these activities
  - (b) the type, availability and costs of law enforcement resources which would be necessary effectively to police criminal laws against such activities
  - (c) the extent (if at all) to which any presently criminal activities should be legalized or decriminalized;
3. review of law enforcement funding to consider additional or alternative funding strategies;
4. comprehensive review of all investigative powers, to critically examine the use of current powers, assess the need for other or more powers, and upgrade control of investigative powers, including:
  - (a) adequate supervision by responsible senior officers
  - (b) external judicial control of powers
  - (c) restriction of the use of powers to designated people or offices
  - (d) making misuse of powers and information offences
  - (e) exclusion of the admissibility of illegally obtained evidence;
5. formation of a professional education and review unit within the Research and Co-ordination Division of the Criminal Justice Commission, which, with the assistance of a small panel of part-time academics and educational experts, will review all aspects of police education and training, including:
  - (a) evaluation of all Police Academy training staff to establish and maintain adequate standards
  - (b) critical review of induction training programmes run at the Academy, particularly with regard to training in ethics, morals, community expectations of police, and acceptable standards of behaviour



- (c) development of recommendations on the most suitable methods of improving the further education of existing police with particular reference to developing tertiary courses in criminal justice processes and social science, preferably to be studied with people from other disciplines
  - (d) a general review of in-service training and promotional examinations to match the new rank structure and recommend a revised overall approach and curriculum;
6. comprehensive review of police information systems in co-operation with specialist external consultants and officers of the Police Department to achieve objectives as follows:
- (a) development of an information bureau, professionally managed by civilian specialists, and responsible for all of the Department's criminal records, associated information and intelligence, and the collection, analysis, storage, access, and dissemination of information by the Police
  - (b) definition of the complementary roles of the Police Information Bureau and the Intelligence Division of the CJC, and arrangements by which the Intelligence Division will oversee the Information Bureau and its liaison with federal and interstate agencies, including the National Crime Authority and ASIO
  - (c) re-organization of the Computer Branch under a civilian manager
  - (d) development of control systems which facilitate legitimate access by field staff to enable them to do their work effectively but prevent unauthorized access to departmental information from inside or outside the Police Force, specify penalties for misuse, and ensure the integrity of information held;
7. development of legislation dealing with misconduct within public institutions in general, which would:
- (a) oblige public officials to report all official misconduct or any reasonable basis of suspicion of official misconduct
  - (b) require public officials to provide all reasonable help in investigations of misconduct
  - (c) forbid the exercise of any official authority, discretion or use of public resources in relation to the investigation of any conduct by any complainant or potential witness in **any case** of suspected official misconduct, except under written authority of the officer in charge of the investigation;
8. review of guidelines and controls on police interview practices;
9. consideration of the obligation of public officials to be accountable for their activities and whether that obligation should be reinforced by the prescription of criminal offences constituted by:
- (a) the holder of any public office lying in connection with that office
  - (b) any person lying to Parliament in respect of any matter of that person's or any other person's personal conduct;
10. consideration of, and advice to the Criminal Justice Committee on the circumstances in which, and terms upon which interrogation upon statements reported in Hansard should be allowed;
11. review of the oath in evidence or making affidavits or declarations, to consider where retention of the oath serves any useful purpose;
12. review of the sufficiency of present penalties for perjury;
13. consideration of the necessity for law to prevent, facilitate the detection of, and punish officials who act when private interest conflicts with their official duty;
14. consideration of:
- (a) the necessity for registration of all property seized in the course of law enforcement, whether illegally owned contraband or otherwise

- (b) rules in respect of the disposal or acquisition of property seized in the course of law enforcement and forfeited to the Crown or confiscated
  - (c) necessity for adequate audit and supervision of such seizure and disposal of property;
15. consideration of amendment of the Commissions of Inquiry Act to make it most suitable for ordinary use.

# RECOMMENDATIONS

## C. POLICE

### I. ORGANIZATION AND MANAGEMENT

This Commission recommends that:

1. with assistance as required from external consultants, and under the supervision of the Criminal Justice Commission, the Police Department restructure its organization along regional lines with increased levels of authority and responsibility, matched with commensurate accountability for commanding officers at the regional, district and divisional levels. The recommended structure provides for:
  - (a) as few organizational levels as practicable between the Commissioner and operational police officers to facilitate communication, expedite decision making, and ensure that policies are relevant. Five broad bands of responsibility with several grades of salary within each band equating to constables, sergeants, inspectors, superintendents, and commanders are proposed
  - (b) a regional basis for operational activities with regions composed of districts and divisions (stations)
  - (c) formalized delegations of authority, areas of responsibility and control to avoid overlap and duplication, strengthen accountability, and improve efficiency
  - (d) a clear division between operational, task force, and administration/support functions;
2. for the immediate future restructure of the Police Force follow the model illustrated in Figures 8.22, 8.23 and 8.24 of this report which provides for:
  - (a) retention of the present number of police regions
  - (b) three commands, viz., Region, Task Force, and Support Services
  - (c) the Commissioner of Police to remain head of the Police Force assisted by ten Commanders
  - (d) eight Regional Commanders with full authority and accountability for managing police regions
  - (e) Regional Commanders to be entitled to call upon the administrative, operational, and Task Force support from Head Office and to be in command of any such units located in their regions
  - (f) the position of Commander of the Task Force Division to be established in Head Office at a level equivalent to Regional Commanders
  - (g) another Commander (Support Services) to co-ordinate the provision of administrative, personnel, financial and operational support
  - (h) the Commander (Support Services) to be a police officer equivalent in status to the other Commanders. The bulk of the units and Directors of major divisions under this Commander should comprise civilian personnel
  - (j) an Inspectorate with broad review responsibility to report directly to the Commissioner;
3. as part of the restructuring process:
  - (a) Regional Commanders be given responsibility and authority for allocating staff within their regions including control of intra-regional transfers
  - (b) a thorough review of staff numbers and disposition in all divisions, districts and regions be undertaken to determine appropriate establishments, with regional and district officers playing an active role in the process

- (c) development of major Police complexes at Mt Gravatt and Boondall proceed as the basis for the North and South Brisbane regional structures
  - (d) Regional Commanders assume responsibility for:
    - (i) supply of law enforcement and all operational policing services on a regional basis
    - (ii) supply of community based police services at a local level
    - (iii) initiation of criminal investigations at a local level
    - (iv) direction of specialist support by Task Force personnel at regional level
  - (e) Task Force command, which will contain personnel based in the regions and Head Office, assume responsibility for:
    - (i) operations against major crime and organized crime
    - (ii) assisting regional command in specific investigations
    - (iii) assuming temporary responsibility for particular problems in particular areas
    - (iv) covert and surveillance operations
    - (v) anti-terrorism operations;
4. Task Force staff:
- (a) be recruited by competitive entry at any rank based on merit
  - (b) include both police and civilian specialists
  - (c) include personnel seconded on short term assignment from other jurisdictions
  - (d) assume regional responsibilities when not required for Task Force duties
  - (e) be encouraged to move into and out of regional operations at various stages of their careers;
5. restructuring include ongoing review of the allocation and use of material resources in the Police Department, including vehicles, to ensure continuing maximum benefit to the Department. It is anticipated that such a review would result in the upgrading of Brisbane Mobile Patrols, where the resources assigned have not changed significantly for 10 years, and the end of the current practice of using police vehicles to drive senior officers to and from work;
6. community policing be adopted as the primary policing strategy, with policing again becoming a neighbourhood affair. The Police Force must move away from the concept of policing based on reactive defence of the community and towards mobilizing the community and its police to prevent crime, maintain order and deliver services dictated by the needs of the community. To this end:
- (a) preventive policing strategies are to be an integral part of the normal activities of every police officer
  - (b) the community is to be involved with the police in preventing crime through establishment of community crime committees and community crime prevention programmes based on the needs of individual communities
  - (c) all police officers on duty, including those on detection and investigative work, and Task Force staff, are to be in uniform in all but exceptional circumstances
  - (d) staff with language abilities and cultural skills are to be recruited to gain the acceptance and co-operation of ethnic and aboriginal communities
  - (e) regional and district officers are to design community projects for trial in those areas which have excess staff levels;
7. action be initiated to remove, as far as is practicable, prosecution and legal advice responsibilities from the Police Department. Except in remote localities, prosecutions presently handled by Police prosecutors would become the responsibility of legally qualified civilian staff of the Director of Prosecutions. Legal advice would be obtained by the Police Department when necessary from

appropriate professional sources such as the Director of Prosecutions or the Crown Solicitor's Office;

8. a policy of "civilianization" be adopted throughout the Police Force, whereby all positions not requiring police powers will, wherever possible, be filled by civilians, and the maximum number of police officers will be available for duties requiring the exercise of police authority. Implementation will require:
  - (a) development of current and concise job descriptions for all positions in the Department so that the type of staff, skills and qualifications needed for each position can be determined
  - (b) redesign of positions which contain inappropriate mixtures of duties
  - (c) a general review and re-allocation of resources to release police from administrative and other specialist non-police roles, and replace them with civilians who are better suited for many of the roles required in a modern police department;
9. the present system of specialized units each with its own hierarchy, including specialist criminal investigation squads, be progressively abolished in conjunction with the regionalization process;
10. the techniques and skills of criminal investigation be developed by learning and research, including systematic academic study and practical observation and study of law enforcement methods elsewhere, and given by formal education to as many police as possible;
11. a professionally designed process be introduced for the recruitment and selection of trainee police officers which will provide for:
  - (a) adequate testing of aptitude, including psychological and other proven test procedures
  - (b) thorough evaluation of the history of each applicant in terms of past behaviour and standards of conduct
  - (c) removal of past restrictions on the recruitment of women, and placing the emphasis on recruiting the best possible applicants for police service irrespective of sex, race, or religion
  - (d) phasing out of the present cadet system which directly recruits Grade 12 school leavers
  - (e) introduction of lateral recruitment to positions in the Police Department
  - (f) introduction of term and contract appointments;
12. training of new recruits at initial placement centres be upgraded by:
  - (a) providing supervisors with regular training and review programmes to achieve a degree of consistency in standards across the Force
  - (b) reviewing standards of training to stress integrity and the proper use of police discretion during initial periods at training stations
  - (c) including ethical standards as an essential integrated aspect of all matters taught;
13. applicants for training programmes be subject to a formal selection process based on merit and aptitude for the position sought;
14. all vacancies be advertised, with senior positions advertised outside the Force as well as in the Police Gazette;
15. all promotions be determined on the basis of merit rather than seniority;
16. a universal performance appraisal system be introduced;
17. the promotion appeals system be reformed by adopting an informal administrative approach and widening the scope of appellants;
18. appeals be heard by designated senior officers from the Inspectorate;

19. legal representation not be permitted at appeals;
20. the process of determining transfers be formalized (and regionalized as previously recommended), with no right of appeal against transfer;
21. external consultants be engaged to determine a new Police Award and review police salary structure in consultation with Police Unions to incorporate penalty rates and allowances into base salary and bring salary structure into accord with the new flattened rank structure;
22. current workers' compensation entitlements be extended to police officers;
23. police be provided with access to an independent Professional Employee Assistance Scheme which will provide confidential personal counselling for members and their families;
24. in considering medical retirements the Commissioner of Police be obliged to consider not only the officer's capability to perform duties currently allocated but also any other duties which the officer could reasonably be expected to perform;
25. the provisions of the Police Superannuation Fund be reviewed:
  - (a) to ensure that it caters for the needs of contract employees
  - (b) to assess the desirability of that Fund having the power to conduct independent inquiries into an officer's health when that officer is being considered for retirement on medical grounds
26. members resigning from the Police Force be required to attend an exit interview with a senior officer;
27. a formal system for the registration of informants be established;
28. administrative support and financial management systems be reviewed and upgraded;
29. the Department's strategic plan be revised;
30. current methods of disseminating information on policy procedures and standards be reviewed;
31. people with demonstrated management skills be recruited from inside and outside the Force;
32. the essential functions of the Police Inspectorate be restored;
33. information collected by police in the course of their official duties not be generally available within the Police Force, but restricted to those who have an immediate need of it, and can demonstrate that it is of direct potential relevance to a current investigation;
34. the discretion of individual police officers be reviewed and where appropriate circumscribed by:
  - (a) proper command responsibility
  - (b) allowing police to warn offenders rather than proceed against them, but insisting that warnings must be recorded and reviewed by senior officers
  - (c) adequate supervision and guidance of junior police in investigative procedures
  - (d) adequate operational guidelines;
35. the Commissioner of Police remain answerable to the Minister for Police for the overall running of the Police Force;
36. a register be kept of policy and staff appointment recommendations provided by the Commissioner to the Minister, and policy directions given by the Minister to the Commissioner. The register would also record instances where the Minister or Cabinet declines to accept staff appointment recommendations put forward. The register would be tabled in Parliament annually;

37. the Commissioner of Police continue to have independent discretion to act or refrain from acting against an offender. The Minister should have no power to direct the Commissioner to act or not to act in any matter coming within the Commissioner's discretion under laws relating to police powers;
38. guidelines be established to direct Police Department media resources in their role of informing the public on Police Department activities, including reforms and their impact, in a manner consistent with the proposed regional commands;
39. the Police Act be redrawn and modernized to accommodate the recommendations of this report, with interim amendments as necessary to allow early implementation of proposals for lateral entry, interim appointment, and contract appointment.

# RECOMMENDATIONS

## C. POLICE

### II. DISCIPLINE

This Commission recommends that:

1. the Police Department Internal Investigations Section be abolished;
2. the Police Complaints Tribunal be abolished;
3. the Police Rules be revised generally to include, but not limited to the following:
  - (a) to oblige every police officer to report any complaint of misconduct or any reasonable basis of suspicion of misconduct to the CJC on a confidential basis
  - (b) to remove any discretion by any police officer not to refer any allegation of police misconduct, other than of purely disciplinary significance, for investigation by the CJC
  - (c) to remove unnecessary obligations of secrecy on police officers
  - (d) to introduce “stand down” provisions, whereby police officers under investigation for suspected misconduct may:
    - (i) have their warrant cards withdrawn and their right to exercise powers of arrest and ancillary powers of investigation, detention, search, and seizure suspended
    - (ii) be employed in uniform on non-controversial police work which does not involve officers dealing with the public, being armed, or using special powers;
4. the Queensland Police Union revise its Rules to preclude any concern with police disciplinary matters other than as relevant to industrial relations;
5. the Police Department implement adequate procedures to protect officers who make reports against other police from any form of retribution;
6. in dealing with disciplinary offences within the Police Force:
  - (a) the present adversarial process be abolished
  - (b) privilege against self-incrimination be abolished
  - (c) investigations be conducted by commissioned officers
  - (d) the process be inquisitorial
  - (e) the Rules of Evidence not apply
  - (f) the police officer concerned be obliged and required to answer questions and provide information, including whether or not the officer disputes the validity of the complaint, with any denials being provided in the form of a statutory declaration
  - (g) other police officers able to provide relevant information also be required to answer questions and provide information
  - (h) investigating officers be empowered to determine whether a disciplinary offence has been committed, and to administer summary punishment;
7. a police officer aggrieved at disciplinary determination or penalty be able to appeal to the Misconduct Tribunal, which will:
  - (a) proceed by an inquisitorial administrative process not bound by the Rules of Evidence



- (b) hear the issues afresh and exercise the investigating officer's power to determine and punish as appropriate
  - (c) not itself be subject to any further appeal from or review of its purely disciplinary review function;
8. the Misconduct Tribunal also make original administrative decisions in relation to the more serious allegations of official misconduct by police officers, such original decisions in this case to be open to judicial administrative review on the basis of want of natural justice or error of law;
  9. disciplinary procedures and administrative action as recommended against official misconduct proceed quite independently, and not be deferred pending the outcome of any criminal proceedings arising from or connected with the same activities;
  10. regional police commanders (or equivalent) be empowered to dismiss out of hand vexatious or mischievous complaints against police, provided that a record of the complaint and action taken is kept and notice of it is given to the CJC;
  11. all complainants against police be informed of any action taken upon, and the outcome of the complaints;
  12. a record be kept of allegations of misconduct made against investigating police in the courts, so that such records may be analyzed to observe trends and patterns of involvement by particular officers or groups;
  13. special consideration be given for a review of the convictions of any individuals who have raised allegations of "verballing" with this Commission, or with the Government, who are still in prison, and who do not have current appeals.

# RECOMMENDATIONS

## C. POLICE

### III. TRANSITION

This Commission recommends that:

1. a staged approach to reform be adopted, with the initial transitional phase expected to extend to December 1992, during which the major initiatives recommended will be put in place;
2. interim appointments only be made to senior positions for the duration of the transitional period;
3. an interim Commissioner be appointed, by contract, for the duration of the transitional period of about 3 years to the end of 1992;
4. an attractive and flexible package of remuneration and other benefits be offered to secure the best possible candidates;
5. the recruitment process for an interim Commissioner comprise:
  - (a) competitive applications sought from within and outside the Police Force by private consultants, who should assess the qualifications of applicants for the position
  - (b) consultants to compile assessments
  - (c) Inspector O'Sullivan to vet applicants by making appropriate enquiries to establish their abilities and reputation, and make recommendations
  - (d) choice of an interim Commissioner be one jointly recommended by the Minister for Police and the Chairman of the Criminal Justice Commission following their consideration of reports by O'Sullivan and the consultants.
6. Inspector O'Sullivan advise the interim Commissioner on the choice of an immediate support group during the initial stages of the transitional period;
7. 10-15 interim superintendents be selected by a substantially similar process and appointed by contract for the duration of the transitional period, subject to two qualifications:
  - (a) that consideration be given to a longer contract where this is a prerequisite to obtaining the services of an outstanding applicant from outside the Force
  - (b) that an interim superintendent who is not re-appointed to that rank after the expiration of the transitional period, not be disadvantaged but allowed to revert to any previous rank the officer would have been entitled to retain;
8. by an identical process, with the same material considerations, a sufficient number of additional interim inspectors be appointed immediately to replace not only those who are appointed interim Superintendents, but also to replace any current Inspectors who may retire, resign or die before the end of 1990;
9. vacancies resulting throughout the ranks of non-commissioned officers as a result of the appointment of senior NCO's to interim commissioned officer positions be filled on a permanent basis as they occur;
10. Inspector O'Sullivan have responsibility for assessing NCO applicants with assistance from the Promotions Board;
11. internal appellate processes related to promotions and transfers be suspended during the first stage of transitional arrangements and interim appointments;

12. appointment procedures to be applied in the later part of the transitional period be determined by the CJC in consultation with the Commissioner of Police;
13. interim contractual arrangements be subject to:
  - (a) satisfactory discharge of duties and responsibilities
  - (b) remuneration and other conditions reflecting the responsibilities and duties involved
  - (c) comparable conditions for other commissioned officers of similar ranks and grades;
14. further employment after the transitional period of commissioned officers who have passed minimum retiring age be subject to competitive selection for contractual appointment;
15. the CJC in consultation with the Commissioner of Police develop a policy to cover currently serving commissioned officers who will be unable to continue beyond minimum retiring age because more suitable personnel are available;
16. maximum opportunities be provided during the transitional period for NCO's to obtain educational qualifications which will enhance their competitive prospects for appointment to commissioned rank;
17. existing systems of recruitment and training be pursued to maintain the current level of police trainee intake, but no significantly greater number of additional police be recruited and trained under the present inadequate systems;
18. during the transitional period data and material selection criteria and processes be developed including vetting systems for use in the appointment of commissioned officers at the end of that time and subsequently;
19. the civilian directors in the support services command be recruited as soon after the appointment of the interim Commissioner as possible;
20. steps be taken to obtain a leadership which is dedicated to excellence and integrity by the end of the transitional period as follows:
  - (a) calling competitive applications from within and outside the Police Force for positions of:
    - (i) Commissioner of Police
    - (ii) all Commanders
    - (iii) all Superintendents of Police
    - (iv) all Inspector of Police positions vacant at the expiration of the transitional period
  - (b) selecting appointees by criteria which emphasize:
    - (i) excellence and integrity
    - (ii) qualifications, skills, and experience
    - (iii) past and current practices and attitudes, including willingness to change by precept and example the present culture of the Police Force
  - (c) engaging staff by contract appointments for fixed periods with appropriate conditions to ensure performance, and providing for improved remuneration and other terms of engagement commensurate with the duties and responsibilities involved
  - (d) fixing contract periods according to rank and personal considerations, with periods ranging from 5-10 years being generally applicable for commissioned ranks other than the Commissioner
  - (e) fixing the contract period at between 3 and 5 years for the first appointment of a Commissioner of Police after the transitional period.