LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr IM Berry MP (Chair)
Miss VM Barton MP
Mr WS Byrne MP
Mr SK Choat MP
Mr AS Dillaway MP
Mr TJ Watts MP
Mr PW Wellington MP

Members in attendance:
Ms A Palaszczuk MP

Staff present:
Mr G Thomson (Principal Research Officer)

PUBLIC HEARING—EXAMINATION OF THE CRIME AND MISCONDUCT AND OTHER LEGISLATION AMENDMENT BILL 2014

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 16 APRIL 2014

Brisbane

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Committee met at 8.58 am

LANG, Ms Jenny, Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General

MASOTTI, Ms Susan, Acting Principal Legal Officer, Strategic Policy, Department of Justice and Attorney-General

ROBERTSON, Ms Leanne, Director, Strategic Policy, Department of Justice and Attorney-General

SOSSO, Mr John, Director-General, Department of Justice and Attorney-General

HOLM, Ms Katie, Assistant Deputy Commissioner, Workforce Policy and Legal, Public Service Commission

CHAIR: Good morning, everybody. Good morning to you, Director-General. I declare this public hearing for the examination of the Crime and Misconduct and Other Legislation Amendment Bill 2014 open. Thank you for your interest and for your attendance here today. The Legal Affairs and Community Safety Committee is a statutory committee of the Queensland parliament and, as such, represents the parliament. It is an all-party committee which adopts a non-partisan approach to its inquiries. Before proceeding further, I want to introduce the members of the committee present here today. I am Ian Berry, the member for Ipswich and chair of the committee. Present with me here today is Mr Peter Wellington, the member for Nicklin and deputy chair of this committee; Miss Verity Barton MP, the member for Broadwater; Mr Bill Byrne MP, the member for Rockhampton; Mr Sean Choat MP, the member for Ipswich West; Mr Aaron Dillaway MP, the member for Bulimba; and Mr Trevor Watts MP, the member for Toowoomba North. The committee has also resolved that leave be granted for Ms Annastacia Palaszczuk MP, the member for Inala and Leader of the Opposition, to participate and ask questions throughout the hearing.

Ms PALASZCZUK: Thank you.

CHAIR: Today the committee will hear evidence on the bill from the Department of Justice and Attorney-General, the Crime and Misconduct Commission and a number of invited organisations. I wish to stress that the committee is undertaking its examination process on behalf of the parliament and has as yet made no recommendations nor put forward any proposals. The committee's proceedings are lawful proceedings and are subject to the standing rules and orders of the Queensland parliament. I ask all people present to turn mobiles off or put them on silent mode. In the unlikely event of a need to evacuate, I ask you to please follow staff directions. Members of the public are reminded that they are here to observe the hearing and may not interrupt the hearing. In accordance with standing order 208, any person admitted to this hearing may be excluded at the discretion of the chair or by order of the committee. Representatives of the media may attend and may record the hearing.

Today we will hear firstly from representatives of the Department of Justice and Attorney-General and the Public Service Commission followed by a number of witnesses who have provided submissions to the committee's inquiry in accordance with the published hearing schedule. I now welcome representatives from the Department of Justice and Attorney-General and the Public Service Commission. Good morning and thank you for coming here today. We have had the benefit of receiving your initial briefing on the bill. We have a number of questions for the department this morning. However, Director-General, would you care to make a short opening statement? If so, I invite you to do so.

Mr Sosso: Thank you, Mr Chairman. I thank the committee for the opportunity to brief you on the Crime and Misconduct and Other Legislation Amendment Bill 2014. I have with me officers from the department, if I may introduce them. On my right I have Ms Jennifer Lang, Assistant

Director-General; on my left Ms Leanne Robertson, Director; Ms Susan Masotti, on my extreme right, Principal Legal Officer; and from the Public Service Commission we have Ms Katie Holm, Assistant Deputy Commissioner, Workforce Policy and Legal.

At the outset I want to make a few preliminary points. The recommendations in both the independent advisory panel—Callinan-Aroney—and the Parliamentary Crime and Misconduct Committee's recent reviews of the Crime and Misconduct Commission were the starting point for the government in relation to many of the bill's provisions. In considering the recommendations from the reviews, the government was aware there would be differing views on those recommendations and also different approaches as to best implement the policy intentions encompassed in those recommendations. The varied comments the committee has received attest to this reality. The bill reflects the government's ultimate decision with respect to the recommendations of both reviews and also makes other amendments as determined by the government.

The explanatory notes to the bill, the Attorney-General's explanatory speech to the parliament and my department's initial briefing to this committee already detail the bill and its policy objectives. With the committee's indulgence, I do not intend to repeat the information that is already in that material and which you have before you. Rather, Mr Chairman, I seek the indulgence of the committee for me to address some of the more significant issues raised by those who have made submissions to the committee on the bill. A more fulsome comment on the submissions will of course be provided in the department's written response on the submissions, which I note is due tomorrow. In that regard, Mr Chairman, I need to flag that the department may need to seek an extension for the due date of the written response to next week to ensure that a comprehensive and detailed response is provided to the committee on now what I understand to be some 38 submissions, some of which we have not yet seen. Mr Chairman, in addressing some of the more significant issues that have been raised in submissions, I need also to point out that a number of the issues raised are in relation to policy decisions that have been made by the executive government of the state. It is not appropriate for my departmental officers or for myself to comment on policy decisions made by the government. That is a matter that the committee and its members should take up with the Attorney-General either in its report or on the floor of the parliament.

Mr Chairman, I note that a number of submissions have asked for the release of the implementation panel's work. As noted in the government response to the Callinan-Aroney review and the PCMC review tabled on 3 July, the government established an implementation panel chaired by me with other members being the director-general of the Department of the Premier and Cabinet, the commission chief executive of the Public Service Commission and the acting chairperson of the CMC. The panel of public servants and statutory office holders was established to oversee and direct the consideration and implementation of certain of the review's recommendations with a view to providing advice and options to the Attorney-General and to the Premier which, in turn, was to inform cabinet's decision making regarding the amendments. The panel's work was therefore part of the deliberative process of government and cabinet and prepared to assist them in their decisions regarding the reforms. As such, it is not appropriate for me to discuss the panel's reports. I will now turn to some of the significant issues raised in submissions to the committee, if I have the indulgence of the committee.

CHAIR: Thank you, Director-General.

Mr Sosso: With regard to the proposed new upper governance structure, recommendation 19 of the PCMC report states—

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

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

As reflected in the submissions to the committee on the bill, there are a number of ways in which this recommendation could be implemented, each with their own merits and possibly with their own drawbacks. The bill establishes a new upper governance structure for the commission. Under the bill, the commission comprises five commissioners, and I will not read out to you what next comes because you know what is provided. The role of chairman is the pivotal role in the commission and, consistent with the qualifications of heads of interstate integrity agencies, the bill provides the chairman is to have legal qualifications. The other commissioners appointed must, before they are eligible for appointment, demonstrate that they are appropriate and suitable for appointment and have the necessary skills, experience and standing for the role.

A number of submissions to the committee, including the Queensland Law Society and Bar Association, have raised issues regarding the removal of a requirement for one part-time commissioner to be a woman and one part-time commissioner to be a person with interests in civil

liberties. Eligible women and people with an interest in civil liberties are not precluded from being appointed and, because these attributes are not specifically mentioned in the legislation, does not mean that they would not be appointed. The government wants the best person or people appointed to the position and positions, irrespective of the gender of that person or persons. Merit and merit alone is the criteria that should be considered not only for those appointments but any other appointment to statutory bodies. The department notes that no Australian jurisdiction includes legislative requirements for the commissioner to have an interest in civil liberties and no Australian jurisdiction has a statutory requirement that a person must be of a particular gender.

With regard to a CEO member of the commission, both the Bar Association and the Queensland Law Society in their respective submissions to the committee, while supporting the creation of a CEO position, do not support its inclusion as a voting member of the commission. However, as the committee will also note, the previous chairperson of the CMC, Professor Ross Martin QC, who has obviously had much practical experience in chairing the CMC at very difficult times, takes a different view in his submission to the committee, noting at page 8 of his submission to the committee that—

> There is no one right way for such arrangements to be set up, and there is no reason in principle why the CEO may not be a Commissioner.

So again to the committee I say there are arguments one way and arguments the other. The government is determined on that particular course at this juncture.

With regard to influence of the chairman, the department notes that some written submissions to the committee, including the Bar Association and Queensland Law Society, have raised concerns that the influence of the chairman is increased under the bill as an increased number of the commission's powers are statutorily delegated to the chairman. This is consistent with the government's policy intent of the amendments to provide the chairman being able to effectively govern this new CCC. The department notes that in New South Wales, Victoria, South Australia and Western Australia the respective integrity agencies are governed by one person with the ability of that person to appoint a deputy or assistant or the relevant act provides for the appointment of a deputy assistant or chief executive officer to assist the chairperson or commissioner, depending on the designation in the relevant legislation. In relation to these concerns around the governance structure and roles of the chairman and CEO, it is important to note that the effectiveness of the new upper governance structure, which includes the CEO position, will be reviewed periodically by the parliamentary committee under an additional committee function introduced by the bill. The reviews will include the relationship between the types of commissioners and the roles and functions and powers of the commission, the chairman and the CEO. For each review, a report must be tabled in the Legislative Assembly, including any recommendations about changes to the legislation. This new parliamentary committee function of periodic review is provided for in clause 67 of the bill which is an amendment to current section 292.

With regard to use of the term 'chairman', a number of submissions to the committee, including the Bar Association and Law Society, have raised issues with the bill amending the term 'chairperson' in the Crime and Misconduct Act to the term 'chairman'. The department notes that under section 32B of the Acts Interpretation Act 1954 words indicating a gender include each other gender. Therefore, the term 'chairman' as used in the bill applies to both men and women. The department understands it is the government's preferred position to use the word 'chairman'. I also point out that when the Criminal Justice Act was initially enacted in 1989 the person holding the position of chair was designated as chairman, and I believe that term remained in the legislation for approximately a decade. As I mentioned in my opening remarks, it is not appropriate for me to comment on government policy. I simply make those points in passing for the benefit of the committee.

With regard to bipartisan parliamentary committee approval for the appointment of commissioners, the bill requires the minister to consult with the parliamentary committee prior to the appointment or reappointment of any of the commissioners but removes the current requirement for bipartisan approval. I note that many of the written submissions to the committee have raised concerns regarding the government's decision to remove this requirement because, in their view, it will erode the independence of the commission, amongst other matters. For example, in relation to the submissions of Mr Tony Fitzgerald; Mr Robert Needham, a former commission chairperson and parliamentary commissioner; the Bar Association of Queensland; the Hon. Doug Drummond QC; Professor Ross Martin; the Queensland Law Society; Australian Lawyers for Human Rights; Professor AJ Brown; and the joint submission by the five former part-time commissioners, each of those did not support the proposed amendment.

I draw the committee's attention to the submission of Mr G Fitzgerald QC, which incidentally raises the amendment as his only concerns with the bill, as far as I could read his submission. In fact, Mr Fitzgerald in his report of the commission of inquiry at page 373 recommended the parliamentary committee be consulted on the chairperson's appointment, but Mr Fitzgerald did not recommend bipartisan approval by the parliamentary committee as being required for the appointment of the chairman or any of the part-time commissioners. Professor Ross Martin and the Queensland Law Society in their submissions also note that fact, and I think the Bar Association of Queensland did as well. The department notes the government's decision is consistent with the department's understanding of the appointment process in the legislation of two other Australian jurisdictions. In Tasmania the relevant legislation provides that the Premier is required to consult with the joint committee regarding the appointment of members of the board, chief commissioner and CEO of the Integrity Commission but joint committee approval of the appointments is not required. At the federal level, the relevant legislation provides when appointing a chief executive officer of the Australian Crime Commission the minister invites nominations from the intergovernmental committee—relevant ministers from each state and territory—and consults with members of the board of the Australian Crime Commission. The minister is not required to consult with, or seek approval from, a parliamentary committee. This is an amendment that results from a policy decision of the government. For the reasons indicated in my opening remarks, this is not an amendment about which I am therefore able to assist the committee further.

With regard to sessional commissioners, the bill allows the chairman to appoint sessional commissioners to help the chairman perform the commission's functions or exercise the commission's powers by conducting hearings, examining witnesses or conducting specific investigations. The Queensland Law Society in their submission supports the amendments for sessional commissioners to assist the chairman and it is my understanding, Mr Chairman, that persons of the calibre of retired judges of the Supreme and District Court would be persons who would be considered for appointment to perform that critical function, similar to what occurs in New South Wales with ICAC.

Funding for the CEO position. The department notes that the issue of funding the CEO position has been raised by Mr George O'Farrell in his written submission to the committee. While this is really a matter for the CMC to respond to, the department understands that this position will be funded from within the existing resources of the CMC, in particular, from the reallocation of the funding for the existing executive general manager position, which will be subsumed into the CEO role.

The commission's new complaint management system—a change in the definition of 'official misconduct' to corrupt conduct. Firstly, I want to deal with the change in the definition of 'official misconduct' in the Crime and Misconduct Act to 'corrupt conduct'. The Callinan-Aroney report found that the definition of 'official misconduct' had a wider application in definitions contained in other interstate anticorruption legislation and that the threshold to what constitutes official misconduct should be narrowed. Recommendation 3A of the Callinan-Aroney report proposed a change to the definition of 'official misconduct' to raise the threshold for what conduct is regarded as official misconduct. This recommendation involved the rearrangement of the current drafting of the current definition and changing the wording from 'could if proved' to 'would if proved'—from 'could' to 'would'.

The bill seeks to address the policy intent to lift the threshold of conduct that comes within the commission's jurisdiction by inserting a definition of 'corrupt conduct'. As explained by the Attorney-General in his explanatory speech on the introduction of the bill into the Legislative Assembly and in the explanatory notes and in the department's initial brief to the committee, the new definition raises the threshold to what conduct is considered corrupt conduct.

Only about six of the written submissions, including from the Law Society, address this amendment and those that do most do not support raising the threshold on the basis that this may result in some corruption matters not being investigated by the commission. However, it should be noted that the commission currently only investigates the more serious matters of official misconduct, now to be called corruption, and most complaints—in fact, the vast majority of complaints, almost every single one of the complaints—devolve back to the respective agencies to deal with.

The commission has a monitoring function—a critical monitoring function—to review and audit how an agency deals with corruption matters. Under the amendments, the commission will maintain this monitoring function in respect of corrupt conduct complaints that are devolved back to agencies. What this amendment achieves is a reduction in the number of complaints that the

commission has to deal with so that it is able to better use its resources for undertaking actual investigations into serious cases of corruption and undertaking these investigations in a timely manner.

In the CMC's 2012-13 annual report, it is stated that in 2012-13 the CMC received 4,494 complaints in that year and of those 4,494 complaints, the CMC commenced 63 investigations. It is not expected that the amendments will reduce to any significant extent the number of more serious matters that the CMC actually investigates. The amendments are intended, however, to reduce the number of actual complaints that are referred to the CMC for initial consideration, many of which will relate to matters that can and should be dealt with by Public Service departments and agencies. If the conduct, the subject matter of a complaint, no longer falls within the definition of 'corrupt conduct', the relevant agency retains responsibility to deal with that matter.

Police misconduct. Callinan-Aroney did not make any recommendations in relation to how the CMC deals with police misconduct and, in fact, noted that their terms of reference did not specifically ask them to go into that matter. The bill does not include any amendments to change the way in which police misconduct is managed by the CMC or the Queensland Police Service.

The Queensland Police Union of Employees in its submission is concerned that the definition of 'corruption' includes 'corrupt conduct' and 'police misconduct'. This is being done for drafting reasons, because the term 'misconduct', as used in the CMC Act, has been changed to 'corruption'. 'Misconduct' in the CMC Act means official misconduct or police misconduct. There is no suggestion that police misconduct is corrupt conduct. As mentioned earlier, the bill does not deal with police complaints, discipline or the misconduct system and it is not appropriate for me to address these concerns in this forum, because it does not form part of the subject matter of the legislation.

Statutory declarations. I now turn to the amendment to clause 16 of the bill to amend section 36 of the CMC Act to give effect in part to Callinan-Aroney recommendation 3B. Callinan-Aroney recommended that all complaints be accompanied by a statutory declaration to the effect that the complainant read and understood the act, that the complaint is not baseless and that the complainant will keep the subject matter of the complaint confidential. So there was going to be a statutory declaration and that the person attesting to the statutory declaration must do those three things. Clause 16 of the bill requires that a complaint must be by way of a statutory declaration. The bill provides some leeway for the commission to accept complaints that are not made by means of a statutory declaration if the commission determines exceptional circumstances exist. Examples are given in the bill including a fear of retaliation for making the complaint, the literacy level of a complainant or his or her competency in English, or that the complainant has a disability that affects the person's ability to make the complaint by means of a statutory declaration.

The requirement for a statutory declaration applies only to complaints made under section 36 of the Crime and Misconduct Act and does not apply to notifications made by public officials under sections 37 or 38 of the Crime and Misconduct Act or to any information or matter given to the commission under section 36. The CMC in its submission to this committee has identified what it would regard as information. It is to be noted that the Callinan-Aroney requirement for a statutory declaration applied to complaints only and not information or matter.

Many of the submitters have raised concerns about the requirement for complaints to be by means of a statutory declaration, most agreeing that this will result in a reluctance in people making a complaint that involves genuine and serious cases of corruption. The bill, in fact, does not implement in full the Callinan-Aroney recommendation, which, as I have noted, required the statutory declaration to attest to the complainant having read and understood the relevant sections of the act, that it was not baseless and that they would comply with the confidentiality requirement. The effect of the bill's statutory declaration requirement requires only that the complainant is to attest to the content and subject matter of the complaint and that it is to their knowledge true and correct.

As noted in the department's initial brief, there are two jurisdictions that limit the form or manner in which a complaint can be made to their respective integrity body: Victoria, which requires a complaint to be in writing, unless the IBAC determines that there are exceptional circumstances, and in Tasmania, which requires a written complaint that allows anonymity. I note that some of the submissions to the committee, for example, from the Law Society, and the CMC, raise alternative approaches to the statutory declaration requirements to that contained in the bill. The Law Society suggests that the commission should be allowed to make a policy requiring statutory declarations

be made in certain circumstances where it would be more appropriate, for example, where a coercive hearing may be involved, where matters may be high profile or where there is a concern that the complaint may have been motivated by a desire to gain political advantage.

The Law Society further states that, if the bill is to proceed as drafted, it recommends that the exceptional circumstances examples be expanded. The CMC submits that consideration should be given to the following alternative, that is, complaints by and about elected officials should require a statutory declaration. The commission states that, for all other cases, there should be a discretion in the commission to request a statutory declaration for a non-political complaint or for the commission to be able to request a complainant provide all relevant information to the commission with the potential for the application of the commission's special powers should they not apply.

As the issues raised by the submitters to the committee relate specifically to policy matters, it is not a matter that I can comment or assist the committee further. I simply note that both the Law Society and the CMC have provided the committee with alternative approaches and that it is for the committee, no doubt, in their deliberations to consider those.

The commission's focus on serious corruption. Callinan-Aroney were of the view that the commission's focus should be on investigating serious cases of corrupt conduct. In addition to changing the definition of 'official misconduct', Callinan-Aroney recommended that a number of other strategies should be designed to reduce the number of complaints the commission has to deal with. Although the bill does not implement these recommendations in their entirety, the changes in the bill are consistent with the policy intent of reducing the number of matters referred to and investigated by the commission. The department's initial brief to the committee, together with the explanatory notes and the minister's speech, give effect to this policy intent.

I now address some of the concerns raised by the submitters. Reasonably suspects. Clause 17 of the bill raises the threshold of when public officials are to notify the commission of corrupt conduct in section 38 so that notification is only required when the public official reasonably suspects corrupt conduct. Currently, section 38 only requires the public official to suspect the conduct involves or may involve official misconduct. This amendment is consistent with recommendation 3 of Callinan-Aroney. 'Reasonably suspects' refers to where there is a real possibility that corrupt conduct is or may be involved rather than a mere suspicion that the conduct involves corrupt conduct. This was noted by Callinan-Aroney in their report at page 48.

The Hon. Doug Drummond and Professor Ross Martin do not support this amendment, suggesting that it will give further scope for departments not to report conduct that really ought to be reported to the CMC. As noted in the Callinan-Aroney report at page 119, the requirement of a public official to report corrupt conduct in New South Wales, Western Australia and Victoria arises where there is a suspicion on reasonable grounds, which is consistent with the amendment contained in this bill. So the bill is along the same lines as in place in those three jurisdictions.

The bill expands the use of section 40 directions issued to units of public administration to ensure that only the more serious corrupt conduct matters will be referred to the commission. Directions under section 40 will now include what complaints need or need not be notified to the commission as well as when and how complaints are to be notified. The commission's monitoring role under section 48 referred to previously is maintained.

The bill requires the commission must only investigate more serious cases of corrupt conduct. Those are the amendments to sections 5 and 35. The bill expands the grounds upon which the commission may dismiss or take no action in relation to a complaint to also include when the complaint is not made in good faith, is made for a mischievous purpose, made recklessly or maliciously, is not within the commission's jurisdiction, is not in the public interest, or has been dealt with by another entity. The bill enlarges the grounds on which the commission may prosecute a person in relation to making a complaint that is vexatious, is not made in good faith, is made from a mischievous purpose or made recklessly or maliciously, which is contained in new section 216A.

The department notes the ambit of section 216A is not as wide as recommended by Callinan-Aroney as it does not include circumstances when the complaint relied upon information received from another party or has not complied with a procedural step. The offence is limited to those complaints made for an ulterior purpose and not for genuine reasons. The offence will impose a maximum penalty of 85 penalty units, which is the same penalty for the existing offence in the act. The department understands that other jurisdictions—Victoria, New South Wales, Western Australia, Tasmania, and South Australia—have provisions that allow their respective integrity bodies not to proceed with a complaint and refers the committee to the information about interstate provisions contained in the department's initial briefing.

The commission's preventive function. In recommendation 4, Callinan-Aroney recommended that the commission's prevention function for misconduct should cease, except for such advice and education as may be appropriate and incidental to matters covered or found by the CMC in the course of investigation. Callinan-Aroney were of view that this would allow the commission to focus on investigating serious cases of corrupt conduct. To implement this recommendation, the bill amends section 23 and makes consequential amendments to other provisions to remove the commission's function for the prevention of corruption in units of public administration. The details of these amendments have been set out in the department's initial brief.

The Bar Association, the Australian Lawyers Alliance, Professor Ross Martin, the Queensland Law Society, Professor AJ Brown and Professor Charles Sampford have expressed concerns about this amendment and suggest that the commission, given its central role in anticorruption activities, is the most appropriate organisation to coordinate and lead prevention activities. Prevention encompasses education and training activities, which every department and agency should be undertaking.

Callinan and Aroney emphasised throughout their report the need for departments and agencies to take greater responsibility for dealing with corruption and the need for the commission to stay focused on the investigation of serious cases of corruption. Callinan-Aroney also recognised that educative functions have generally been conferred on anticorruption bodies in each state, but were ultimately of the view that the task of prevention of corruption should be undertaken by the Public Service Commission. The government accepted that and it is a matter that you may wish to pursue with Ms Holm as to what the Public Service Commission will be doing in engendering in government line departments a policy and focus to ensure that corruption activities are stamped out.

The commission's research function. Callinan-Aroney expressed the view in recommendation 12 that non-specific research by the CMC is a distraction and is not such to justify the expense and resources needed for it and recommended that the commission only undertake research that is referred to the commission by the government but that the commission could make recommendations to undertake research in response to an emergent issue. Mr Mick Keelty in his review of the CMC also identified similar issues with the CMC's research unit and the commission's research activities.

Mr Keelty proposed, in recommendations 10 to 12 of his report, that the research unit needed to be reduced in size, put to more stringent testing on the subject matters for research and collaborate more with other institutions in research activities to ensure its research outputs could actually influence/change behaviour in police and public servants. Mr Robert Needham, Professor Martin, Professor Prenzler, the Bar Association, the Law Society, Professor Brown and Mr McIntyre in their respective submissions to the committee are of the view that the commission should retain its independence over its research function.

The amendments in the bill will allow the CMC to identify suitable research activities to support its functions. This differs from Callinan and Aroney which provided that the CMC was only to research matters that were referred to the commission by the minister. The initiatory role on research under this bill lies with the commission; under Callinan and Aroney it was to be with the executive. Not all other integrity agencies within Australia have legislative provisions requiring them to undertake research. Queensland, Victoria and Tasmania are the only jurisdictions to include specific legislative provisions requiring their respective agencies to undertake research.

Transparency: meetings of the parliamentary committee. I do not think I need to deal with that one. You can ask questions on that, Mr Chairman, if you see fit. I will turn to the Parliamentary Commissioner. The bill enlarges the powers of the Parliamentary Commissioner in accordance with various recommendations, reviews and reports by allowing the Parliamentary Commissioner to investigate complaints on his or her own initiative—that was recommendation 11 of Callinan and Aroney—removing the requirement for bipartisan approval by the parliamentary committee for the Parliamentary Commissioner to hold hearings and allowing reports of the Parliamentary Commissioner to be used by the commission's chief executive officer in deciding whether to take disciplinary action and what disciplinary action should be taken against commission officers, which was recommendation 21 of the parliamentary committee's report.

There has been a mixed response in the written submissions about the additional powers given to the Parliamentary Commissioner. While the Queensland Law Society and Bar Association support the enlarged powers, Mr Robert Needham does not. The CMC has also expressed concerns. The department notes that the PCMC in recommendation 21 made specific reference to

changing the current restriction on the Parliamentary Commissioner holding hearings and that Callinan and Aroney in recommendation 11 recommended the Parliamentary Commissioner have that on his or her own motion.

CHAIR: Do you have much to go?

Mr Sosso: About three paragraphs. We are thinking almost in tandem as to when I should finish. This is another example of the variance that people have in their views on what is an appropriate or inappropriate amendment for inclusion in the bill. The government has opted to accept those particular recommendations. It should be noted in relation to the amendment to allow the Parliamentary Commissioner an own-motion investigative power, the bill includes certain safeguards that were not recommended by Callinan and Aroney to ensure that the exercise of those powers occur in limited circumstances only. Mr Chairman, my colleague Ms Holmes from the Public Service Commission is available to address matters the committee may wish to hear about the operation of the corruption function and the role of the PSC. Thank you, Mr Chairman.

Mr DILLAWAY: Mr Sosso, thank you very much. My first question to you is in relation to the appointment of independent statutory body commissioners and the like. Are you aware of any other independent statutory body appointments in Queensland where the relevant minister must obtain bipartisan support of the committee before confirmation of an appointment?

Mr Sosso: The only example I can think of, and I have consulted with my colleagues, is the appointment of the Electoral Commissioner.

Mr DILLAWAY: Can the department advise the committee what happens regarding similar appointments for commissioners in other states or commonwealth jurisdictions? I know you touched on that briefly before, but is there a requirement for any others to have that bipartisan support?

Mr Sosso: As I pointed out in my introductory comments, the requirement for bipartisanship is contained in the relevant legislation of the other jurisdictions with the exception of Tasmania and the Commonwealth. In response to the other question, I can only comment about legislation within the purview of the Department of Justice. There may well be other pieces of administration administered by Premier and Cabinet, I do not know, for example, about the Integrity Commissioner and the likes of those statutory office holders. But certainly within the purview of my department, the Electoral Commissioner is the only one requiring bipartisanship that I am aware of.

CHAIR: If in fact there has been an allegation of corruption and it is in a department and the appropriate department personnel has been told of it, they have an obligation to report it to the CCC. That would not be by way of statutory declaration at all, it would be a matter of just simply reporting it, is that the case?

Mr Sosso: That is correct. That was the referral to notification I made earlier in my address.

CHAIR: Just making sure. The other issue is that in the exceptions to the statutory declaration you mentioned about some people not having the ability to be able to fill one out or understand it perhaps. Does that mean that the person who wishes to make the complaint is not articulate enough to do it that they need the assistance of another person? Is that person required to complete a statutory declaration at all, that being of a person who has all the faculties?

Mr Sosso: No, I would not have thought so.

CHAIR: I am just making sure that I understand.

Mr Sosso: It might be akin to assisting a person to fill out a ballot paper, Mr Chair. I am not sure.

CHAIR: Indeed.

Ms PALASZCZUK: Mr Sosso, thank you for your time this morning. You stated in your opening address that the chairman's role is pivotal to the CMC. I note that the current chair's term is due to expire on 22 May 2014. As the director-general, when are you advertising this position?

CHAIR: Is that relevant?

Ms PALASZCZUK: It is relevant, chair.

Mr Sosso: I would have thought, if I can address the Leader of the Opposition, that would be dealt with in the fullness of time having regard to the outcome of the legislation before the parliament.

Ms PALASZCZUK: Can we go now to the legislation before the parliament. I note that in clause 81, which inserts new sections 397 and 402, that the current acting chairperson will continue to act until 31 October 2014. I think the Bar Association calls this the Dr Levy clause, if I recall.

Mr Sosso: That is correct, they did.

Ms PALASZCZUK: Did you have any discussions with anyone in government in relation to this matter?

Mr Sosso: To what matter?

Ms PALASZCZUK: In relation to the amendments for the extension of Dr Levy's appointment.

Mr Sosso: As the Leader of the Opposition would know, it is axiomatic. As the director-general of the department responsible for the legislation before the parliament I would be discussing every element of the legislation with a lot of people in government. Why wouldn't I?

Ms PALASZCZUK: Mr Sosso, the existing legislation requires the bipartisan support of the position of the chair. Did you provide any advice to the government removing the bipartisan support from the act?

Mr Sosso: I would have thought, Mr Chairman, and with due respect to the Leader of the Opposition, what advice I give to the minister and Attorney-General is a matter within the deliberative processes of government.

CHAIR: Indeed.

Ms PALASZCZUK: Given section 27 of the Acts Interpretation Act, which applies to acting appointments and provides that a particular individual cannot be in an acting appointment for more than 12 months, did you provide advice to the Attorney-General that for Dr Levy to remain as acting chairperson after 22 May 2014 would require legislative amendment?

CHAIR: I am going to interrupt there. We are dealing with questions in relation to the bill.

Ms PALASZCZUK: With all due respect, this is a very serious matter. The Bar Association has called it the Dr Levy clause. The director-general has said that the position will be advertised in the fullness of time. I am trying to get to the substance of this. This is very concerning. We have had numerous submissions here talking about the concern about removing the bipartisan nature. I am trying to get to the centre of this by asking the director-general what advice and what conversations he had with people in government about this matter. He has said that it is the pivotal role.

CHAIR: I am overruling it. It is not in relation to the bill.

Ms PALASZCZUK: With all due respect, it is clearly there. It is clearly new sections 397 and 402 of the act. There are submissions in here, submissions removing the bipartisan nature of the appointment. The director-general has said that it is the pivotal role and I believe that Mr Sosso could answer these very simple questions.

CHAIR: If you are prepared to ask about principles in relation to the body of the legislation which we are discussing I am more than happy for you to proceed. By simply referring to the Bar referring to a Dr Levy provision does not allow you then to pursue a Dr Levy issue. The two do not follow. I am more than happy for you to refer to this director-general a Dr Levy, if you wish to call it that, provision, but it must be relevant to the bill not to what Mr Sosso's knowledge was in respect of Dr Levy. That is the person, that is not the principle here today.

Ms PALASZCZUK: I accept that. Can I now put it in terms of the current acting chair. I will not refer to Dr Levy.

CHAIR: The same principle applies though. It must refer to the principle not the person.

Ms PALASZCZUK: Sure. Mr Sosso, can you confirm that the new amendment that is put in this legislation would continue the current acting chair's position for a further five months?

Mr Sosso: If passed, yes.

Ms PALASZCZUK: If passed, yes. Can we talk briefly about the bipartisan issue.

CHAIR: Yes.

Ms PALASZCZUK: Thank you very much because it is raised in a number of submissions. I note that clause 38 of this bill will replace sections of 228 to 230 of the current Crime and Misconduct Act which relate to the bipartisan appointment of commissioners. Did you have any discussions with any members of the government about removing the bipartisan provisions?

CHAIR: I am going to object to that on the basis that it really is dealing in matters of policy. It is not relevant to the bill that we are here to discuss.

Mr Sosso: Mr Chairman, I can answer it. There are two parts to it. No.1, I just refer to my previous answer: every element of the bill was the subject of discussion both with my officers and with others in the executive government. I am not privy to discuss the subject matter of that because they are policy matters and fall within the deliberative processes of government.

Mr WELLINGTON: If I could just put a follow-on question, director-general: what evidence are you aware of that the current bipartisan requirement is not working?

Mr Sosso: Mr Wellington, the decision to dispense with the bipartisan process for appointment was a policy decision of the government and it is a matter that you need to address with the minister.

Mr WELLINGTON: My question was to you what evidence does the department have that the current position of requiring bipartisan support is not working. If are you saying that is a matter for policy, you are effectively saying to me then you have no evidence to—

Mr Sosso: No, you are misunderstanding. I said that is a policy matter for government.

Mr WELLINGTON: No, I asked you a question. What evidence does your department—

Mr Sosso: That is my answer.

Mr WELLINGTON: So your department has no evidence?

Mr Sosso: That is my answer to you. It is a policy decision for the government.

Mr WELLINGTON: Thank you. So your department has no evidence that the current situation is not working?

Mr Sosso: Why would you assume this department would have any evidence whether a particular appointment process is working or not based on qualitative measures that you have not enunciated?

Mr WELLINGTON: I am not assuming anything, I am asking you a question.

Mr Sosso: I have answered your question.

Mr WELLINGTON: The next question that I have, if I can follow on, is have you investigated the credibility of any of the assertions made by the Callinan and Aroney report which formed the basis of their recommendations?

Mr Sosso: Could you just explain that a little bit further, Mr Wellington?

Mr WELLINGTON: My question is have you investigated the credibility of any of the assertions made by Callinan and Aroney in their report which form the basis of their recommendations?

Mr Sosso: Mr Wellington, as the title of the committee that I chaired was the implementation committee—

Mr WELLINGTON: I realise that.

Mr Sosso: Just let me answer your question. That was the subject matter of our remit, to implement those recommendations accepted by the government. It was not a forensic exercise to determine the validity of the recommendations. Our role as public servants was to implement them.

Mr WELLINGTON: In your role as director-general did you undertake any investigations or are you aware of any concerns with the credibility of the base of the recommendations, of the credibility of the material that Callinan and Aroney relied on to make their recommendations?

Mr Sosso: I am not aware of any issues regarding the credibility of either the gentlemen in question or their process of reaching their recommendations, no.

Mr DILLAWAY: The question here is does the need for a statutory declaration as highlighted by many of the submissions actually stop concerned citizens from providing information or material to the CMC for consideration and possible use in investigations?

Mr Sosso: No. There is a legitimate debate as to how far the requirement of statutory declarations can go. For example, the bill itself provides exceptions by means of exceptional circumstances and provides examples.

Mr DILLAWAY: It is not an exhaustive list, is it?

Mr Sosso: It is not an exhaustive list. If I can say this, it is a question of reasonable debate how far it should go. It is a matter that people can have different points of view on. I have noted that some of the people who have made submissions to this committee—the Queensland Law Society, the Bar Association and the CMC, for example—have made some useful suggestions. I think it is

open, certainly from my point of view, and the department is open to hear from the committee and from the submitters as to where they think the line should be drawn. The Queensland Law Society, for example, has suggested that if the existing approach is to be continued the definitions of exceptional circumstances be expanded. I think that is a very useful exercise.

Mr DILLAWAY: Ms Holm, can you outline to the committee how the transferring of the preventative functions to the Public Service Commission will work? I note that concerns were raised by the Queensland Law Society in its submission where it feared they would not be properly and completely addressed?

Ms Holm: That might be best answered by me giving an overview of the provisions in the bill that relate to amendments of the Public Service Act, so I will try to briefly outline that. To assist with the efficient and effective operation of government agencies, it is important that Public Service managers are empowered and that staff under their management or supervision have a clear understanding of the Public Service work performance and personal conduct principles. These longstanding principles recognise that Public Service employment involves public trust. They state that Public Service employment must be directed to matters such as achieving excellence in service delivery, ensuring the effective, efficient and appropriate use of public resources, and carrying out duties impartially and with integrity.

Both the Callinan and Aroney report and the Commission of Audit report recommended reforms to refocus responsibility for conduct in public sector agencies to line managers and ultimately CEOs to be dealt with promptly. The bill amends section 26 of the Public Service Act to make it clear that Public Service managers must take all reasonable steps to ensure each Public Service employee under their management is aware of these important work performance and personal conduct principles.

To support that, and in line with the government's accepted recommendations from those reports, the Public Service Commission has developed a proposed conduct management model for the Queensland Public Service, and that is known as the Conduct and Performance Excellence service, or CaPE. CaPE's purpose is to promote and support excellence in the management of personal conduct and work performance in the Queensland public sector. The new system does not replicate the CMC process but instead builds managerial and human resource capability including decision-making skills. The system is designed to improve timeliness from the start to the end of a process, to reduce the cost of processes and to improve outcomes. In summary, it will provide specialist advice and support to agencies upon request on the management of conduct and performance, set and strategically monitor benchmarks and standards for agencies' handling of these matters, and review individual cases as required with the aim of building capability.

The CaPE service closely aligns to the Public Service Commission's main statutory functions which include enhancing the Public Service's human resource management and capability, enhancing and promoting an ethical culture and ethical decision making across the Public Service, enhancing the Public Service's leadership and management capabilities in relation to disciplinary matters.

CaPE will contribute to the development of capability within agencies to ensure that they have a high standard of human resource and managerial skill. It will also work closely with the proposed Crime and Corruption Commission to ensure matters are addressed effectively and within the appropriate jurisdiction. CaPE will be focused on building capability in the sector for managing the matters of employee conduct and work performance in a more effective way. It is not a double-up of what HR areas already provide. Rather, it will work with those areas to improve processes and outcomes.

It is anticipated that capability within agencies will be enhanced through CaPE's involvement in these matters, as it provides advice, coaching and support. The improved capability across the agencies is expected to return savings through reduced costs overall including the duration of paid suspensions, investigation costs and more timely management of these matters, more streamlined processes and outcomes requiring less time and investment for human resource and ethical standard functions. There will be a range of information sessions held, and the CaPE service will include an outreach function to work with agencies and key stakeholders within those agencies on the sorts of matters that staff need to be aware of and how to address them in a timely way.

CHAIR: The Queensland Nurses Union indicate that there is no definition of work performance or personal conduct. Is there going to be some prescriptive means by which an employee will understand what that means?

Ms Holm: The Public Service Commission's view is that section 26 in itself outlines what those work performance and conduct principles are. They are very explicit and very clear, I would suggest. They refer to specific items which I have just mentioned as well as the code of conduct and other responsibilities and obligations that public servants have under, for instance, the Public Sector Ethics Act.

CHAIR: We are running over time, but I understand the Leader of the Opposition has two questions.

Ms PALASZCZUK: That is all.

CHAIR: Provided they are quick.

Mr Sosso: Mr Chairman, could I clarify something? I have also had brought to my attention that the requirement for consultation also applies with the Ombudsman, the Information Commissioner and the Right to Information Commissioner.

Ms PALASZCZUK: Mr Sosso, going back to the new section 402 about the possible extension in the act of the acting chairperson, have you had any conversations with the acting chair about the possibility of his term being extended until 31 October 2014?

CHAIR: I am not going to require you to answer that question. What is the next question?

Ms PALASZCZUK: Sorry, Chair, that is a very clear question—

CHAIR: It is not relevant to the bill.

Ms PALASZCZUK: It is; it is in relation to the act. Has the director-general had any discussions with the acting chair about the possibility of him continuing until 31 October 2014?

CHAIR: I am overruling that question. What is the next question?

Ms PALASZCZUK: Director-General, are you aware that in Tony Fitzgerald's submission he refers to you and states that—

neither Newman nor Bleijie (nor for that matter Sosso) has knowledge or experience of the complexities involved in balancing personal freedom and public safety through criminal justice.

Mr Sosso: Yes, I am aware of it. He inferentially mentions that I was the first secretary of the Fitzgerald commission. I actually established the Fitzgerald commission, Leader of the Opposition; I don't know if you knew that?

Mr BYRNE: Yes, we do.

Ms PALASZCZUK: Yes we do. These are quite damning comments.

Mr Sosso: I am aware of what he had to say. It would not be appropriate for me to comment too much on his submission. I would prefer that his legacy be left intact without people commenting on the veracity of what he had to say.

Mr WELLINGTON: I have one final question to the director-general. Director-General, in your presentation you spoke about the appointment of people to the leadership team on merit, and I note there was also a requirement for some legal qualifications. My concern is that there does not appear to me to be sufficient detail of the criteria that the candidates must demonstrate they possess when they apply for that position. I have a concern that simply using appointment on merit enables the government to appoint people to the leadership team because they will do the government's bidding, rather than people being appointed to the leadership team because they will protect the independence of the authority. Merit seems too open ended for the government to appoint their chosen person who will do the government's bidding and not do the bidding that Queenslanders want this entity to do.

Mr Sosso: I understand the concerns of the member for Nicklin. Clearly the requirement for merit is central to the way this bill has been drafted. I understand there have been concerns raised by other submitters to the committee. All I can say as a public servant to the member for Nicklin is that the merit principle is central and if it is given effect to appropriately then the concerns raised by the member for Nicklin would be addressed.

CHAIR: Thank you very much for attending.

LEVY, Dr Ken, Acting Chairperson, Crime and Misconduct Commission

McFARLANE, Ms Dianne, Acting Executive General Manager, Crime and Misconduct Commission

CHAIR: I welcome the representatives from the Crime and Misconduct Commission. Good morning and thank you for coming today. Can I begin by asking if you object to being filmed or recorded by Hansard and the media? And can you confirm that you have read the guide to appearing as a witness?

Dr Levy: Yes, Mr Chairman.

CHAIR: Please make an opening statement if you wish and the committee will then have some questions for you. I think we have transgressed by eating into your time, but we will try to get through this as quickly as we can.

Dr Levy: Thank you, Mr Chairman and members of the committee. My name is Ken Levy. I am the acting chairperson. Accompanying me this morning is Ms Dianne McFarlane, who is the acting executive general manager and who has had very lengthy experience. Hopefully between us we will be able to assist the committee.

To begin with, might I say that last Friday the commission met about the response the commission would put to this committee, and it decided as a matter of practice—or a matter of policy and a matter of prudence perhaps—that there will be some things we will not want to get engaged in where they are matters of government policy. That was a unanimous decision of the commission, but we take the view that we are here to assist you. If we have some particular expertise and experience, then we would wish to leave that with the committee for your deliberations, mainly those highly controversial matters on which there have been many submissions on either end of the continuum and nothing terribly much in the centre.

Our submission has noted the participation of the implementation panel which Mr Sosso recently spoke to and his position regarding the appropriateness of commenting on the deliberations of the implementation panel. We will assist the committee today. In particular, I would like to make some comments about the term 'corrupt conduct', which is in the bill, the requirement for a complaint to be made by statutory declaration and the commission's corruption prevention function.

Firstly, in relation to the new definition of corrupt conduct, the bill proposes some changes to the type of conduct that would be dealt with by the commission. The aim of the reforms is to refocus the commission's work to be mainly dealing with serious corrupt conduct, the term 'corrupt conduct' of course being defined in the act. It is defined in section 15. It will generally be understood as the dishonest or partial exercise of powers by a person with the intent of providing a benefit to a person or causing a detriment to another that would, if proved, be a criminal offence or a dismissible disciplinary breach. 'Conduct' is defined as including neglect, failure, inaction and a conspiracy or attempt to engage in conduct that would be corrupt conduct. In other words, corrupt conduct simply would target a public officer who deliberately acts in breach of his or her duties of public office in a dishonest or impartial manner, any officer who abuses the trust placed in them as an office holder, and an officer who wilfully and improperly uses official information to gain benefit.

There are a number of key changes in this bill that work together to bring about changes of the type of conduct which the commission will be required to deal with. In concert, the bill amends the test for a public official to refer a matter to the commission; secondly, it provides for the commission to direct a public official about the type of matters the commission wishes to have referred to it or which it can delegate out to agencies; and thirdly, it requires the commission, in performing its corruption function, to focus on more serious cases and cases of systemic corrupt conduct.

In our estimation, the combined effect of the legislative changes will result in a considerable decrease in the number of complaints received and dealt with by the CMC, although the exact decrease in those numbers is difficult to quantify. The resources which would be involved in those present matters which we will not have to deal with in future would be reallocated to other important functions.

We note that for the current financial year the commission has experienced a decrease in the number of complaints received. Our interpretation of the definition of matters that would amount to corrupt conduct, but would not be reported to the CMC as per a section 40 direction, would include: misappropriation of petrol, for example; falsifying timesheets; minor assaults; low value theft from a

patient; and misuse of minor administrative resources of an agency. Finally, the examples of the type of conduct which the commission would envisage not being corrupt conduct as defined, and which would no longer be within the jurisdiction of the commission, would include bullying and harassment in the workplace; misuse of resources; threatening conduct in the workplace for no benefit; or perhaps simple driving offences. The commission will focus its efforts, therefore, on the most serious cases of corrupt conduct and systemic corrupt conduct.

Can I turn now to the issue of the statutory declaration. The amendments to section 36 insert a requirement that a complaint about corruption must be made by way of statutory declaration unless the commission decides otherwise, and it is given some guidance about the exceptional circumstances that would be required for the commission to waive that requirement for a statutory declaration. The explanatory notes state that this is to ensure complaints are made for a genuine purpose. The commission has taken the view then, practically, it will have the effect of reducing the number of dishonest, baseless or mischievous complaints. However, as we noted in our submission, the commission believes that the strict wording of this clause may inhibit the CCC's ability to effectively investigate some complaints of serious corruption that would be prudent for it to retain within the commission, and therefore some flexibility might be considered in this area.

On a strict interpretation of section 36(3) there are no provisions for the receipt of anonymous complaints by the commission unless it is assessed as an exceptional circumstance, those being mentioned in the bill as being fears of retaliation for making a complaint about either employment, property, personal safety or wellbeing; or more likely, it could be received perhaps as information under subsection 4 if it cannot be received as a complaint. In 2012-13, seven per cent of the complaints received by the commission were anonymous complaints. Examples of important investigations which the commission has undertaken in the past which were commenced, at least, as anonymous complaints included the $16 million health fraud, investigation into misuse of public moneys by a former ministerial advisor, and the investigation and prosecution of a former health minister.

In practice, there would also be a need to continue to receive information. That term 'information' is also mentioned in section 36. Information in this category would include material that becomes known to the commission as a result of its internal activities such as a hearing that would be conducted by the CMC in the—

CHAIR: Would you mind wrapping it up? We have about 15 minutes left.

Dr Levy: Certainly. The last point that I was going to make is about prevention, which is dealt with in section 23. We just note that in the last financial year there were 116 prevention recommendations which the commission made to agencies, both in the public sector and government agencies. I will leave it there, Mr Chairman.

CHAIR: Thank you very much, Dr Levy. The reason why we wanted a little more time to ask you questions is—and we might well go over the 15 minutes—I would like to start off by saying you mentioned about the $16 million health fraud. Is that the 'prince' case you were talking about?

Dr Levy: Yes.

CHAIR: Okay, let's drill down. Because effectively the impression we are getting is, 'Stop all the small stuff and get into the major organised crime.' Is that the thrust of it?

Dr Levy: Yes.

CHAIR: You have been in the job now for a reasonable amount of time, as your predecessor has probably been for a short time as well, so that is not something you can answer. But what I want to get to the thrust of is this: with organised crime, I have heard anecdotal evidence to say that it takes two years for anything to get investigated by the CMC, and that concerns me. How can we say to the people of Queensland that we are tackling organised crime? I thought you said that the 'prince' case was an anonymous complaint?

Dr Levy: It commenced as anonymous.

CHAIR: You get a complaint; it is not by stat dec; it looks like it has substance: what do you do with it?

Dr Levy: Ms McFarlane might also make some more detailed comments, but essentially if an anonymous complaint is received, like any other complaint, it has to be assessed. Depending on what evidence there is it may appear to be minor matter, in which case—as happened in that fraud matter—it was sent back to the department to investigate the matter further and then, if there was some better or further evidence, to bring it back to the commission. There was then a subsequent

complaint. There had been a previous complaint, by the way, about the person who was ultimately convicted. But then there was a subsequent complaint, and then the commission was alerted to the fact that some internal inquiries by one of the finance officers had indicated that what in fact had occurred was a very elaborate fraud where this person had control over not only systems, but also people, and he was very bullying in some respects I suppose, if I can use that term. He had many people under his control. My reading of the matter is that he even had a very senior executive of the department to whom he went and asked him to delegate further powers to him.

CHAIR: Can I redirect you though, because I understand the detail. I am really wanting to find out as to a complaint which has substance—maybe on the face of it there might be something—but it is not a stat dec. It comes before you; how are you going to deal with that? Are you going to dismiss it because it is not a stat dec, or are you going to give it to somebody who will actually work out as to whether it is worthy of receiving a stat dec to proceed further? How do you—

Dr Levy: Under section 36, the strict wording, we would assess it and in fact would go out. If there was enough evidence of serious corrupt conduct, it would go back to an agency to look at. But it could come back. In fact, if it was an anonymous complaint or a complaint not in writing or not in a stat dec, it is possible that—not that all matters would not be investigated. If in fact there was a complaint from a department, if that came in that would be an information.

CHAIR: Indeed, it would not be a stat dec.

Dr Levy: So 'stat dec' is not perhaps quite as legal as what it first appears. But nevertheless the strict wording of the act—if there was greater flexibility to the commission to be able to demand a statutory declaration if there was some suspicion of serious conduct, then that would give greater flexibility for the commission.

Mr DILLAWAY: Dr Levy, in your submission you are sort of highlighting, I guess, those stat decs and you said in addition to the clauses set out in the bill, and you have given some examples of what that would be—complaints about elected officials should require a stat dec—and then in other cases it is desirable by the commission. Are you suggesting that is in addition to the clause, or are you suggesting that is instead of the clause?

Ms McFarlane: We would be suggesting that is instead of.

Mr DILLAWAY: Thank you.

CHAIR: The research facility is disappearing.

Dr Levy: The research function.

CHAIR: The research function. Can you give us an idea as to what effect that will have in terms of—and I am looking at the big picture—organised crime, which we have read about in the papers for now a good 12 months at least in the various states.

Dr Levy: The research function is not disappearing; prevention is.

CHAIR: I'm sorry, prevention. Can you give me a synopsis of that and how that will affect the function of the CCC if it becomes that?

Dr Levy: Yes. The way we have interpreted that section, we would still have power with an investigation to make recommendations about prevention in the matter that was investigated, and that certainly is important. That is our interpretation of it. There was other prevention work that was done which was probably helpful to some agencies, but I think the level of resources that was put into it previously was probably seen as perhaps not being cost effective, and I think that is the main change in that.

Ms PALASZCZUK: Dr Levy, I just want to talk about the bipartisan nature of the appointment, because there are a lot of submissions there that raise concerns about the removal of the bipartisan nature of the appointments of the commissioners and the chair. You have been now acting in the role for a period of about a year. What are your views as the acting chair about the bipartisan provisions that currently exist in the bill?

Dr Levy: I am prepared to make some comment, but I just need first to say that the commission has said we are not going to get into some of the radioactive, very sensitive aspects of it. The Director-General has discussed this earlier. The bipartisanship issue is a matter of policy for government certainly, but I think care needs to be taken that this is about corporate governance, and the governance of the commission is a board. One of the things that struck me in the 11 months that I have been there is that the world has changed and that perhaps a greater level of skill would be useful for the commission. So the bipartisanship is an issue that is a matter of policy, but I think one shouldn't lose sight of the fact that what the decision is is about what sort of skill sets you want on the commission, and that is all about independence. But independence, of course, is about

independence of mind and independent judgement. Often times in corporate boards these days there are various committees, including nominating committees, so how one actually gets the appropriate—first we have to identify what are the skill sets you want, and then often times it has been said that the independence of people who are directors, such as commissioners, while they may appear to be independent, you sometimes find also it has been said that people who have all been members of the same club or the same university even do not necessarily bring independence. So it is a vexed question really, but that is as much as I will say about that.

Ms PALASZCZUK: We have a submission here from some former part-time commissioners of the CMC, Julie Cork, David Gow, Ann Gummow, Judith Bell and Philip Nase, talking about their concerns about removing the independence of the CMC and that it will be compromised if the bipartisan nature is taken away. I think the non-government views are very well-known in relation to that.

My next question is in relation to your position as acting chair. There is a provision here to extend you for another five months, which would mean that you would be acting in that role for 17 months. Is it your intention to continue in that role until, if the legislation is passed, 31 October 2014?

Dr Levy: The only comment I will make about that is this: I was originally asked to go there for six months. That is all I had intended being there for. Because of other events I was asked to stay for another six months, and I agreed to do that. There has been no request for me to stay any longer, and I have to say that it is not a health-enhancing position. When I saw that in the bill, it was quite clear what the government was trying to do.

But, depending if the bill went through and when it went through, it depends whether my role would be finished and if the government made a request for me to stay somewhat longer. The question has not arisen. I am not applying my mind to it because in four or five weeks time I might have an entirely different view perhaps. But, anyway, that is a matter that I have formed no view about and I am not going to make any further comment about it.

Ms PALASZCZUK: I have a final question. In relation to the end of last year, you indicated through media reports that you will certainly not nominate to be permanent head of the CMC when that comes up next year.

CHAIR: I am not going to allow that.

Ms PALASZCZUK: It is very clear, Chair. This is what the acting chair said.

CHAIR: No, I am not going to allow it.

Dr Levy: Mr Chairman, can I just comment?

CHAIR: Yes.

Dr Levy: I saw the report. The report was not exactly what I said. I made some comments, but that was not exactly the way it was. I will just leave it at that.

CHAIR: Estimates is another place and another time, but we are dealing with a bill.

Mr WELLINGTON: Dr Levy, in your brief presentation this morning you said that the bill proposed changes to the matters of complaint that could be referred to the commission. You said if the bill goes through as it is currently proposed there will be changes to resources or those resources will be reallocated. What are we talking about? Are we talking about one staff or two staff? How many staff, or do you have a dollar value on the resources that may be reallocated because of the change in the number of complaints that you may receive?

Dr Levy: It is a little premature to put figures on it. We have been doing some work on it. You will appreciate there is also the Keelty review which will have some effect, and we have not worked through all of those with police yet. But we do not expect the resourcing will be significant. Most things are not touched in the commission as a result of all of these amendments. The Crime function, for example, remains the same. Misconduct, by and large, remains the same. In fact, the number of operations or the number of investigations we will do of serious corrupt conduct will essentially remain the same. What changes are the number of matters that come in the door that we will not have to spend resources dealing with because it probably should have been done by departments. So that is the number or part of those matters that would have come in the door where we might get a saving. In terms of whatever saving we get, my view at the moment is that you will recall the PCMC had made a comment about a year or so ago about the Legal Services Unit. That is an area that has not had enough resources while I have been there. I am just flagging it; I do not want to be bound by that.

Mr WELLINGTON: No.

Dr Levy: Whoever might follow me might have a different view.

Mr WELLINGTON: In your answer you said that you do not think the resources will be significant. Is that specifically answering my question?

Dr Levy: Yes. I am talking about savings now.

Mr WELLINGTON: Just to repeat: there are the proposed changes to the number of complaints that will come to the CMC. The expectation is there will be savings in resources because you will not have to deal with those. Are we talking about one staff saving or two, or what dollar value?

Dr Levy: Sorry. If I start putting numbers on something that we actually have to work through, that could create some fear amongst people. I have identified the area where the workload will change—let us put it that way—but there are other things and not only legal services that the commission is required to do.

Mr WELLINGTON: But with respect you are not answering the question. I am trying to work out how much.

Dr Levy: I cannot answer the question really.

Mr WELLINGTON: But everyone is saying there are going to be significant savings. Surely there must be some formula you have looked at to say, 'Yes, we're going to save these two staff. They won't have to process the applications and forward them on to the council or to whoever.' Surely someone has done some exercise. I cannot believe you have not.

Dr Levy: I said we have done—

CHAIR: At the moment I think you said there were 4,494 complaints, of which 63 have been investigated. So you are dealing with 4,494. How many people have you got employed directly and indirectly on that and processing of those complaints at this point in time? Perhaps we can draw from that. We are not looking for a definitive but just a global just so we can get an idea, because the whole idea is getting into—

Dr Levy: Of the whole area that deals with all of those matters, I am told there are 90. The number who might be affected of that might be 11 who do that sort of work. But, apart from identifying those, we have other areas where we would want to put staff into. So it is about 11 per cent I suppose, if you want to put numbers on it, but that is just based on those very rough raw figures.

CHAIR: And what the member for Nicklin is talking about is something in the future, and perhaps you might expand on that now as to what you anticipate happening if in fact the—

Dr Levy: I am just trying to flag where the change will be and therefore some notional saving but where we would be putting resources into, and we have a number of vacancies as well of course. In terms of the number of vacancies we have in the organisation in terms of the likelihood of us not having enough vacancies to deal with whatever savings we get, one would not expect that much significant variation from that.

CHAIR: So people you save in the triage, if I could call it that, if the complaints come in; if it is less they will be transferred to, depending on skill sets et cetera, fill 34 vacancies as well as equip the rest of the vacancies through—

Dr Levy: Those vacancies across a whole area of—

CHAIR: Indeed. I am not suggesting anybody could just move across, but obviously there might be some sort of—

Dr Levy: There are some lawyers. They are not all lawyers, but that does not mean that we will not have roles for people. Certainly in the transition to a new organisation there is always some turnover anyway. There will be change—there is no doubt about that—but I do not think it is something where we expect that it is going to be that a significant number of the existing staff will not be doing similar functions to what they are now. It is just hard to be more precise.

Mr WELLINGTON: I am happy.

Ms PALASZCZUK: I have one final question, Dr Levy, in relation to how important it is that the CMC be independent and be able to investigate any allegations of corruption. Has ICAC been in touch with you in relation to any Queensland connections with their investigation involving Australian Water Holdings, and I understand that Premier O'Farrell has just resigned?

CHAIR: I am not going to allow that question.

Ms PALASZCZUK: These are very serious issues.

CHAIR: Yes, I appreciate that.

Dr Levy: Yes, but—

CHAIR: Dr Levy, no. The reason I am not allowing that is because it is not dealing with the bill. There is an estimates and another place for another hearing. There is parliament. I am more than happy, but I just do not see the relevance of it. We are going to adjourn for 10 minutes. Thank you very much for giving us your time. We appreciate that. Thank you.

Dr Levy: Thank you.

Proceedings suspended from 10.22 am to 10.33 am

MARTIN, Professor Ross, former chair of the Crime and Misconduct Commission

CHAIR: Thank you very much. The public hearing of the Legal Affairs and Community Safety Committee into the examination of the Crime and Misconduct and Other Legislation Amendment Bill 2014 is now resumed. I welcome Professor Ross Martin QC. Good morning and thank you for coming along, Professor. Can I begin by asking if you object to being filmed or recorded by Hansard and the media?

Prof. Martin: No objection.

CHAIR: You are probably used to it by now, I suspect. Could you confirm that you have read the guide to appearing as a witness.

Prof. Martin: Yes.

CHAIR: Can you please introduce yourself, speaking clearly for Hansard and then please make an opening statement if you wish. The committee will then have some questions for you.

Prof. Martin: My name is Ross Martin. You have my written material. May I simply amplify a couple of points if I may? It is axiomatic that independence like justice may be both real and perceived. The diminution in independence or its perception brought about by the removal of bipartisan support is manifest beyond the need for further elaboration. To adapt Dr Levy's metaphor, everyone's Geiger counter is pinging on this.

I would like to make some further points about bipartisan support and mention its value. It confers a protective function on governments as well as oppositions and the CMC itself. Can I amplify what I mean. The first is that no government is in power forever. What bipartisanship requirement does is it protects a current incumbent party against the day when it is not in power. The second point I would make is that the requirement for bipartisan support blunts the capacity for partisan attacks by parties on each other, on the CMC, and so on. Where each side has ownership of the relevant appointments to the degree that bipartisanship confers, then debate is not stifled but rendered more temperate by that provision. Lastly, still dealing with the aspect of the protective function that it confers, all parties are vulnerable to a member or some members going down the road of corruption and history seems to suggest that there will be a corruption scandal if any government is in power for long enough. A government seen to have diminished the CMC—or CCC—will carry the political burden much harder when that occurs.

I would also ask this question rhetorically: what problem is being solved by this change? It is difficult to find people to become members—commissioners of the CMC and chairs—but the reason for that I apprehend has nothing to do with the need for bipartisan support. Dr Levy mentioned that this is a health-damaging position.

Can I make this point about the CMC and its uniqueness from other functions in government. The CMC, unlike courts and unlike other bodies, very publicly and in respect of people who are very powerful initiates proceedings and, just as importantly, it chooses not to initiate proceedings. The initiation, once it is done, is done in public and there is a discourse about that in the public domain. But when it chooses not to initiate, then mostly those decisions are conducted in private and the community may never know about them. If the community were to suspect that decisions not to initiate proceedings were based on anything other than grounds of good faith within a culture of a courageous willingness to pursue corruption, then that criticism, or that mistrust, rebounds as a criticism of government. The CMC is always criticised. That is business as usual for the CMC. But its reputation carries it through the crisis of the day. Damage to perceptions of its independence reduces its capacity for its reputation to carry it through the crisis of the day.

Can I turn now to the research function. My simple rhetorical question is: why should the government have the power to stifle research that might be politically embarrassing? The principle behind the CMC is that it is not answerable to the government of the day; it is answerable to parliament. So in principle, in my respectful view, the research function should be answerable to the PCMC and to parliament, not to the executive of the day.

As to the prevention function, I have said what I have in my written material and I do not propose to add much. As to the complaints function, increasing the CMC's focus on more serious matters is the long arc story of the CMC since its inception in 2001. For my part, the answer in increasing that focus is a progressive refinement in internal processes rather than elaborate statutory changes to things. But that is not an issue about which I hold views that are passionate.

As to the provisions dealing with deterring public complaints, I suspect ultimately that requiring statutory declarations and so forth is a matter of policy. It simply will not work. There will always be people who ring in and they have to be managed through a process one way or another.

They will be told that they can provide a statutory declaration, in which case they will have to be managed through the process of providing it. One simply cannot ignore these things. Imagine if an anonymous but detailed and cogent complaint came into the CMC and it could do nothing about it, yet sometime later the complaint became public and it became known that the CMC had the complaint but could not act upon it. The position would be manifestly absurd. For that reason at least the power to act without a statutory declaration must be, in my respectful submission, substantially wider. I comfortable with the idea that the CMC should be in a position to be able to insist upon statutory declarations in circumstances where there are people who might be thought to be acting in less than good faith.

As to the position of the CEO, I have said what I have said in my written material. It comes down to this, in my view: if the chair and the CEO get on, then it does not really matter that the structure is. Business will operate. We have to prepare against the day that they might not and if they do not get on, no structure will prevent the hostility between the two of them being manifest. If the position is intractable, section 236 requires bipartisan support to dismiss one or the other and quite an elaborate process would be part of it, because these positions are protected. Once a CEO becomes a commissioner, then dismissing him or her becomes a very difficult process. I would accept the proposition that there is a need for a CEO. The question is whether it is a valuable addition to make that CEO a commissioner. But minds can reasonably differ on that. I only make that observation. Because time is limited, I will not make any further introductory observations.

CHAIR: I might perhaps start by picking up your analogy when you said mining for gold, which I thought was very appropriate because, with gold, there is a huge overburden and that really seems to be the issue. We have limited resources. Society is wanting more and more in health and education and so forth. Of course, the CCC—or the CMC—is just one part of that jigsaw puzzle which has to be resourced and resourced properly. Using that analogy, there is a huge overburden, coupled with the fact that, the since the CJC, the QCC et cetera, there is a transition going on. Would you accept, though, that the corporate governance model has changed since the time of the CJC?

Prof. Martin: Not necessarily so, simply because the merger of the QCC and the CJC into one body—not without some difficulties—in my respectful view has been managed well. I do not mean by me; I mean before my time. I do not have a great difficulty with the idea that a CEO might be an important function, but there is already an executive general manager and the person who is the chair needs an executive general manager or somebody performing that function. I do not think, respectfully, that the chair will be relieved of any great duties. The CEO has certain functions, such as employment and budget and what have you, but the chair will still have to be on top of those details by virtue of the fact that he or she is the leader of the organisation. The mere fact that there is a CEO who is a member of the board does not mean that the rest of the board, including the chair, can wipe their hands and point the finger if anything goes wrong. I suspect that it will not really make that much of a difference, except so far as the point I make that, if there is a clash, how does one resolve it?

Ms PALASZCZUK: Thank you very much, Professor Martin, for your time today. I just would like to seek your views on the current situation where we have had an acting chair for the last 12 months and under the provisions of the act that this committee is examining the term of that person would be appointed to 31 October 2014, which would mean that the person would be in that role for 17 months without advertisement. Would you just like to put forward your views in relation to that matter?

CHAIR: If you can.

Prof. Martin: If I have views.

Ms PALASZCZUK: Yes.

Prof. Martin: I speak generally when I say that it is desirable for the chairperson to have bipartisan support, to be appointed with bipartisan support. An acting chairperson, even now, is not required to have bipartisan support. That, of course, is against the possibility that the acting chairperson would probably be only there for a relatively short period. In practice what has happened in the past is that the acting chairperson was a commissioner or an assistant commissioner, all of whom had gone through a process of significant scrutiny by the committee. I say nothing about the present incumbent because I apprehend that his position was brought about through my resignation.

CHAIR: It is probably not relevant here today anyway.

Prof. Martin: All I say is that it is desirable, and I maintain my consistency, that people in that position have bipartisan support.

CHAIR: In relation to that bipartisan support, and just drilling down a little bit, because effectively what you are doing is you are actually appointing a person to fulfil a job and there has been a history of people being appointed who do the exact opposite to what you thought they might do anyway. I am not entirely sure that I am reaching the connection between bipartisan support in terms of choosing a person and what that person does in the office.

Ms PALASZCZUK: It is called independent corruption watchdog.

CHAIR: Yes, I know. If I might just comment on that. Today in corporate governance you actually have a team of people come in and you look at your board and you look at the skill set. I can remember a board that I was on where you had too many lawyers, not enough insurance et cetera. They said, 'You've got too many lawyers'. It just seems to me there is a skill set for the chair as well as the commissioners. If you could comment on that in terms of what modern corporate governance is today.

Prof. Martin: There are two steps in the process to appointing the chair. The first step is done by the executive government. That is to say, they identify a chair, they think about the skill sets and government does decide who the optimum person is. Against that, part of that decision is that the person is sufficiently manifestly independent that they will survive the bipartisan process. So everything that you have said is picked up, as I understand it and as I appreciate it, in the process of the government's first step in identifying what is necessary. What then happens is that the person so selected is presented to the PCMC who asks questions. From my perspective it was something of a job interview. They obviously had information about me before I went there, but I was asked questions and I was lucky enough to be perceived to be worthy of support. That I think is the way it works and so there is no necessary clash between the requirement for bipartisan support and making sure that the balance of the board is appropriate. It is not as though the chairman appoints the board members or anything like that, although he is consulted. I think the two can live quite happily together.

Mr DILLAWAY: I refer to your submission where you stated that generally you are not in favour of erecting barriers to complaints, such as stat decs, I am assuming you are referring to.

Prof. Martin: Yes.

Mr DILLAWAY: Because, and I quote, 'The simple reason is that some valuable investigations have come from unpromising material, including anonymous complaints.'

Prof. Martin: Yes.

Mr DILLAWAY: Earlier on today we heard from the department that information to the CMC can still be submitted without the need of stat decs and if it is information only, or there may be a variety of exceptions which is not an exhaustive list at this stage. Therefore, do you agree that investigations could still be undertaken that may indeed lead to investigations.

Prof. Martin: It depends what all of this means. The language in the legislation is not clear. It seems to depend upon the internal interpretation of the CMC as to what words such as 'complaint', 'information' and 'matter' mean. Those three different words have enormous capacity for overlap. If the point of making people create statutory declarations is to prevent the CMC acting upon anything that is not by way of a statutory declaration, other than in those narrow exceptions, then it is possible that a good complaint, and the example I mentioned, the hypothetical example I mentioned, may well simply not get anywhere. If the CMC, the CCC, cannot find for some reason the author of the complaint to track them down and get them to sign up, what is it to do? The legislation simply is not clear. Respectfully, requiring statutory declarations as a barrier to investigation is contrary to the historical position where low-grade complaints have turned out to be very fruitful indeed.

Mr DILLAWAY: In your opening remarks, as a follow-up question, you did, I believe, correct me if I am wrong, indicate that statutory declarations under certain circumstances might very well be useful.

Prof. Martin: Yes.

Mr DILLAWAY: We heard from the department earlier that there obviously is already a list and there has been submissions made by both the CMC and also the Queensland Law Society that highlight some other examples where that may very well capture more opportunities where a stat dec is not required. Would you, in your opinion, from your past experience, believe that that would maybe make it a little bit more of a robust system?

Prof. Martin: What I would prefer to do is invert the obligation. So rather than it being prima facie necessary for there to be a stat dec, the position be, rather than that, the CMC can insist that there be a stat dec. However, it may be that with sufficient tweaking of the requirement for a stat dec that may solve the problem one way or another. And I suspect it will be solved.

Mr DILLAWAY: You were just touching on there that obviously that goes back against what I guess has been part and parcel of the CMC, or the CJC or whatever it has been known as, for a number of years, and it was acknowledged by the department earlier on that in your submission you stated that under the original recommendations of the Fitzgerald report and the inquiry that bipartisan support for the appointment of the commissioner was not actually one of those recommendations. Is that your understanding?

Prof. Martin: I have read the material. The history of it seems to be that the party that was a predecessor of the current government was the one that brought about the requirement for bipartisan support. Perhaps the reason for that was the point I made, which is that it saw the day when it was no longer going to be in power.

Mr DILLAWAY: One of the recommendations of the Fitzgerald report was that bipartisan support was not necessarily required.

Prof. Martin: I am not sure he went so far as to say that. What he said was consultation, and he did not expand upon what consultation meant. So it seems, historically, that consultation back in the day was interpreted to mean bipartisan support. The language that was then in 1989 enacted is different from the language that is there now but the concept is still cognate and the history goes back that far.

Mr DILLAWAY: We also heard from the department that there are a number of other independent statutory bodies that have positions similar to a commissioner where their role right now is actually a consultative appointment as opposed to bipartisan support. I would argue that there is precedence out there for those statutory bodies and for those commission type roles. It is more of a consultative approach as opposed to bipartisan.

Prof. Martin: It is not a matter of looking for precedence. How many times is the Information Commissioner on the front page of the paper, it being challenged constantly? The CMC must have the confidence of the community that when it makes decisions, notwithstanding the crisis of the hour, that its reputation will carry it through. A prime way to support its reputation is that all parties have bought into the members of the commission, including the chair.

CHAIR: Indeed.

Prof. Martin: It is quite separate from, in my respectful submission, other bodies, such as, for example, judicial officers who have a very important position to play, but the CMC is of such a profile and has such powers, much wider than those other bodies you mentioned, and undertakes investigations of such profile that it is quite different.

CHAIR: Certainly confidence is one thing, but also it has to be effective.

Prof. Martin: Yes. I accept both of those aspects.

Ms PALASZCZUK: Professor Martin, this is in relation to the research function that you mentioned in your submission. You mentioned the restrictions on the exercise of the research functions of the CMC. Can you give some examples of research that was undertaken by the CMC that might not in your view have received the approval that will now be required by the Attorney-General? I notice in your submission you talk about political donations as one, licensing.

Prof. Martin: It is not appropriate for me to suggest that the present government might or might not undertake refusal with respect to any particular matter. The point is a larger one. It is not about what might happen now, it is what might happen some distance down the track. Accepting the present government does everything it is asked to do, the present Attorney-General does everything he or she is asked to do—presently he, of course—what happens down the track? The veto would not be public and the temptation to veto something that might be politically embarrassing is robust. It should not be there, in my respectful opinion.

Mr WELLINGTON: I want to say thank you to Professor Martin for your informative submission and for coming along today to be prepared to speak to that report. I hope not just this committee considers it but, more importantly, the powers of government listen and read.

CHAIR: Thank you very much, professor, for giving us your time. It is very much appreciated. Thank you for your attendance.

GOW, Dr David, Former part-time commissioner

CHAIR: I welcome Dr David Gow. Good morning. Thank you for coming along today. Can I begin by asking if you object to being filmed or recorded by Hansard and the media?

Dr Gow: I have no objections.

CHAIR: And that you can confirm that you have read the guide to appearing as a witness?

Dr Gow: I have.

CHAIR: Can you introduce yourself, speaking clearly for Hansard, and then please make an opening statement if you wish. The committee will then have some questions for you. Do you have a long opening statement?

Dr Gow: I will keep it fairly short.

CHAIR: I would be obliged.

Dr Gow: My name is David Gow. I am one of four other part-time commissioners who have made a written submission which is, I assume, before you. It is submission No. 33. Two of those part-time commissioners also served time as acting chairs of the CMC. Consequently, we have both knowledge and experience collectively in the areas of law and public administration and corporate governance. That is the basis on which our submission is made. We acknowledge that the CMC is an organisation that needs change. This bill does indeed bring some welcome organisational changes. They include the creation of the position of the CEO, which we think will ensure the CMC has high-level executive and administrative knowledge and experience. We hold aside whether that position should be a statutory position or not. Our submission is really based around three principles that we want to advance and which we think provide benchmarks against which some aspects of the bill can be assessed. The three principles currently in the CM act are based upon what we think desirable and accepted by all political parties. They are: the independence principle. Simply put the CMC is an independent body that operates at arm's length—that is, as far as practically possible—independent of the government of the day. This finds expression in section 57 of the CM act which says the commission must at all times act independently, impartially and fairly.

There are another two principles which we think are also relevant. One is the accountability oversight principle. The CMC is to be accountable to the parliament through the PCMC, as the PCMC has the responsibility for exercising oversight of the CMC. The third and final principle is the governance principle, or perhaps the corporate governance principle. The five commissioners meeting in session are responsible for setting the strategic direction of the CMC and for monitoring and assessing the performance of the CMC. The commission is accountable to parliament through the PCMC. These principles are embedded in the current act. These three principles are all well within the reach of the legislature to exercise its powers to change, modify, close or expand. Our point is that any legislation that impairs the operation of these principles ought to be subject to strict scrutiny and that the relevant changes should be justified in terms of a public interest test.

Let me turn to what I think is the key issue: the issue of bipartisan support. Currently, as you would be aware, under section 228 there is a requirement for bipartisan support for the appointment of commissioners including particularly the chairman. The proposed bill cuts across the independence principle. In our attempt to assess the reasons and the rationale for these changes we have basically drawn a blank. Let me tell you where reasons are not provided. They are not provided in the Callinan-Aroney report, which makes no recommendation about the appointment process of the chairman or part-time commissioners; nor in the Keelty review; nor in the PCMC's inquiry into the recent destruction of Fitzgerald documents; nor can we find it in the Queensland government's response to the PCMC's inquiry or the Callinan-Aroney report. Put differently, we can find no reference to a problem, a deficiency or a shortcoming in the current appointment procedure that provides a rationale for which the proposed amendment is designed to be a remedy. Thus it is difficult to assess the reasons why this proposal or this amendment is being made simply because the case has never been put.

If we turn to the explanatory notes to the bill, they are somewhat opaque in their account of this particular section. We can, however, gain some type of guidance perhaps by looking at the practice in other jurisdictions. I refer members to a table in our submission on page 5 that simply compares the requirements for the appointment of the chief officer, whether called chairperson, commissioner or chief commissioner, in each of the six Australian states. In five of those states there is an explicit legislative requirement for bipartisan support. In one state and one state only—Tasmania—there is no such requirement: there is a consultation requirement. If we look to guidance from the practices of other states it would certainly suggest that the current requirement remain intact—that is to say, that we continue to have bipartisan support.

As a final comment, let me refer back to what I think is an appropriate way to reach a judgement about this particular section. Its purpose is clear. It is to ensure some degree of independence of the CMC. If there are going to be inroads through the appointment process, then it ought to be justified by some compelling arguments that suggest the public interest is better served by simple consultation rather than bipartisan support. Our written submission goes on to touch on other issues about corporate governance, but I best leave that for questioning.

Ms PALASZCZUK: Thank you very much, Dr Gow, for your time. I might ask a very similar question that I asked Professor Martin. Currently we have an acting chairperson who has been appointed for about one year. There is an amendment proposed here to the legislation which would look at extending that appointment by another five months which would mean the acting chair would be in the position for 17 months without advertising and without the recommendation that currently exists in the legislation having bipartisan support. Can I canvass your views on the current situation that is before us?

Dr Gow: I would prefer to speak to the principle rather than the current situation, if I may?

Ms PALASZCZUK: Absolutely.

Dr Gow: I think the principle of bipartisan support has a number of different dimensions to it, one of which is that it engenders public confidence in the CMC. The lifeblood of the CMC is information. That is to say, it is essentially a complaint driven or largely complaint driven information in which people dispersed throughout the state decide to write, phone, contact the CMC and raise issues. The willingness of people to do what seems to be a simple act depends in part on their confidence that they are going to get a fair hearing from the CMC and that the information they give, at sometimes personal risk to themselves or at personal risk to their careers, is going to be protected and the investigation is going to be an honest and forthright investigation—or the review of the complaint and if there is a subsequent investigation it is going to be honest and forthright. Consequently, the bipartisan support requirement enhances the capacity of the CMC to do its task. That is one of the most significant aspects of the requirement.

Ms PALASZCZUK: Would you go so far as to say that removing bipartisan support would lessen the public's confidence in the watchdog being independent?

Dr Gow: Yes, I would. I think it will impair it. Whatever the reality may be, we know that perceptions often drive the actions of people. If people perceive that the PCMC is nothing other than an extension of the government of the day, or unwilling to vigorously investigate any complaints that may relate to the government of the day, then undoubtedly they are not going to make complaints for fear that it may adversely affect their own careers or their own lives.

CHAIR: I understand what you are saying, but one of the problems is that you are talking about people having confidence in the CMC. We had 4,494 complaints of which 63 are investigated. As a member of the public, I am not particularly enhanced by that. I do not feel particularly confident about it. In fact, the impression I am getting of the CMC from an outsider looking in is that it is just one big bureaucracy into which people get great incomes without results. Very little seems to be happening. My anecdotal evidence is things like unexplained wealth. We have $2 or $3 million in unexplained wealth over 10 years or so. It is not a lot of money. It seems to me that it is a big organisation which has been well resourced over the years. Does it cost $50 million or so a year?

Dr Gow: That is correct.

CHAIR: I am happy for people to be confident, but has it been effective? That is the difficulty I have personally with it. Is it effective? Of 4,494 complaints, 63 have been investigated and some of them take two or three years, and I have my own anecdotal evidence about a matter in Ipswich. Please explain to me how you said bipartisanship enhances its requirements. Bipartisanship appoints, but I am having difficulty in understanding how that really gets this ball rolling faster and more economically. I need to understand that.

Dr Gow: Mr Chairman, I think there are genuine issue about the performance of the CMC over the last 15 years and I do not question that. I would not even question but perhaps soften a little bit the characterisation of the CMC that you have made.

CHAIR: I am an outsider looking in.

Dr Gow: I think there is fair comment there. I suspect, but I do not know, that if you were to contact those people who made complaints to the CMC you would find there is a tremendously large amount of dissatisfaction about the way the CMC has managed their complaint, and I think in many instances there is good grounds for that dissatisfaction. Notwithstanding that, I think there is a wide level of support out there by the community at large.

CHAIR: I will come to the aid of the CMC as well—

Dr Gow: Oh wonderful.

CHAIR:—in comparing to a judge. Judges get criticised all the time even though they are doing the right thing, but it is a perception by the public. But they have got to do the job; they cannot deviate from the rules or the principle of deterrence et cetera. So we have this conflict.

Dr Gow: We do indeed and my point is really a simple point. The elimination of the bipartisan support requirement will not go to remedy any of the problems that you have raised or discussed. The only thing it will do is erode public confidence in the organisation. It will not enhance it surely. There is no compelling case that has ever been advanced that I can see or that has been made for the elimination of this particular requirement.

CHAIR: I could be the voice of the public in saying that, if you ask 100 people whether or not the CMC is bipartisan in terms of its chair, 99 would have no idea.

Dr Gow: I think the elimination of the bipartisan requirement would further enhance that particular view that the CMC is a plaything of the government of the day. I think the person in that role would be much better equipped to go about the task—and it is a very, very difficult task in leading the organisation—if they are there with bipartisan support.

Mr DILLAWAY: Thank you very much, Dr Gow, for your submission and your summary of bipartisan support. To stay with that theme, we heard from the department earlier that the Commonwealth commission does not have bipartisan support.

Dr Gow: That is right.

Mr DILLAWAY: It is a consultative role. Often across different jurisdictions there are different interpretations of what something actually means. My understanding for using New South Wales as an example—and many of them have veto powers through their parliamentary committees or similar—is that that is a majority principle. Therefore, if it goes to the parliamentary committee that is responsible for the commission, if a majority of those accept the appointment it is not a veto as such. It is a majority of the parliamentary commission; is that your understanding?

Dr Gow: I would have to re-read the act. I am not particularly familiar with it. I simply consulted it to compile the table, but I am not sure about the details of it.

Mr DILLAWAY: Thank you.

CHAIR: To ameliorate the bipartisan approach, I would be suggesting to you—and I would like you to comment—the fact that it has a five-year tenure as the chair.

Dr Gow: As opposed to the proposal to extend it or make it possible for another five years to make a total of 10 years?

CHAIR: Yes. I will not say it becomes a judge like state who is appointed to the age of 70, but I would be respectfully submitting that the longer the tenure it does give that chair a good degree of independence. He has five years within which to change the culture.

Dr Gow: I think the mechanism, however, requires once again an extension or reappointment by the Attorney-General.

CHAIR: For another five years.

Dr Gow: Put differently, for an incumbent seeking to serve a full 10 years there is an incentive to not go hard on the government of the day under those circumstances.

CHAIR: Assuming 20-year terms?

Dr Gow: No, two five-year terms.

CHAIR: Indeed. I think we have probably explored that.

Mr BYRNE: Dr Gow, your submission talks about the governance structures, and I know you and others have commented on the CEO and the dual role. I have considerable concerns about that duality of role or duality of purpose, I suppose. With your experience, would you like to comment about governance and the role of the CEO, given what I see in this bill is an extremely broad role the CEO has and the fact that it is connected to a commissioner?

Dr Gow: Thank you for your question. Could I start a little bit higher? The bill makes significant changes to the governance of the CMC. One is that it strips the commission of much of its responsibilities. It becomes increasingly an adornment. On everything of significance the commission is no longer able to give a direction to the chairman. This represents, I think, a serious

backward step. It ought to be quite clearly in the province of the commission to be able to make many of the decisions for which it is ultimately responsible to the PCMC. So I think that is the first issue.

The second issue, the one that you have raised, is a difficult one. If I can briefly canvass what I think are the elements of it. Chairmen have, in some instances, come from the private bar and they have not had particular experience in the management of a large and complex organisation of about 300 people with a budget of about $50 million. I think it has been a fairly difficult task. I think every chairman has put in quite extraordinary hours in order to serve those dual roles. Quite clearly they need assistance in performing their functions.

The position of executive general manager was created and designed to support the chairman in this role. My sense is that I still do not think the chairmen fully understand how to utilise the executive general manager and their support staff as effectively as they have. If you have come from the private bar you have been principally a one-man band. Whether the position now to be called the CEO is entrenched as a statutory position, also to be made a member of the board, I have misgivings about. I think it is best left as a position within the organisation created by the commission.

Mr BYRNE: Is it theoretically possible to be on the board as the CEO without being a commissioner itself?

Dr Gow: It certainly would be possible.

Mr BYRNE: To me, the connection between being a commissioner and what I see as the traditional CEO role is the piece that concerns me.

Dr Gow: Under the current arrangements my position would be that the CMC is ungovernable in any meaningful sense of the word, and I could take you briefly through that, if I may. The proposed bill I think quite rightfully addresses one of the main issues. Under the current arrangements, the chairman serves as both CEO and chairman of the board. There are two second-tier positions within the organisation: Assistant Commissioner (Crime) and Assistant Commissioner (Misconduct). They are statutory positions, and these officers often serve, in the absence of the chairman, as chairman. By virtue of serving as chairman in the absence of the regular appointee, they then chair the commission. So the net result is that second-tier officers, if you will—that is to say, down the organisational chart—then serve as chairman of the commission. That is simply not discussed in any of the literature on corporate governance because I do not think anyone in their right mind would ever design such a scheme. But nonetheless, it is the practice in the CM act. Quite correctly, I think, the current act changes that arrangement. They are no longer statutory positions; they are no longer governor in council appointments. So it is a step forward for the current bill and a change that I would like to endorse.

If a CEO is to be created and have a position on the board, the situation is that then the commission will consist of the chairman, the CEO, a deputy chairman and then two further appointees who we might regard as the external appointees outside the normal management lines. That, I think, weighs heavily to management and I think seriously weakens the position of the external appointees. It is of little import, however, if the function of the board, as the current bill contemplates, is to remove most of the powers of the commission and centre them in the chairman and the CEO. Put differently, there is work to be done on corporate governance here. There are some steps forward that this bill makes that I think are significant enhancements to corporate governance, but it also compounds the situation in the way in which it constructs these other positions. It gives them positions on the board and then, as it were, seriously dilutes the powers of the board.

CHAIR: Every five years—getting you back to it—I think every government appoints a chair who will carry out the functions to the best of his ability. One does not appoint a chair in anticipation of it getting into areas of corruption and hoping that the chair will go the government's way.

Dr Gow: I agree.

CHAIR: So I take your point what you are saying.

Dr Gow: It is simply whether you want to give the commission—essentially the board—the normal role that commissions and boards play or you want to have a faux commission which is largely stripped of any real authority.

CHAIR: Thank you very much for giving us your time. It is very much appreciated.

KEIM, Mr Stephen, SC, Bar Association of Queensland

CHAIR: I welcome the representative from the Bar Association of Queensland, Mr Stephen Keim. Good morning. Thank you for coming along here today. Can I begin by asking if you object to being filmed or recorded by Hansard and the media?

Mr Keim: No, that is fine.

CHAIR: And that you confirm you have read the guide to appearing as a witness?

Mr Keim: I have looked at it.

CHAIR: I will take that as being read. Can you please introduce yourself, speaking clearly for Hansard. Then if you wish, you may make an opening statement, and of course we will have some questions for you.

Mr Keim: Thank you, Mr Berry, and thank you to the committee as a whole. On behalf of the Bar Association of Queensland, I thank the committee for the opportunity of making a submission and also for the opportunity of appearing here today. I have been reading some of the other submissions and the association's submission is quite thin, I notice, in contrast. Hopefully we have put something in it that is of substance nonetheless.

Out of the various topics that the submission deals with, I thought I would just deal with two. The first of those is what is referred to under the heading removing the safeguards or 'Loss of Independence' in the submission. I have listened to Dr Gow's presentation and the questions that he was asked and also some of the presentations before that. It is probably important to stress that there are a number of factors that are removed from the appointments process, and I have listed them here as five. There is the removal of the community qualifications for part-time commissioners in the current act in two alternative bases. I have listed as an additional factor, although it is part of those community qualifications, the loss of the civil liberties requirement. It is not only that the person is required to have a consciousness of civil liberties values, but also that the person is appointed from one of four nominees: two from the Bar Association and two from the Law Society. In an organisation that must and is properly given exceptional powers to exercise against people, I think that community qualification and the backing of the association and the society is an important loss in the present draft.

The third requirement that is removed is that at least one of the commissioners be a woman. Then one of the changes is the full-time addition of the CEO to the commission, and that replaces a part-time commissioner. I think that does have an effect, because it weights the dynamic to the full-timers. Going back to those exceptional powers, there is a real concern with any body of this kind that, dealing with information about criminals all the time, you can see only your own reflection all the time. So I think it is really important in the current commission that we have part-time commissioners and people from separate backgrounds. To give that extra weight to the full-time commissioner by having the CEO in replacement of a part-time person does have an effect. The fifth is the huge elephant in the room that we are all talking about: the loss of the bipartisan requirement or the loss of support for the appointee on a bipartisan basis from within the parliamentary committee. I think those five losses are very significant.

Can I just touch on a point that I think Mr Dillaway may have raised earlier. I actually think the history is more emphatic in that the Fitzgerald report stressed the requirement for 'independence from the partisan atmosphere', or words to that effect. It was in fact the three parliamentary leaders at the time, Mr Cooper, who was the Premier, Mr Innes, who led the Liberal Party, and Mr Goss, who was the Leader of the Opposition, who came up with a mechanism in order to achieve the value that Mr Fitzgerald had put forward in the report. I was reading that the other night, and there is an interesting remark from one of the National Party members, and I forget who it was. He made the point that 'Mr Fitzgerald is only one person, but we represent the whole people', and then some ratbaggy Labor Party member has rubbished him for only representing 8,000 people—but that is beside the point. The point was that it was the people who represented all of the people who came up with this mechanism. It is slightly different wording now, but I think that combined history of the endorsement of Mr Fitzgerald but not the mechanism, and the mechanism coming from the three parliamentary leaders, is an additional importance that the current structure carries with it. That is what I wanted to say about the structure.

There are other things in the submission about the authoritarian structure, some of the things that Mr Gow touched upon, some other matters that the association's submission has touched upon, as have others opposed, including that of the Law Society.

The other thing is the use of changing 'chairperson' to 'chairman'. I might just read a paragraph from the submission in that regard.

The use of non-gender specific language in legislation and in government publications is important in both reflecting and promoting a mind set in favour of equal opportunity values. The use of such language has been a bi-partisan policy at most levels of government in Australia for several decades. The Association perceives it to have very wide support in the community not just but particularly among women.

That is what the submission says. I just wanted to add to that that it is, I think, undeniable that symbolism is important. We can say, 'It is only a symbol. A woman can be appointed a chairperson.' I think that may have been quoted in public in recent times. But symbolism is extraordinarily important: that is why we have flags; that is why we have anthems; that is why we have portraits on the wall; and that is why we have public holidays—because symbolism is important. So that change is of huge symbolic importance and the association, as an equal opportunity body itself—as we sat around the table the other night we were quite astonished by that proposal. That is what I wanted to say by way of opening statement.

CHAIR: I thought we actually might avoid that for the whole day, but thank you for raising that issue.

Mr Keim: No problem at all. I am here to please.

CHAIR: I understand what you are saying. I understand there is symbolism, but I was of the view that it is people who change the language and it changes naturally. I mean, English is what it is today because it is a bastardised language. We take on everybody. I do not know that you can actually artificially legislate for changes of words. I mean, 'personcover' instead of manhole cover; 'midperson' for midwife? I mean, we could go on, but I understand where you are coming from. You have made the point, and it is rhetorical. I do not expect you to reply.

Mr DILLAWAY: Thank you, chair, and, Mr Keim, thank you very much for not only your submission but just touching on those five aspects. I just want to explore some of those. I do not have the answers to them so I am hoping that you do. In other jurisdictions across Australia—and we have certainly seen from some of the submissions that they have made some comparisons between them—are you aware if bipartisan support is required for their equivalents to part-time commissioners or assistant commissioners?

Mr Keim: No, I have not researched that at all. My emphasis and that of the association comes from our natural born history here in Queensland. I think it is that history that gives it particular importance, I think.

Mr DILLAWAY: Sure. I am just trying to highlight that for governments of the day—and I think it is their responsibility and I hope you would agree and I will get your opinion on it—it is necessary to review legislation from time to time and it is also important to ensure that that legislation stays on the original intent of the recommendations from a particular report that may have been the trigger for that piece of legislation. Would you agree with that?

Mr Keim: I think what lies at the heart of the importance of all legislation are values. It is important that the values in the new legislation, with whatever changes are made, are values that we can still feel proud of. I think the values of independence—and, in fact, Dr Gow I think set out five of them that were very important—I think independence in a body that is both an anticorruption body but also an anti serious crime body, independence, I think, is particularly important, as the Fitzgerald report said. In picking up your point, those values from the report are important. I think they need to continue to be reflected in the legislation.

CHAIR: Okay.

Mr DILLAWAY: In regard to that, as time goes by—and we know that from 1989 until now society has changed considerably—there becomes an ingrained cultural change within how we approach things and how we do things. To give you an example, in 1989 and certainly during the 1970s and 1980s there was a rebirth of civil liberties, certainly within Queensland. Would you not argue now that that is already ingrained in our culture and that there is not necessarily a need for a specific aspect of the legislation to say that one of the part-time commissioners must be somebody from civil liberties when our cultural change in Queensland now is that we accept that and that is part of our day-to-day activities?

Mr Keim: 'The price of freedom is eternal vigilance' is the quote. I do not agree with your summary of the events that have occurred in the last 25 years. Obviously, you can argue as to whether that position is required or not, or a better arrangement is required or not, but you are talking in broad terms. I think one of the factors of historic importance is the crash of a couple of

buildings in September 2001. That has resulted in an increased amount of legislation, starting in the anti-terrorism area, which has tended through parliaments to cherry pick those provisions in that legislation and to then place them in other pieces of legislation, which apply only domestically. So I think the need for concerns, even as we say, 'This particular power is appropriate to be provided to the law enforcement authorities,' the need for a bulwark to make sure that those decisions are made properly and they are not made excessively I think becomes increased. That need is increased. So I would not agree with your sociological sweep. I actually think that, whether it is defined in particularly the same way or not, the need for a watchdog position on the commission to make sure that the commission does not abuse its own powers, which are probably much greater than they were in 1989, or 1990 when it started operating. I think the position is even more important now.

Mr DILLAWAY: Okay.

Mr WATTS: I am curious with regard to the appointment in relation to the civil liberties question. Would you not expect that a merit appointment would mean that everybody would have some experience with civil liberties and would have some concern on their restraint? It seems strange to have one so-called expert as necessary when I would see that as something that needs to be across all appointments.

Mr Keim: I think there are two aspects to it. It is a matter of emphasis. You and I share much the same values. We come from a similar society. We share much the same values and we share values that go to liberties and freedom and civil liberties. We also share values about the importance to have an effective law enforcement system that people who are found guilty of serious offences are punished, that there is a proper deterrence to crime et cetera. That broad sweep of values, we share them, but I may place more emphasis on one aspect of those values than you might. You might place more on the crime fighting, because you have come from a particular background to the commission and that is your work and you place an emphasis on it. So that is the emphasis—the shared values, but the emphasis.

The other thing is the portfolio aspect of it. If the person is appointed from a group, two nominated by the Bar Association and two nominated by the Law Society, they feel the responsibility. They have a degree of portfolio. That does not mean to say that they will not neglect the other important aspects of the commission's work, but they will feel that, if a question has to be raised about the excessive use of powers or a demand for more powers, then they are the person with that responsibility—just like the Minister for Agriculture may not know more about agriculture than the Minister for Education but the Minister for Agriculture has a responsibility in a cabinet to make sure that that portfolio, that interest, is represented. That is why I think it is important.

CHAIR: Member for Broadwater?

Miss BARTON: I just had a question about your objection to the removal of the requirement that one of the part-time commissioners be a woman. In your opening address you said that the Bar Association considers itself an equal opportunity organisation. I wondered whether you would consider yourself a meritorious organisation as well.

Mr Keim: Yes.

Miss BARTON: Do you have children, Mr Keim?

Mr Keim: Only four.

Miss BARTON: Are any of them daughters?

CHAIR: Only four?

Mr Keim: Only two of them. I have grandchildren, too, and I have a cat.

Miss BARTON: There is a point. Mr Keim, would you not consider that it would be better for your daughters and any granddaughters that you may have that they be appointed not because of their gender but because of their merit and because of their ability to do the job?

Mr Keim: I would expect any woman to be appointed to the commission on the basis of her merit and on the basis of her ability to do the job, and there are lots of them out there. I just want to make sure that the people who are shuffling through the binders of folders—the binders of women—that they actually do shuffle through the binders of women and find those meritorious women out there.

CHAIR: Mind you, having said that, we have not only have men and women these days; there are transgender.

Mr Keim: Well, I think that is important.

Miss BARTON: I just have a quick follow-up question. You also expressed dismay at the removal of the bipartisan requirement with regard to the PCMC. I just wondered what you would say to the suggestion that in that circumstance an appointment might be made because it is more publicly agreeable or less controversial as opposed to the right person for the job being appointed and the potential impacts that that might have on the commission, if not necessarily the wrong person was appointed but rather that the right person was not because of what the public perception might be or how the committee might respond.

Mr Keim: I thought—

Miss BARTON: And the negative impacts that that might have in terms of the commission's reputation and its ability to do its job.

Mr Keim: I thank you for that question, Ms Barton. It is a good question. I suppose you can see some of the problems in nominations for judicial positions in the United States where Senate endorsement has to be obtained. I thought Professor Martin dealt with the way of going about it very well when he said that you find the person who has the right qualities but that person would also have a patent degree of independence and is likely to get support from within the committee. Certainly, when we look back at 1989, we see how well the parliament did work and in 1990 when the appointments were being made—that candidates were able to be found who had the talent and who could find support among the parties within the parliament. I really think that at whatever era and from whatever party, an opposition represented within the parliamentary party that continually rejected good candidates would themselves receive public and political detriment if they did that. I think it would be very rare that a good candidate with all the necessary qualities and who does have the necessary degree of independence from the party that happens to be in power at the time would not find support within the parliamentary committee. I do not see it as a problem. I see it as a well-identified theoretical risk, but I would not see it as a practical problem in 25 eras out of 26.

CHAIR: But the times are changing. The CMC, I believe, must change and I will give a brief explanation and just ask for your comment. We have heard earlier 4,494 complaints of which 63 were dealt with. To me, that is a problem. You probably heard that at the back of the room. Combined with the fact that today there are professional CEOs—ex-ICAC et cetera—who would be prominent in taking over roles of chairs, in other words there is a floating population of people who are now more experienced than before. We used to call upon the bar and places and professors and so forth, as we have in the past, but there is now a wider field. The difficulty I seeing is that you need somebody to take the CMC to the next generation, to tackle organised crime, because it is more prominent. Certainly, it is becoming more public than it ever has before. It seems to me that you will need a chair to respond to the position. Necessarily being a lawyer is not now the only credential. As Professor Martin has indicated, what happens if you do not get a CEO and the chair getting on? So there is a finer skill set, which may not necessarily be bipartisan. It might be an outsider. It might be a non-Queenslander and we all know what Queenslanders think about non-Queenslanders taking up positions. Certainly, the public have a certain view about that. So how do you respond to that—that we have in a changing time and, in fact, this bill is really just part of that change?

Mr Keim: I agree that the person who we would want to appoint chair of the CMC today may be a different sort of person to the person who we wanted to appoint 10 or 15 years ago. Why that should cause any problem with regard to obtaining bipartisan support within the parliamentary committee, I do not see how that follows at all.

CHAIR: Okay, just as much as I probably have difficulty seeing how bipartisanship really has an effect upon the chair. I see a disconnect between the two there. Okay, you agree on a person. Just as you appoint a judge. You do not necessarily get the judge who you think you are getting.

Once he becomes independent—he or she, I should say—they are their own person. We know that simply from the composition of the High Court as to what we think is the way people think. But the point I am making is that bipartisanship really is, no disrespect, not as big a deal as I seem to think has been made out.

Mr Keim: I think, and I would hope, that probably four times out of five that it would be exactly as you say, but there is the danger that a government in four or five or 10 years time might choose to appoint a lapdog and they get the appointment right. I mean, it is the danger of somebody not being independent that is the problem and the danger is that that may occur not tomorrow, but some time in the future. That is why you have safeguards. You have flood levees not because it is going to rain tomorrow, you have flood levees because some time in the next 10 or 20 years we are going to have a big storm. And that is what the bipartisanship is. It is a bulwark, it is a protection, it is a safeguard. I would hate to see it go.

CHAIR: That is the difficulty. I have a disconnect to see how that can be as what you say it is. Leader of the Opposition?

Ms PALASZCZUK: Thank you, Mr Keim, for your time today. Just in relation to the transitional provisions where we currently have an acting chair that is basically there for a year without bipartisan support and then there are some transitional provisions that would see that acting chair appointed for 17 months without the position being advertised, I note in your submission, if my reading is correct, that the association's view would be that that particular clause be deleted from the bill. Would you care to that expand on that or just let it stand as written?

Mr Keim: Thanks, Ms Palaszczuk, for the question, and, yes, that is the position of the association. That is what the submission says. Can I say that I am on public record, and would like to repeat it, that I am a great admirer of Dr Levy and I have a great deal of respect for him and for the public work that he has done over many years, but as the submission points out, there is the concern that it is a part-time appointment which has been made in a non-partisan manner and it is now being continued in the legislation and, you have done the maths, that adds up to a considerable period of time. The association does have a concern with regard to that. The other matter, and these are matters before another committee and I do not want to buy into them in any way, nor does the association, is the concern that Dr Levy's account to the previous committee has been called into account and he has acknowledged that it was in error in some circumstances. I think that adds to the difficulty of his position, and the association refers to that in the submission and that is another reason why, notwithstanding the respect that I personally hold and the association holds for Dr Levy, that that Dr Levy clause is not appropriate and should be removed from the bill.

Ms PALASZCZUK: Just one final question, if I may, chair, in relation back to that bipartisan support for this position, which I think is very important and has been in our history for a number of years and has been seen to be effective, what is the association's view in relation to the public perception of how the CMC will be viewed into the future if that bipartisan issue is removed?

Mr Keim: I think that is implicit in what we say in the submission, and again I think Prof. Martin and Dr Gow expressed this as well, that not only is it a bulwark, as I have described to the chair, against bad appointments or appointments that are not independent—bad in that sense—it is not only a bulwark against that but the person does come stamped as independent and that, as Dr Gow and Prof. Martin spoke about, must be a great comfort when you have to make incredibly difficult decisions where you have to arbitrate in areas that are waters full of sharks and from that point of view it helps the person, I think, have the courage to make those independent and tough decisions that have to be made. So I think it is important from that point of view as well.

CHAIR: That concludes the committee's questions. Thank you very much.

Mr Keim: Thank you very much, chair. Thank you very much, members.

BROWN, Mr Ian, President, Queensland Law Society

CRANNY, Mr Glenn, Chair, Criminal Law Committee, Queensland Law Society

CHAIR: I welcome representatives from the Queensland Law Society. Good morning. Thank you for coming along today. Can I begin by asking if you object to being filmed or recorded by Hansard and the media?

Mr Brown: No.

Mr Cranny: No.

CHAIR: And that you confirm that you have read the guide to appearing as a witness?

Mr Brown: Yes.

Mr Cranny: Yes.

CHAIR: Can you please introduce yourselves, speak clearly for Hansard and then make opening statements if you so wish. The committee will then ask you questions. I am more than happy for you to summarise your opening statements if you so wish.

Mr Brown: Thank you, Mr Chairman, and thank you to the committee for the opportunity for the Law Society to address you today. My name is Ian Brown. I am the president of the Queensland Law Society. I have with me Glenn Cranny, who is the chair of our Criminal Law Committee. How we propose to deal with our submission today is simply to make some very brief points that summarise the submission and then to invite questions from the committee on any of the issues that we have raised. Obviously the society has a number of concerns in relation to issues that are raised in the bill and those are articulated in the submission that we have made. It is critically important that the commission is a completely apolitical, independent crime and corruption watchdog and we have some concerns that the proposed amendments will undermine that role.

It is an important time, as the chairman has indicated, in the life of the commission. It is important to remember that at the time that the Fitzgerald inquiry was undertaken and the report provided that the world that we lived in was a very different one to the world that it is today. As we have made clear in our submission, at the time that Mr Fitzgerald provided his report we did not even have the internet. The internet was something that would take another decade to come along. The world is a very different place now and is one that is rapidly changing. It is one that in this era of hyperconnectivity, cybercrime and all of the issues that go with technology, that corruption and crime, which inevitably go hand in hand, is going to be on a far more sophisticated level than it is right now and the Crime and Misconduct Commission needs to be equipped to deal with that. The opportunity ought not be lost at this point to look at the fundamental structure of the Crime and Misconduct Commission. Importantly, not to dilute or water down any of its powers, but in fact to take the opportunity to strengthen the corporate governance structure of the commission to ensure that it is well equipped over the next five or 10 years to deal with those very issues that I have raised in relation to the inevitably higher level of sophistication of criminal and corrupt activity. I will now turn to Glenn Cranny, the chair of the committee, to talk through the principal points of our submission.

Mr Cranny: Thanks, Ian, and good morning committee members. The society has produced a detailed submission which we hope stands on its own, but there are a couple of issues that we would like to emphasise today before inviting questions from the committee. In terms of some of our key concerns in respect of the draft bill, the first is concerning the prioritisation of organised crime over public sector corruption or public sector misconduct. We are concerned that that prioritisation, which is really unheard of in the Australian regulatory landscape, will mean that forever more the issue of public sector corruption, public sector misconduct, will be a poorer cousin. Dr Levy has himself indicated that when budgetary restraints kick in it would follow as a matter of logic and course that priority would be given to the paramount consideration of organised crime to the detriment of investigations and attention to the area of public sector misconduct or public sector corruption. We should not lose sight of the fact that we have a well resourced body to investigate organised crime, and that is the Police Service. We do not have a body which has as its priority to investigate public sector corruption and public sector misconduct. We are greatly concerned by that possible development.

Secondly, we are concerned by the prospect of a requirement that complaints be made via statutory declaration other than in exceptional circumstances. We appreciate there is a legitimate concern about the number of trivial or baseless complaints. We understand that entirely. What we say though is that this mechanism is not the way to address that. This mechanism is likely to create

impediments to the receipt of information. I think it was Dr Gow who said that information is the lifeblood of this type of organisation. We support that view. We think there are better ways of addressing the ways in which complaints should be allowed to be accepted by the commission.

Thirdly, the society maintains that both the chair and the commissioners should be appointed in a way that is not only apolitical but, even more importantly, free from perceptions of any political interference or influence. We do not believe the current bill achieves that. Fourthly, and importantly, we are concerned about the CEO role as it has been formulated. We are supportive of the concept of a CEO role, but we have concerns about the means in which it is presented in the draft bill, particularly with that CEO being a full-time commissioner. We think that is at odds with usual corporate governance structures and we think there is potential for problems to arise with that type of structure. With those brief comments we are obviously very happy to address any questions the committee may have.

CHAIR: Thank you very much for that. I might ask the first question in terms of complaints procedure. You have heard before that out of 4,494 complaints there were 63 investigated. I think Prof. Martin talked about digging for gold. Of course, there is a lot of overburden, even to the point you go back over burden and start looking for gold when it becomes more precious. I am using the analogy simply to indicate one problem that society has. Nobody wants the cost of living to go up—nobody. You could talk to anyone in the street. So we have a finite resource: $50 million-odd. Nobody is prepared to do away with hospitals, teachers, whatever the case may be. With that finite resource you have to achieve a change in landscape and, gentlemen, you need to do things and you need to do things which are out of the box and that may mean a chair comes from interstate, he may in fact be really a lawyer by description only but a CEO and well versed in international organised crime techniques, et cetera. You may not get a bipartisanship approach for that. You may not. Yet you need that person. I am just trying to work out that bipartisan does not necessarily guarantee you get the best person at all. And do people in the street realise that bipartisan is a criteria? I doubt it.

Mr Brown: There is a lot in what you have just said and I wonder whether or not, with all respect, you are not conflating a whole range of different issues there which go to corporate governance, which go to budgetary issues, which go to the powers of the respective people within the organisation.

CHAIR: I think my message is, Ian, you have got $50 million to play with, you have got years of complaints to deal with. You have got to somehow change something. That is the broad approach I am suggesting to you. I understand what you are saying. You have said that complaints by statutory declarations is not the way to go. Sure, but which way do you go? That is what governments are about.

Mr Brown: I am not sure that it would be our position at all that there is a correlation between the structure of the CMC in terms of the role of the chair and the CEO and issues in relation to bipartisan appointment and issues in relation to budgetary constraints and the way in which complaints are handled. They are all quite separate individual issues.

CHAIR: Indeed.

Mr Brown: The bipartisan appointment issue is one that goes to a perception of the independence of the Crime and Misconduct Commission as an independent, fearless watchdog. That is the fundamental issue in relation to bipartisanship. The society's position, as you have seen in the submission, is in fact to think outside the square, to think outside of the box, and to suggest a completely independent process for the appointment of the chair of the commission and the commissioners in terms of a selection or advisory panel that would take the issue completely out of the hands of politicians in terms of the appointment of such a critical and pivotal role. So in fact that is a very serious suggestion that we are making and that at least it be given some consideration.

The issue with the independence of the Crime and Misconduct Commission is one that will resound, we think, through the community given the historical precedent in Queensland where the executive arm of government has, over many, many years since the 1920s obviously exerted a great deal of power to the point where there is no essential separation in many respects between the executive and the legislative branches. The consequence of that is that bodies like the Crime and Misconduct Commission are critically important in not only undertaking that pivotal role in ensuring that there are appropriate checks and balances in relation to the investigation of criminal and corrupt behaviour, but also the perception issue on the part of the public that there is an appropriate system of checks and balances in place. So I am not sure if that answers your question.

CHAIR: It does. Thank you for that, Ian. Does anybody else want to follow up?

Mr BYRNE: Mr Brown, I found your submission really exhilarating in many ways, frankly. Some of the things that you recommended in there were, I think, worthy of very, very serious consideration; particularly about the selection processes, I found great merit in that idea. I do not know whether it will see favour across the rest of the committee, but I certainly think that is something we should think about.

You might have heard me earlier talk about the CEO role and this issue of them being a commissioner, and of course other witnesses have given evidence about the gravitation, I suppose, into the more permanent roles. You have made comment on some of that in your submission, but can you reflect specifically on that issue about the CEO, the permanency, the role of the broader commission and the risks you see with this current set of proposals?

Mr Brown: Certainly. Our position in relation to the issue of the permanent full-time position of the CEO as a member of the commission is we do not support that. We have some fundamental concerns that, from a corporate governance perspective, it is certainly not best practice for the CEO to be sitting there at the table at a meeting of a board of directors and being a director in an organisation like the CMC.

That goes hand in hand with some other concerns that we have, particularly in relation to the role of the chair. This has a ripple effect across all of these issues that we have spoken of in terms of the importance of perception of independence and objectivity, but in circumstances where it is proposed that the chair of the CMC will, in effect, not be the chairperson of a broad—they will not be the chairperson of a board. In normal corporate governance obviously the chair of the board is the first among equals and is subject to discussion and direction of the board. That is not the case with what is being proposed in the bill.

More importantly, not only is the chair not going to be subject to a direction from his or her board; there will be no effective board, and the CEO will in fact also essentially be subject directly to the chair and again not to the board other than in respect of administrative types of issues. A great many powers are delegable by the chair to the CEO, and so the CEO will effectively be performing quite important functions that have been delegated by the chair and in circumstances where the board is not exercising any appropriate oversight or control in relation to those actions by the CEO, either through or not through the chair.

Mr BYRNE: Thanks very much.

Mr DILLAWAY: Mr Brown, thank you very much. I am not sure if you were here earlier on. There are a lot of people, of course, in the crowd. It is standing room only. But we did hear Ms Holm from the Public Services Commission address I think one of the key concerns that you actually had in your submission, and that is about the preventative function. Were you able to hear what was discussed?

Mr Brown: No, I am afraid not.

Mr DILLAWAY: I certainly invite you to go back and have a look at that once the transcript becomes available, because I think Ms Holm covered quite well how the Public Services Commission is going to take on that preventative function and the processes they have got in place there. So I certainly invite you to have a look at that; that might very well address your concerns in there.

The second thing is of course we also heard from the department first up this morning talking about various things in the statutory declaration and that the list of exemptions that are currently there and in the proposed bill are certainly not exhaustive, but again they certainly took the view that there was an opportunity for them, even though it is a policy, that it is certainly, I guess, a willingness to consider additional things. I was just wondering if you could maybe pass a little more comment on some of the two different approaches that you have actually put in your submission about how statutory declarations could become useful, but with maybe more broader terms.

Mr Cranny: I might address that, if I can. Our concern with the statutory declaration proposal is that it may ultimately prove to be an ineffective tool to meet the desire to better weed out the unmeritorious complaints. Our thinking is that such a proposal will not stop many of the unmeritorious complaints. To be blunt, it will not stop the crazies. It will not stop people who are single-mindedly determined to make such a complaint, but it may deter those who have a legitimate need to provide information or complaint to the CMC.

I might pause at this stage and say too that in relation to the bill there is a concern—I think Dr Levy expresses this as well—about the distinction between giving information and making a complaint. I do not think that is made clear in the bill, and I see a lot of grey area there which I think needs to be clarified. So that is the first point to be made there in respect of the statutory declarations.

In relation to the exemptions, if that proposal remains in the bill the society believes that even if they are simply by way of examples, there should be clearer examples and illustrations within the bill to give better insight into what would constitute an exceptional circumstance so as not to require a statutory declaration. For example, children are not mentioned. We would have thought that is an obvious instance where one would not require a child to make a statutory declaration. The fact that the example talks about illiteracy I think is too narrow. In our submission we have suggested that be viewed as a broader category of disadvantage, whether that would be someone in a remote area, someone perhaps who might be literate, who might be competent, but through various social or other disadvantages do not have the capacity to proceed by way of statutory declaration. And even if we could have confidence that the commission on a case-by-case basis would continue to exercise the discretion appropriately and make correct determinations or fair determinations about who should and should not be the subject of a statutory declaration requirement, in our view those matters should be more clearly spelled out within the terms of the bill, within the terms of the act, if that proposal is going to remain. But our threshold position is that we do not think the statutory declaration proposal is an effective means of achieving the concern that we have about baseless complaints.

Mr WATTS: I note your submission about a structure for an alternative approach in terms of appointing commissioners or a panel to look at those. I am just curious: to be the Chief Justice you would have had to have been a lawyer; would that be correct?

Mr Brown: Correct.

Mr WATTS: To be the president of the Bar Association you would have had to have been a lawyer?

Mr Brown: Certainly.

Mr WATTS: And to be president of the Law Society you would have to be a lawyer?

Mr Brown: Certainly.

Mr WATTS: So it would seem that elected officials by the general public would have their position weakened in that appointment, while lawyers would have their position strengthened if all of those people were to make the appointment. I am just curious on your comment.

Mr Brown: Well, there is no intention to create some kind of lawyer conspiracy to achieve certain outcomes.

CHAIR: Nothing wrong with that, Ian.

Mr Brown: I cannot even comment on that, much as I would like to. Look, it is simply an idea and we hope the genesis of a discussion as to the proposal itself; maybe not in the form that it is presented in the submission. It requires, obviously, some detailed consideration (a), as a threshold question as to whether or not it is something that will even been entertained. We would say in answer to that threshold question that yes, it should be entertained because it in fact achieves the complete independence that I am sure everyone is striving for in terms of the appointment of the chair and members of the commission. It achieves also the thinking outside the square that the chairman has raised as important for an organisation like the CMC going forward. And (b), having answered the threshold question what form that committee might take or panel might take obviously would be a subject for much more detailed consideration as to the appropriate people who are representative of society generally and stakeholders, importantly, in terms of the appointment of the chair of the CMC and the assistant commissioners.

Mr WATTS: I guess my question is in terms of representatives of the community generally. We have these elections every three years where the community decide who will represent them, and yet of the positions that you are suggesting there is a large percentage of the general population who would never have a say in those people who are going to make the selection.

Mr Brown: At the end of the day it also needs to be reflective of people with the appropriate level of expertise in terms of the appointment of this very important position. There is no understating just how important this role is, and so it is simply reflective of that. But the makeup, as I say, is not necessarily the point. The point is the panel being independent of government, of the legislative, of the executive—being a truly independent process whereby this role is filled through a recommendation coming from an apolitical independent group who advise on the best candidate.

Mr WELLINGTON: I am interested in pursuing this one step further. I have seen no evidence presented to me to date that the current system has failed.

Mr Brown: We are certainly not suggesting that the current system has failed. What we are concerned about as a starting point is that there is a recommendation that the current status quo not be maintained, that is, that bipartisanship be removed. Certainly we agree wholeheartedly that

there is no evidence for the removal of the bipartisan appointment of the chair. Again I will use the term 'think outside the square'. If there is a concern that that process is somehow flawed or is not working—which seems inherent in the bill in the proposition that the current status quo needs to change—then what we are suggesting is that it not change in what we would see as a potentially more problematic method which could result in a perception of the politicisation of the role, but to move it in the other direction, which would completely free it up of any suggestion in that regard.

Mr Cranny: If I may add to that briefly, in respect of the previous question, the model that has been proposed only proposes nominees of three legal representatives in respect of a seven-person committee. The Attorney-General need not be a lawyer, the Leader of the Opposition need not be a lawyer and the suggestion is of two non-legal members as well. But we should also not be apologetic about this. We are not talking about agriculture. We are not talking about medicine. We are talking about crime and corruption. These are matters that lawyers have ongoing expertise in day by day, hour by hour and it is appropriate that lawyers, properly qualified, have significant input into those decisions.

CHAIR: Indeed but, as the president has said, we are in a changing environment with statisticians, IT professionals and I could go on. We are in a changing world and the question is: are we keeping up? That is the issue for us all. That concludes the committee's questions. I found your submission informative and it was outside the square, so I really do thank you for that. Thank you, gentlemen.

Mr Brown: Thank you, Chairman.

Mr Cranny: Thank you all.

LINDEBERG, Mr Kevin, Private capacity

CHAIR: Mr Lindeberg, I have been mentioned in your submission and so I really need to just set the parameters by which we are going to discuss your submission before the committee. It really is to do with the bill. Reference to the Heiner inquiry may be relevant on some indirect means, but I would ask you to simply direct your submissions to the bill before us if you want to make an opening statement. Just with that precursor to my opening statement, I will need to ensure that you comply with that. But I welcome you, Mr Lindeberg. Good afternoon and thank you for coming along today. I begin by asking you if you object to being filmed or recorded by Hansard and the media. Are you happy with that?

Mr Lindeberg: I have no objections.

CHAIR: I also ask you to confirm that you have read the guide to appearing as a witness.

Mr Lindeberg: I have.

CHAIR: Thank you. Please make an opening statement, if you wish, and the committee will then ask you some questions.

Mr Lindeberg: Given what you have just said, Mr Chairman, can I also seek a point of clarification because I have prepared an opening statement but it was against the background that my submission would be made public, and to my knowledge it has not been made public yet.

CHAIR: That is a matter for the committee and a determination has or will be made about that.

Mr Lindeberg: Just so I am clear—

CHAIR: It is irrelevant, and we do not have a lot of time. For the purposes of your appearing here today, it is irrelevant because we have read it. Okay?

Mr Lindeberg: I understand that and I respect the committee's position, but it is just that other people have spoken here today but their submission is on the public record but I am speaking here with it not on the public record. Therefore, people who might be watching this—notwithstanding I am talking to you—may not have a full understanding of why I might have wanted to talk about the Heiner affair in this context.

CHAIR: Yes. Sorry, but I am told your submission has been published now.

Mr Lindeberg: And redacted?

CHAIR: Yes, and there have been parts of it taken out that are irrelevant. But you are here. Your submission is irrelevant for the purposes of making an opening statement and questions. I am just simply asking you to make an opening statement that is relevant to the bill.

Mr Lindeberg: I understand. I will talk off the top of my head, if you do not mind, because of that. I come to this committee today not as an observer but as a whistleblower—a user of the CJC and the CMC, the PCJC and the PCMC.

CHAIR: And the QCC.

Mr Lindeberg: Indeed, and all of those, as it happens, are wrapped up in the Heiner affair. I say to you that the system is not working. It has collapsed because when I went to the CJC I went there in good faith on a matter which I believed represented corruption—namely, a government destroying documents to prevent them being used in court—and I was sent away from the CJC—the independent CJC—claiming that what the government did was perfectly lawful. It is well known that for 24 years I have struggled against that within this system which claims to be working to get justice. As this committee knows, last year I appeared before a Carmody inquiry which found that the shredding was indeed a prima facie case—

CHAIR: I need to stop you there because I am going to centre you back on the bill. I am interested in your comments. If you want to use some aspects of Heiner, I am happy for you to do so. But effectively what the government is saying is that the bill is a means by which it is addressing certain issues.

Mr Lindeberg: To eradicate corruption, amongst other things.

CHAIR: I do not think eradicate corruption, but it will do the best it can with the resources it has available. Not every organisation can be everything to everybody at all times.

Mr Lindeberg: I understand that.

CHAIR: What I need for you to do is to centre your comments with respect to the bill.

Mr Lindeberg: I will, and part of that—

CHAIR: What things you disagree with. For instance, if I might just paraphrase, the issues that seem to be raised today are the statutory declarations, the bipartisan chair, the CEO being a commissioner et cetera. They are the main issues that I am interested in hearing from you, so if you could address the committee on those matters I would appreciate it.

Mr Lindeberg: I hear that, and this is against the background of putting in place new legislation for this organisation to encourage whistleblowers to come forward to it to eradicate corruption in government and to do so in confidence. Part of that that has disturbed many people, and it disturbs me, is a notion of bipartisanship, because as my submission shows you I do not approve of the taking away of the matter of bipartisanship in terms of the appointment of the chair, except it might be said it depends on how many people turn up for the job. It is not a job that I think people are rushing to. The other aspect—

CHAIR: What do you say about the statutory declarations? I would be interested to hear—

Mr Lindeberg: I mirror what the Law Society had to say with regard to that. I do not think that I can elaborate much on that. It is traumatic enough for anybody to go to blow the whistle, and it depends on what you are blowing the whistle on and all of that type of thing. I went to the CJC and these bodies in good faith and I got dudded, and it is in my submission who I dealt with. One of the things about bipartisanship is to take politics out of decision making because, as my submission said, I have a fundamental problem with politicians being decision makers in criminal justice matters. I believe it is a fundamental breach of the doctrine of the separation of powers and it possibly is a fundamental flaw in this whole thing, particularly in a unicameral system of government, because we have had previous premiers saying that the CMC is our upper house. That is a load of nonsense.

CHAIR: I have never heard that before, but thank you for telling me.

Mr Lindeberg: He has said that and he said a lot of other things too.

CHAIR: Certainly; okay.

Mr Lindeberg: But you would have seen my submission. I will say that I approve of the ability of whistleblowers or complainants to go directly to the parliamentary commissioner which presently requires the bipartisan support of the committee to get there. You would have seen also in my submission, if you have read it, that it has the benefit of having a statement of concern put to the previous government but attached to your submission by eminent judges in relation to the current understanding of the committee in terms of what bipartisanship means under section 295(3) of the act. That has not been altered, but the way it is being interpreted it actually allows corruption to be blocked inside the PCMC because the act, as it has been read, suggests that when you decide not to make a referral you can use your numbers. It is only when you decide to refer a matter and the—

CHAIR: I am not entirely sure that I understand and if I do understand I do not think I agree with it. What we might do—

Mr Lindeberg: I am saying I approve of that. But in terms of the business of bipartisanship, I think it is very important that the chairman has the support of the committee. But, again, if one person turns up, you do not have much of a choice.

CHAIR: As you may have heard previously, I am suggesting in fact that we will have more turn up and they will be not necessarily Queenslanders but professional chairs in crime-fighting bodies. It was not that long ago that we had police commissioners being chosen interstate.

Mr Lindeberg: I understand that.

CHAIR: We might actually ask questions of you because we can then centre those questions in relation to the bill and your comments will become relevant for our purposes because we do not have a lot of time. Are you happy with that?

Mr Lindeberg: I do not mind.

CHAIR: I have a couple of questions just in relation to the bipartisan issue, because I think you did touch upon that or perhaps I forced you to touch upon it.

Mr Lindeberg: I did, yes.

CHAIR: Yes. If in fact you do not have the bipartisanship of the chair, is there some suggestion that the chair is going to do the wrong thing? The chair will be chosen and will be a person of some standing, otherwise the egg will be on the face of the Governor in Council, will it not?

Mr Lindeberg: You could easily say that what you are suggesting is correct, but that is the reason I am here to talk to you about the Heiner affair. I suppose I am talking against myself in one sense.

CHAIR: I was wondering about that, because you rely on a previous act where in fact there was bipartisanship.

Mr Lindeberg: It does come down to the integrity of the person. It is about probity in public office. Notwithstanding that, I would suggest to you, the previous chairman had failed in relation to this particular matter, I still think it is better to have it there than not. It is about probity in public office, not just for people down at the CMC but it is about politicians. It is about people who sit inside the PCMC who are part of that process of agreeing to the bill.

CHAIR: I might just stop you there because it is outside the bill but also there are matters there that I do not think we are entitled to discuss because what happens in the PCMC, as I understand, is secret.

Mr Lindeberg: With respect, that is not as true as it used to be insofar as some of the hearings now are being held in public, which is a good thing. There might be something to be said for the appointment processes of the chairman being made in public. The applicants may not particularly like it, but I have thought about this and I think there is some benefit in relation to the processes in the United States where they go before a Senate committee before they get appointed to a particular appointment to allow the people to see what is going on. It is all a punt. You hope to get the right one; you may not. As you said about the High Court, you might end up with somebody who acts quite differently when they get on the High Court.

CHAIR: Yes, not wrongly; just differently. When you appoint somebody, you take them lock, stock and barrel. That is the nature of our democratic society. I do not know we can really press that matter any further. As nobody else has any questions, that concludes the committee's questions. I thank you for your attendance.

Mr Lindeberg: Thank you.

CHAIR: Thank you. The committee will now adjourn for lunch until 1.10 pm

Proceedings suspended from 12.28 pm to 1.11 pm

BROWN, Dr AJ, Program Leader, Public Integrity and Anticorruption, Centre for Governance and Public Policy, Griffith University

CHARLES, Mr Stephen, Executive Member, Accountability Round Table

SAMPFORD, Professor Charles, Institute for Ethics, Governance and Law, Griffith University

CHAIR: The public hearing of the Legal Affairs and Community Safety Committee into the examination of the Crime and Misconduct and Other Legislation Amendment Bill 2014 has now resumed. I welcome the representatives from the Centre for Governance and Public Policy, the Institute for Ethics, Governance and Law and the Accountability Round Table. I begin by asking whether you object to being filmed or recorded by Hansard and the media. Will you confirm that you have read the guide to appearing as a witness? I invite you to make an opening statement if you wish. The committee will then ask you questions.

Prof. Sampford: Thank you for inviting me before this committee. A lot can and will be said about the substance of the provisions in this amendment, but I would like to make a brief comment about process. I was born a Queenslander but I grew up in Victoria—if I ever grew up. I had just returned to Brisbane as foundation Dean of Law at Griffith when I was first invited to appear before a committee of the Queensland parliament. It was the PCEAR. While I knew, as a constitutional lawyer, that the chairman had to come from the majority party, I did not know the party affiliations of the other committee members and, after an hour of excellent questions and high-quality discussion on important governance issues, I have to say I left the committee none the wiser about the political affiliations of those other members. This was an example of governance reform that was not only effective but also inspiring. It was one in which governance reform was considered by a non-partisan group and went to a bipartisan committee at which the reforms were discussed.

I think a thorough review of the Crime and Misconduct Commission has long been overdue. A body as powerful as the CMC should be subject to regular, intensive review by a body of experts reporting to parliament. There has, of course, in this particular process been a mountain of criticism about the detailed substantive provisions. The Premier has said that he wants Queensland to have the most open, transparent and accountable government. He acknowledged the Fitzgerald report was a game changer. He said that much has happened over the last 20 years and it is time we properly reflect on the journey since. I agree that the Fitzgerald report is not holy writ, but it is always a good departure point for consideration of what was done well and what could be done better. I think that the single most important measure in meeting the Premier's goal would be to reinstate a body similar to EARC as recommended by Fitzgerald and implemented by the National Party in 1989 with a very important variation which was brokered by the National Party, which was to ensure that that body had bipartisan appointments. It was disbanded by the ALP and has not been reinstated either in full or in limited form.

I think that if you look at the number of criticisms of this particular bill I have confidence that a body such as EARC, if properly reconstituted, would have been able to deal with a lot of the issues and come up with a bill that was probably going to be much more acceptable to a wide range of stakeholders. So my first issue is process. Obviously I have been asked along with the rest of us to talk about this particular bill, and so in saying that I think that is the process. I have been around the world to many governance reform initiatives and there has never been, in my view, a better process than that that was initiated in 1989. In my submission I go into why in fact the permanent body is better, because they understand the integrity system. They understand the relationship between various institutions and so forth, but I will not go into that.

I will say two things about the substance. One of them is this problem that people say: 'I'm going to the CMC,' and publicly saying that they have a complaint. Callinan and Aroney quoted me as calling this an abomination. I thought it was an abomination when I arrived here and it is an abomination when it has been done since. The question is what you actually do about it. This bill seeks to raise the barrier on making complaints and criminalises a range of improper complaints. My colleagues will say quite a bit about that.

Regarding the combination of making it difficult to make complaints and criminalising proper complaints, I apply what is called the Neighbourhood Watch or the Crimestoppers approach. If you are trying to stop crime, would you do this with Crimestoppers? Would you say that you have to sign a statutory declaration and, if you make an improper complaint or if you try to make it confidentially, you are engaging in a criminal offence? How many calls would you get to Crimestoppers? If in fact

you would not do it for Crimestoppers, as we obviously haven't, is there a good reason to do it for allegations of corruption? If you see somebody climbing over the fence to break into a neighbour's house, it is pretty clear to most laypeople that there is an offence being committed, But the kinds of things you see with corruption is that there is a titbit of information. Somebody, as in the Obeid case, has released a whole lot of land for coal. Why is that? You do not know that. Or as in our case in the moonlight state you see a policeman walking by a known brothel. You do not know why that is. You get snippets of information. What a body like the CMC needs to do is pull together the snippets of information. Sometimes they add up to something when they have several reports; sometimes it is nothing. To some extent it is more difficult to get information on corruption than it is for ordinary crime. So we shouldn't be making it more difficult, because as in other areas the greatest assistance for the police is in the participation of the public and similarly for the CMC. The greatest possibility of the CMC doing its job is to have participation by the public.

The other point is about bipartisan appointment and I think a lot of people have said this. In many anticorruption commissions around the world they have been captured by government and they are used as a one-way tool to provide immunity for those in government and to attack the opposition. I am not suggesting, and no-one is suggesting. that this particular government would do that, but I ask a simple question to those on both sides of the House: do you really trust your opposition sufficiently to entrust this power to a future government of the other side to be able to abuse it? There is a risk of abuse and it is a risk we do not want to take. It was a great innovation in 1989 to require bipartisan appointment. It had not been done elsewhere. Fitzgerald hadn't recommended it. It was a great idea. There were two great ideas in 1989: establishing an independent governance reform commission, EARC. Labor got rid of that. The other idea was to make bipartisan appointments to the CMC and to EARC. That was another great idea. I would suggest go with the first and not abolish the second.

Mr Charles: I represent the Accountability Round Table. I want to take up two points. The first is the requirement that complainants make a statutory declaration. That comes out of the review panel's recommendations, and the principal basis for it was the excessive number of complaints and the great waste of time that was involved in 39 people in the CMC having to go through and examine them. The first thing that we would question is whether the basis is there. It was said that in the 2011-12 year there were 5,303 complaints. Fifty-one per cent of those were for police matters, according to the report for that year. In that year, ICAC in Sydney received and managed 2,978 matters and they are all civil. They have not got criminal jurisdiction. The Western Australian CCC had 5,192 misconduct notifications. When the review panel said that Queensland's number was part of a culture which far outstripped the other states, I question whether that exists.

Secondly, the review panel recommended that the declarant, a complainant, swear that relevant sections of the act have been, firstly, read and understood; secondly, that the complaint is not baseless; and, thirdly, on something seen or heard by the complainant or on information provided by a credible person, implying therefore no anonymous complaints. How could any ordinary member of the community do what most lawyers cannot do, which is swear that they understand the legislation? With respect, these statutory declarations would be hopeless to enforce and would intimidate large numbers of people from making complaints. If you want that, that is fine.

Taking Operation Jasper, the Obeid investigation, by way of example, as Professor Sampford has said, at the outset you might have seen something concerning such as why are we opening the Bylong Valley up to coal in circumstances where no-one has asked for it before? It is strange that this has happened. But going to the commission with a complaint of that kind without any basis for saying that something has gone wrong would not provide any basis on which the investigation could begin. Only if there had been a whistleblower inside the minister's office with detailed knowledge of what had happened would you have a complainant who had adequate knowledge to provide a complaint of that kind and make a stat dec. But whether an insider of that kind would be prepared to sign a statutory declaration obviously indicating his identity to the minister and his exit from office following shortly afterwards is a different question.

The next thing is the narrowing of the investigatory focus. ICAC's jurisdiction in Sydney is unlimited because of a wide definition of corrupt conduct which includes misconduct in public office and section 13 which sets out exactly what ICAC can investigate, which is effectively just about anything. Victoria has IBAC legislation which has a very much narrower focus and a higher threshold and which the review panel said they thought was terrific and which Queensland should follow. The very high threshold, in effect, requires the IBAC to identify one of a very limited number of indictable offences not including misconduct in public office, and IBAC's report yesterday shows they are now desperately seeking wider powers to start and continue investigation. Politicians from

both sides, Liberal and coalition, are saying they are prepared to amend the legislation to the great embarrassment of the Victorian Liberal government, which is now facing an election this coming November. One possible prospect of introducing these reforms is you are going to have the government facing complaints of that kind in a few years time when people come to say why is your—

CHAIR: Impeccable timing, wasn't it?

Mr Charles: It was impeccable timing indeed, Mr Chairman. The review panel at page 61 of their report expressly sought a similar threshold to Victoria's. There are various sections which produced a narrowing of focus for Queensland and they have been set out in Professor Brown's submission, with which we completely agree.

All of this follows from, one would expect, a government which is fairly concerned about the vast number of complaints coming through and wanting to produce some limits to the investigation of corruption. A second might be the Greiner effect, where Mr Greiner back in 1988 was the first victim of the commission he had set up. That was unfortunate, but it is not a good example of why an ICAC is wrong, because that was a matter following from a very large public argument which ended up in the New South Wales parliament referring the question to the ICAC commission to investigate.

That investigation produced a report, which said that Mr Greiner had been guilty of corruption. The Court of Appeal disagreed and that was put to one side. So on one view that is the system working properly. I might add that most administrative lawyers take the view that the Court of Appeal was wrong and that, in fact, the decision of ICAC was one made within jurisdiction and powered by a body and that the Court of Appeal should not have intervened. But that is a different question.

Dr Brown: Thank you, Mr Chairman, and thank you to the committee for the opportunity. My name is AJ Brown and I am a Professor of Public Policy and Law at the Centre for Governance and Public Policy and the School of Government and International Relations at Griffith University. Some of my other background are listed at the back of my submission. I should say that I am also appearing here today wearing a second hat, which is as a member of the board of directors of Transparency International Australia.

I would simply say three things in light of the detailed submission that you have already accepted. One is that my submission lists seven major issues with the amendment bill, which cover similar ground to many of the other issues of other submissions. It does not go into other amendments and other reforms of the commission or of the integrity system, because there are elements of the entire debate that has occurred and the reforms that are being undertaken which have the potential to help lead to a much strengthened, more efficient, effective, streamlined integrity system. But the seven things that I have chosen to emphasise each individually represent what I have described as being counterproductive overkill, which is not necessary, and any one of those seven things has the potential to have that effect severally, not just collectively. So there are many things that can be done, should be done, are being done otherwise in the bill or in other reforms that actually already address all of the issues that have been identified through the various reviews and debates without the need for these seven counterproductive elements of overkill.

The second thing that I would emphasise is that many of the elements of the reforms—and they are detailed in the submission—are entirely inconsistent and undermine other major elements in the integrity system in Queensland, which were not even discussed by Mr Callinan and Professor Aroney, such as the Public Interest Disclosure Act and the whistleblower protection regime. Both parties in Queensland, but especially the Liberal National Party, have a strong track record of having been absolutely instrumental and fundamental in their period in opposition in ensuring that that regime in Queensland is as strong as it currently is. It would not have happened. The Bligh government would not have amended, would not have replaced the Whistleblowers Protection Act with the Public Interest Disclosure Act of the kind that it is were it not for the Liberal National Party and the positions that it took on the need to do so in its period of opposition. So to see the government now turn around and introduce a suite of reforms apparently with a high level of ignorance as to the consequences of those reforms on the good things that it has already previously done to strengthen Queensland's good and efficient things, I might say, to strengthen Queensland's integrity system is particularly worrying to me, being somebody who has worked on that particular issue with the Queensland government, with all sides of politics, with all levels of government and with all sides of politics at both levels of government for a considerable period of time.

The third thing—and I am happy to talk about the specifics, obviously—is that, wearing my Transparency International Australia hat, I believe that all members of the committee have a copy of the statement that Transparency International Australia has issued today calling on the Premier to release the implementation panel's reports.

CHAIR: Yes. That has not been distributed.

Dr Brown: It has not been distributed? In that case, Mr Chairman, with your indulgence I will just refer to the fact that Transparency International Australia has issued a public statement today, having written to the Premier on Monday, calling for the release of the implementation panel reports for similar reasons to those referred to in the Queensland Law Society's submission.

CHAIR: We are particularly interested in hearing your comments about the bill.

Dr Brown: Yes. The reason for emphasising this, Mr Chairman, with your indulgence, is that, like the Queensland Law Society, I—and I suspect many other people—would like the leave of the committee to be able to make further submissions on some of the amendments, because to my reading, and certainly to Transparency International Australia's reading, and I think to other people's reading, including the Queensland Law Society, there are significant amendments here whose purpose for statutory interpretation purposes is not explained by the review panel's report, or the government response, or the Attorney-General's introductory speech, nor the explanatory notes.

CHAIR: Doctor, you have appropriately taken it up with the Premier. That is great. That is where we leave it.

Dr Brown: Thank you.

CHAIR: Because it is not much to do with us today.

Dr Brown: Just in case it bears on the committee's recommendations in terms of its own ability to have engaged—

CHAIR: We will deal with the bill, the explanations, the submissions, and the witness statements.

Dr Brown: Thank you, Mr Chairman.

CHAIR: Thank you. I did not mean to cut you short, by the way.

Dr Brown: No, that was my final point.

CHAIR: Professor, I might go to you first because you spoke first and how appropriate it is for me to ask the first question of you. You mentioned EARC and you mentioned process. It has been a while since I have looked at EARC, I must say. I looked at the Fitzgerald report and the Callinan-Aroney report and so forth, but I cannot remember very much about EARC. Could you please indicate why you consider that to be a model that should be followed and should not have been abandoned, firstly, and, secondly, how that comes into your imprimatur about it being a matter of process?

Prof. Sampford: I think—

CHAIR: I think the two are related, are they not?

Prof. Sampford: Certainly. Of course, it is partly counterfactual what a reconstituted EARC would do. I think the really important thing is that, although everyone was waiting in 1989 for Tony Fitzgerald's reports and not just what had happened but what to do about it, he was in many ways modest, because did he not say, 'These are the answers.' He said, 'These are the questions and I think this is a good way of dealing with those questions' and that was to set up the independent Electoral and Administrative Reform Commission. I call them generally a governance reform commission—one that will look at not just corruption but at the whole of government, every element of government, whether it was to change the constitution, parliamentary committees, bills of rights, a public sector ethics act; a whole range, everything that we now call the integrity system. All of those elements were questions that Tony Fitzgerald suggested should be addressed by an independent governance reform commission.

EARC—as I say, it is a process that has never been bettered—they had the issue that was originally given by the Fitzgerald report. They would do a preliminary report, which would look at the issues and say, 'This is what the problem seems to have been. This is what the current Queensland structure is. This is what other jurisdictions do'—not necessarily saying that what other jurisdictions do is better but looking for good ideas that might be slotted into the Queensland system to make it better.

They then had a public conference at which attendance was free. It was not on the internet, because it was not available then, but the idea was that it was totally public and open. They invited outside experts to speak and I had the honour to speak several times. Then EARC would come up with a final report, which would then, of course, go to the Parliamentary Committee on Electoral and Administrative Reform because, obviously, it must come back to parliament. It is not a question of delegating all to this independent commission.

What was really good was that actually the National Party and the Labor Party and the Liberal Party agreed that there should be bipartisan appointments, which actually means that there was an independent commission. Actually, the Labor Party did not—I only found out recently—honour that in the first round of appointments, because they made the appointments the day before the committee sat. But with subsequent appointments they followed and certainly there was a high degree of independence and integrity.

But then it came to the parliamentary committee. Because the questions had been set by a non-partisan body and the proposals by a non-partisan body, when a bipartisan body looked at it, already it was framed in terms of the general public interest. What I thought was really important is that when you deal with the rules of the game and the institutions that police the rules of the game, it is really good if you get both parties on side. Because it made, if you like, non-partisan recommendations, it was easier for the committee to do it as such and then virtually all the reforms were passed by the Queensland parliament with some variations.

That is why the process was really good. I think Tony Fitzgerald had intended it to be an enduring body that would continue. The idea was that once they looked through every element of the Queensland integrity system first, then they could come back to it. I think that is why I say that a body as powerful as the CMC and any body—Hong Kong ICAC, all the other ICACs—are very powerful and all power is capable of abuse and you must then take out what I call insurance against that abuse in a range of governance measures.

I would have loved to have seen EARC continuing year after year. They would have had—I do not know; depending on how large it was—probably every major institution would be looked at least every 10 years and may be very powerful ones more frequently. But they would develop, as they did in the 1990s, an expertise to understand the integrity system. So they are not just getting two very eminent lawyers looking at one particular part of the integrity system, but because it is their job to look at the integrity system, each institution sequencing, they understand where each one fits. They understand the dynamics. They might say, a bit like the education and the ethics function, which is held by the CMC, 'How are they doing it? Would it be better for that to go somewhere else?' and to get an idea of the dynamics of it. I think that a body like that was the greatest contribution to Queensland's reforms and the reason that the Queensland reforms for a long time—whether they are called an ethics regime (which I called it), an ethics infrastructure (which the OECD called it), or a national integrity system (as Transparency International called it)—became the gold standard. In fact, it became the model of what others should have been expected to do.

I think it is a pity that we have lost our capacity to reassess our integrity system because, as I say in the submission, anyone who thinks that they have governance reform right and perfect is placing a very large banana skin in front of them. I think it is really a great pity. As I say, I have been privately critical of the abolition of EARC for a while and with some colleagues we have made suggestions to a number of Premiers and Attorneys-General about that, which I obviously will not go into in detail. And for the last year I have been saying this publicly. I really think that this is one of the great things that Queensland did and I would like to see them re-establish it and remember what they did well. It is not a question of going back to the past, but having a process that worked.

So I thank you very much for the opportunity to comment on it and why I think that it is a very good process rather than one-off reviews of particular elements of the integrity system, which however able and dedicated the individuals are, do not have the same picture. Probably AJ and I, who have studied the integrity systems a lot, have probably a better overall picture, but it is not our job to research and comment. It is somebody in government to be an independent body to think of these things and to come up with the best suggestions. Quite honestly, I would be amazed if a bill produced by that process on the CMC would have had anything like the degree of criticism that this has had, justified or otherwise.

CHAIR: Further on that point, one of the difficulties about large bodies regardless is that it is an ageing process. It applies to business just as well. It is ineffectiveness that you ultimately become when you keep adding staff and your budgets get bigger and everybody feels pretty comfortable and everybody is patting themselves on the back and doing a good job. The next thing you know you are getting 5,000 complaints and you are dealing with 63. How do you see that? Do

you see that as being a part of the CMC that presently exists or is it immune to it? It is one of the very few bodies that is able to metamorphose and change and adjust to different patterns of crime and so forth?

Prof. Sampford: I think that the CMC is subject to the same sort of institutional dynamics and problems as any other. That is the reason why it needs to be reviewed and it has been reviewed in different ways. But what I would like to see is a body which has at its job to understand the whole of the integrity system and each of the elements within it. I think they are the best able to ask questions like that. Also, the question here about are there too many complaints, which I think there is some debate about that and how you judge it, I would like to see them, with an appreciation of the system as a whole, being able to make those comments.

I agree that every institution is subject to the institutional dynamics that you describe. That is the reason why they need bodies to look at them, why you need an independent body to look at them, like EARC, but then of course it comes back to a parliamentary committee and to the parliament itself because they are the ones who must, however much we talk about fourth-arm institutions, how important the ombudsmen and ICACs are, auditors-general, DPPs, the courts, I agree all of those are terribly important, but we have always got to remember that the absolute heart of the integrity system has to be the parliament. But it needs the other institutions to be able to feed in the best of independent thought that can be provided so that parliament can make its ultimate decision as they did in the EARC process.

CHAIR: There is a question that I would like to ask each of you and then I will hand over to the member for Bulimba. It is in relation to the bipartisan aspect of it. It probably comes in two parts. The first part deals with the fact that the bipartisanship has been taken away. Maybe it is me, but I do not see that as being a deal breaker. When you appoint somebody with all the qualities, for which you are responsible—whatever he does, you appointed him, you are responsible—there is a certain dynamic in terms of the chair today, that you need to drive your team and to be held accountable. He is there for five years. I do not think it has ever been suggested the government is going to appoint somebody who is corrupt or anything of that nature, that in fact he will do his job to the best of his ability. It is the government of the day who wears whether in fact he is effective or not.

Prof. Sampford: Well, I think that firstly there is experience in other countries in which the problem is that it has become a tool of government which actually provides protection for government cronies and provides a tool for battering the opponents. I am not suggesting that that would happen instantly or now.

CHAIR: I think one could argue that it has happened in recent times with the bipartisan approach.

Prof. Sampford: I am not sure what you are particularly referring to, but I think there is a risk and I think that like a lot of these things I see that governance provisions are a form of insurance against the risk of corruption. In fact, as you will see in the keynote I did from India recently, which I gave some extracts of, I say that institutions pull together people, power and resources to achieve collective aims, but the very pulling together of people, power and resources also provides an opportunity for abuse and so this is actually, if you like, a risk we take. But governance reforms are a way of reducing that risk.

Although the thing is that I do not think right now, although of course the appointment of a former police commissioner was an example which we all knew actually in the end was done—well, we know that a very senior appointment could be made which everybody regards as actually being totally, totally inappropriate for all sorts of reasons, so we do not expect that that sort of thing is going to happen right away, but the question is, is there a risk of it and what do you do to deal with that risk. I think that if, in fact, you do trust your people on the other side of the House in government, future government, will not abuse that power, then in that case—sorry, if you do think they will abuse the power then in that case you should take out the insurance of bipartisanship. If you do not think they are going to abuse it—

CHAIR: But it does not happen that way, does it? The public do not know about bipartisanship. If it is your government under which the person is appointed they cop it, do they not?

Prof. Sampford: I don't know, I think the thing is it can be—

CHAIR: I was referring to Whitrod, I was not referring to anybody else, as being an outsider who had certain skills to bring. It was that cross-pollinisation. I was not making any other comment other than that really.

Prof. Sampford: I think that there is a risk and the risk might start in a little way. And that some people become more confident that the powers will not be used against them: we are a bit safer. And when you say about criticism going to, you know, 'you appointed them', the thing is it could be that the minister has moved on, but it could be the minister is still there and one of his mates says, 'So-and-So is giving us a huge amount of trouble. Why is he doing that? Why did you appoint him?' They won't say, 'I wanted you to appoint somebody corrupt'. They say, 'You appointed a zealot, he is going after little things', of course there are little things that they and their colleagues engage in. In insurance you can underinsure or you can overinsure and I think that given the experiences of Queensland, and given the experiences of the risk of abuse of power in any system, a little bit of overinsurance is not a bad idea and I think that this was a really good idea to actually have bipartisan appointment because if there is any tendency by one side or the other to appoint somebody who is, if not corrupt, one who thinks a bit like us or 'I like So-and-So. He speaks common sense', you know. And, of course, if you are of one political persuasion and there is any difference between the two parties then you will have different views on general philosophy and principles. 'I like that person', and so you appoint them and some of your colleagues think, 'Well, he's okay. He's not going to create problems for me', and they feel a bit more secure. Others are a bit more concerned and they say, 'Well, So-and-So was appointed by that particular government. I am a bit concerned about raising this point about the minister', and maybe it is not all that important. Maybe the thing is that he did declare his bottle of Grange or something like that, you know. So I think that it is actually a question of the confidence that both parties have in that commissioner. Because I can assure you that if the party of government appoints a commissioner and they later on go after a member of the opposition or somebody who is associated with the opposition, the argument will quickly be raised, 'Ah, but the government appointed him. He is really going us all for political purposes.' It is a great defence for the government and for the commissioner if in fact they have been appointed by a bipartisan process.

CHAIR: Indeed. Damned if you did, damned if you don't.

Prof. Sampford: I think credited if you do do bipartisan appointment. I think a lot of the people followed Queensland in this. Don't forget that Queensland led in this and now I think five out of six have followed, which is not bad.

CHAIR: Thank you.

Mr Charles: It is a highly important position, the commissioner of the corruption commission. He or she can exercise great influence in deciding what to investigate and how it is investigated. It is a matter of an appearance which is highly desirable that the commissioner be chosen on a bipartisan basis for that reason and a good example of that is what is happening in New South Wales at this moment.

Mr WATTS: Might I ask a follow-up question relevant to the comment about New South Wales? My understanding is that it is actually not a bipartisan appointment, it is actually a veto power held by a committee that is dominated by government members so therefore not necessarily bipartisan.

Mr Charles: I entirely agree with you, Mr Watts. I did not mean that. I am saying that is an example of how this can operate. The power of the ICAC commission is demonstrated by it. I recognise what you say. I think it would have been better had it been a bipartisan appointment.

CHAIR: I might ask Dr Brown to give his response to that question.

Dr Brown: I rely principally on my written submission and endorse what my colleague Professor Sampford has said but also what Mr Keim said on behalf of the Bar Association. I think the critical issue here is the amount of sharks in the water that Mr Keim referred to and which Professor Sampford has referred to. I think the interesting thing for the committee to reflect on is perhaps whether there are not other equivalent types of appointments such as the Chief Justiceship where you wonder, 'Well, why don't we do it for other public offices', where we expect just as high a level of independence and we seek to have the same degree of political protection from the knowledge of that office being above politics and authorised to function above politics.

CHAIR: Is there anything above politics?

Dr Brown: It depends on your definition of politics.

CHAIR: You are replacing a committee with another person.

Dr Brown: With reference to the Chief Justice—

CHAIR: Probably been around too long, I think.

Dr Brown: I didn't say that, Mr Chairman, and I wouldn't say that. I think the important distinction or value of the comparison is that the Chief Justice and other appointments to the judiciary are appointments until retirement. It is the guarantee of the tenure of office which provides the political support to their independence. Correctly, the appointment of the chairmanship and other commissioners to this type of commission do not have that same sort of source of independence.

CHAIR: With respect, five years for this job, and I think we have heard Professor Martin and Dr Levy indicate it is a very stressful job. It is not quite like the Supreme Court judge. I would have thought that five years is a pretty significant tenure if you wanted to achieve results.

Dr Brown: I think reasonable minds could probably differ on the question of whether that degree of tenure equates in any way to the same sort of tenure and security of office that goes with judicial appointment. In some countries judicial appointments are subject to parliamentary confirmation or congressional confirmation, for example, and so the question is—

CHAIR: And some countries are limited to years of tenure.

Dr Brown: Yes, indeed. I think if the committee is of a mind to think broadly about this issue then even if there are improvements that could be made to the mechanism for the appointment of chairman in particular that might help achieve that result, I think the committee should keep the result that it wants in mind and especially in the absence of any justification or explanation through this review process or in the explanatory notes about why this is being proposed. That is one of the reasons I have listed it as one of my seven examples of not only counterproductive overkill, but totally unexplained counterproductive overkill, the current purpose for which has simply not been disclosed.

CHAIR: Just on that point, you have indicated in the one breath the accountability argument. There are some things that government do in confidence. I appreciate what you said, but I did not quite get the connection between the two, the statement by the Premier and the fact that some things you do you do in confidence. You do not have to release everything. You can have an accountable government where some things just cannot be released. I just make that one point.

Dr Brown: I am not sure whether you are inviting me to speak about the Transparency International Australia statement or not, Mr Chair.

CHAIR: No, it was probably rhetorical.

Dr Brown: I am happy to accept it that way. There are many, many topics here to cover.

CHAIR: Indeed. The quote was an interesting one and I was not sure that I felt comfortable with it.

Mr DILLAWAY: My question is to Mr Charles. I note that a significant portion, if not all, of your submission is surrounding the statutory declarations. Certainly I can garner from that that you are not supportive of them. I want to throw it back to you: how do you believe the committee should undertake an understanding of how we can stop the level of complaints that are often put into the CMC, and we have heard the chair mention on occasions close to 4,500 last year, particularly, for example, for political advantage. How do you foresee that we should stop complaints being made, particularly during an election cycle or otherwise, considering that you do not agree with statutory declarations.

Mr Charles: First, Mr Dillaway, by insisting on absolute confidentiality and imposing significant penalties for any failure of that kind. If you say to a complainant that you may not make this public in any way at all and you will be severely punished if you do, that will reduce, will it not, the number of those seeking to get malicious advantage out of making complaints? The second is are the numbers as bad as you think? If it was about 4,500 last year, only about half of those would have been misconduct notifications and that is likely to have been less than the ones that ICAC and the West Australian commission were receiving on the figures I have got. Apart from that, there are other ways. There is an ability to deal with people for making vexatious or malicious complaints. They have not been used, as I understand it. It is a bit like cutting off a thumb, it will go quite a long way.

Mr DILLAWAY: Further to that, we have heard from the department and we have also seen from other submissions that there are avenues and maybe some consideration certainly for the committee to put forward some recommendations maybe for the bill, and I am not pre-empting anything that the committee may decide. There are exemptions available for people not to have to undertake a statutory declaration. There is also, I guess, other avenues as well where a piece of information or a matter that may be put forward that does not actually require a statutory declaration

but still may be considered by the CMC or the CCC, whatever it is ended up being called, to undertake an investigation. Out of the 4,494 or thereabouts that we are talking about, a large proportion of those again may not actually be deemed to need a stat dec. Again a stat dec is there specifically for, I guess, some purposes, but also covering some elements of the society because of retaliation, et cetera. I am sure you have read it.

Mr Charles: One alternative would be to give the commissioner power if he thought it desirable to require a statutory declaration from someone. One of the difficulties with a stat dec is that it prevents anonymous complaints being made, and there is quite a lot frequently gained out of an anonymous complaint. But beyond that, the three examples given are not exclusive. It says that examples of exceptional circumstances are the ones set out. You are going to have a lot of the commission officers going through applications being made by people which may well take longer than going through a complaint to see whether it is trivial. A lot of those that are referred to among the 60 which the review panel took as a good sample were, on their face, ones that you could throw straight into the rubbish bin.

Dr Brown: I am happy to help address that question as well. I think there are two critical things to note, and you have two and a half pages of submissions from me on this. The amendment that is currently proposed is unworkable. It is simply unworkable. To try and make it work would either require other amendments to the act to make it work dealing with those distinctions between information, complaint, matter, et cetera. That would make it more onerous and complicated and administratively bureaucratic to try and administer than any possible gain you get from inserting the requirement in the first place. It is a worry that the best that could have been come up with in relation to this particular issue after this amount of time and consideration is an amendment which is technically and administratively quite unworkable.

But I guess the real answer to your question is all the other things that are also already being done in the bill to support the commission's ability to do exactly what we all want, which is to be able to repel and discard—not attract in the first place—a high proportion of less worthy complaints, however they might be defined, many of the other proposed amendments already provide that weaponry to be able to do that. The new CMC, which is already what is evolving under the current acting chairmanship, is already moving to do that using its existing powers and discretions. The new misconduct regime will support the ability to do that because there is clearly an alternative misconduct regime for dealing with the more minor matters. So there are all the other things that are already being done which will serve the purpose. You just simply do not need to make everybody's life more complicated, administratively difficult and politically difficult by introducing this particular requirement given the counterproductive effect of this particular requirement, which is to send the message to everybody that fundamentally we are not interested unless you are prepared to front up and sign your name to a piece of paper at the beginning. We do not even know what the statutory requirements are supposed to be for this declaration, so we do not actually know what it is that people are being asked to swear. But if you imagine that it is that: 'I have this information. I believe it is information pertaining to or defining or identifying corrupt conduct. I believe that all this information is true and correct. I believe I have enough evidence to support this concern of mine', then you can bet your bottom dollar that you ain't going to get any quality complaints. You will simply get complaints that you do not want from people who will sign that sort of statement recklessly or in the belief that they have all that information, when they cannot possibly have all that information.

So for all the reasons that I think almost every submitter has given you, it is simply not something which is sensible, workable or necessary.

Mr Charles: The Victorian Ombudsman, who has just come to the end of a 10-year period in office and who has been the only effective member of Victoria's integrity organisation at that time—the present Auditor-General is being drowned in paperwork, whose predecessor was very effective—says that some of the best tip-offs he got were from anonymous complaints.

CHAIR: Indeed, that may well be the case.

Prof. Sampford: On the confidentiality thing, when I first came to Queensland there was some Gold Coast councillor who said they were going to the CJC. I thought it was terrible then. I think apart from the criminalisation of breach of confidence, one thing I have suggested is that all privilege will be removed from the communication. If you go and publicise it—which of course you should not be doing if it is a serious issue (you might prejudice the examination). Not only to criminalise it, but also remove all privilege. In fact, allow those who take defamation actions against them to actually seek exemplary damages. Often that kind of—

CHAIR: That seems awfully akin to statutory declaration mechanisms.

Prof. Sampford: No, the point is that for me the mischief is—

CHAIR: I mean, I like the idea of it.

Prof. Sampford: But the mischief is breaching confidentiality rather than coming with an inadequate complaint. Because the other thing is—

CHAIR: The only problem with that is—and can I just be the devil's advocate—these things are surrounded by a journalist in a nameless newspaper who's got a source. Do you pin that back to the person? It is a very nebulous area where we come with—

Prof. Sampford: I am very conscious of that and I address it, I am not suggesting that the press be criminalised for this. On the other hand, the thing is I think I see this fitting in the same—just like I say, apply the Crime Stoppers test. Would you do this with Crime Stoppers? The other thing, as I say, is that when it comes to—

CHAIR: I like your analogy, but we do have 89, 90, 150 police stations around the state and we only have one CMC, so I do not know that we could quite use the analogy.

Prof. Sampford: But how many Crime Stoppers complaints are there and how quickly are they triaged and so forth? But the other thing is that you won't necessarily know whether this is a trivial complaint, because the nature of corruption is that the victims are not present. So therefore the thing is all you will probably see is a little chink and if somebody reports it anonymously, this little chink may mean nothing. It may be sort of thrown in the dustbin. It may be just put away in a file. Maybe there is something; I do not know. But then another chink comes in. So when you finally build the case it is because each little chink is insufficient to know that there is substantial corruption, but when you see these things together. That is, of course, actually what crime authorities do. If you are chasing serious crime and organised crime and corruption, you want those little chinks. You want to encourage people to report the little bit they think that they are suspicious, and one person's suspicion does not lead to a public inquiry, but a number of them together will add up. I think that a really effective CMC, as I put in my submission, involves a mixture of intelligence, research, experience, tip-offs, and there are a whole series of things. So I think in one sense there is a huge emphasis on complaints and too many complaints. We do not know how many crime stopper complaints there are and we do not even know how many police—there are a lot of policemen, but we do not—I suspect there are a lot more complaints to Crime Stoppers than there are to others, and we are used to triaging these things. But part of it is to actually try and build up little bits of pictures. You will come back to it and take no action, but, you know, after little bits of—and as I say, the thing is that one policeman walking past a known brothel did not make a corrupt chief of police, but pulling them altogether—

CHAIR: It is legal, of course, these days.

Prof. Sampford: Which is actually interesting, of course, because that was one of the ways that corruption flourishes, is by actually criminalising certain things which gives those who are corrupt the capacity to give them informal approval.

CHAIR: I understand where you are coming from, and really ultimately what it is is somehow trying to separate the chaff and the straw. We can talk about this all day, but ultimately we have a finite resource. The government of the day is going to make a decision on how far we go with the limited resources we have got. We could spend $150 million and we could probably eliminate—well, I daresay we cannot. But I understand where you are coming from. What this bill is doing is creating the portal through which you must pass in order for the matter to be investigated. Now, it is not the only portal, of course. I think we have talked about information. So I understand where you are coming from, and the difficulty is how do we make it more effective?

Prof. Sampford: There was a claim there are actually 37 people involved in this preliminary investigation. Now, there are two things: could that be operated more effectively? That is where I would like to see a body like EARC to compare how does the Ombudsman triage a much larger number of complaints and how do they do it elsewhere. Maybe with better, efficient management you might get it down to 18 or whatever and then you say—

CHAIR: With a good CA you might get it down to 10.

Prof. Sampford: Who knows? The first thing is to do it more efficiently, and then the thing is that you say will you have—you take out catastrophe insurance. You want to avoid the catastrophes you cannot take self-insurance for, and the kind of thing we had in the 80s I think most Queenslanders would think was a catastrophe. If in fact there was another 18 investigators triaging,

or 20 or whatever, it is a very small proportion of the total income and assets of the state of Queensland. In one sense the thing is that if your insurance—parliament is very important and the courts, add it all up. What percentage of the total government revenue is it? Then you say, 'Are we talking too much insurance or too little?' Then you put your 18 or 20 or 30 investigators who are triaging complaints into that perspective, and that is where I would like to have an independent body looking at this. But at the moment, looking at those figures, if you could make it more efficient, go to 18 or something like that, what percentage of the total revenue of the government is it?

The other thing I want to say here is at the moment there is consideration of selling public assets. There can be very good cases for privatisation and very bad cases, and there can be very good cases for PPPs and very bad cases. We have seen in lots of countries where actually some privatisations have involved a lot of corruption. Obeid is all about a huge PPP. I would like to think that if the government decides to sell assets—and as I say, there can be good and bad decisions—the thing is that you are not just dealing with the annual net income of Queensland. You are dealing with the assets, and there is a lot of value in that. There is value that can be lost by the Queensland people and value that can be gained by those who have neat little stories, and I would like to see the CMC on hand. When you are dealing with the assets there is much more that can be lost, so I would tend to take a bit more insurance at that particular time.

CHAIR: Can I assure you that we are not selling the CMC.

Prof. Sampford: There would be some good buyers, I think. The Obeid family would be very happy to bid.

CHAIR: I was being a bit light with it, but I appreciate you giving us your knowledge and your qualifications. I certainly understand where you are coming from, and I would like to thank you for your contribution. It has been helpful and certainly thought provoking in a few areas. I am going away to look at EARC now, because I have looked at everything but EARC. I must have somehow missed that. But thank you very much for coming in and assisting us.

Dr Brown: Thank you, Mr Chairman, and might I say good luck.

CALLAGHAN, Mr Peter SC, Law & Justice Institute of Queensland Inc

GNECH, Mr Calvin, Legal Group, Queensland Police Union of Employees

LEAVERS, Mr Ian, General President and CEO, Queensland Police Union of Employees

McCARTHY, Mr Mark, Law & Justice Institute of Queensland Inc

McMAHON, Mr Greg, Secretary, Whistleblowers Action Group Queensland Incorporated

SWEPSON, Dr Pam, Whistleblower, Whistleblowers Action Group Queensland Incorporated

CHAIR: I welcome the representatives from the Whistleblowers Action Group Queensland Inc., the Law and Justice Institute Queensland Inc., and the Queensland Police Union of Employees. Good afternoon and thank you for coming along here today. Can I begin by asking if you object to being filmed or recorded by Hansard and the media?

Mr Leavers: No objection.

CHAIR: And that you confirm that you have read the guide to appearing as a witness? Thank you. Can you please introduce yourselves, speak clearly for Hansard and then please make an opening statement if you wish and the committee will ask you some questions. I am just wondering, though, we have got into a little bit of trouble this morning in terms of time. We have an hour in which to do this, so I will leave it to you as to how you want to divide up the time. Do you want to make it five minutes each and summarise it? Are you happy with that? Are you happy to go from left to right?

Mr McMahon: I am a management consultant by trade. I deal with organisational failures, would you believe. I accompanied by Dr Pam Swepson. Pam is a whistleblower who made the disclosures for an inquiry into fire ants. Her PhD is in research methodology, which might be of interest to you. Do you want to hear the other introductions, or do I do my three minutes now?

CHAIR: Do your three minutes now and we will just proceed along and then we will ask the questions.

Mr McMahon: You described the position, Mr Chairman, regarding the 63 investigations out of 4,000 plus. Our position is that there is an anticorruption watchdog that is the subject of a credible and accumulating body of allegations and established prima facie cases. That body may have engaged in actions and omissions to acts that did beyond reasonable doubt knowingly advantage another by not applying the law in an honest, consistent and accurate manner and that this may have occurred particularly with respect to sections of the Criminal Code dealing with the disposal, destruction and manufacture of evidence and sections of the whistleblower protection legislation dealing with criminal detriments to whistleblowers, including punitive transfers and termination by their agencies.

I thought you were describing the problem as one of where is the $50 million going—efficiency? We see the problem of years of allegedly tolerated corruption within agencies that has undermined our institutions and, in fact, we might be getting 4,000 a year because of the failure to respond appropriately to the cases of corruption that arise. That has reduced the capability of our Public Service to levels that threaten the welfare of the community and has generated waste beyond the ability of the state to fund.

The possibilities we see for you and for the government are the do-nothing option, with or without a pretence of doing something; the reform option, endeavouring to turn around the CMC; and the parliamentary option, doing away with the CMC or some of its allocated functions and seeking to address corruption in agencies in another way from the parliament. We have three proposals regarding achieving a better situation. Regarding the anticorruption function that has been so long and trusted to the CMC—what we call the sword function in our policy, the sword and the shield, the committee should recommend a return to parliamentary initiatives rather than a standing inquiry, in our view. We think that the Fitzgerald inquiry was more successful than the Fitzgerald reforms and that most of the improvements, or corrections of corruption, have come not from CMC investigations but from investigations initiated by the parliament.

Why is the Fitzgerald inquiry successful when the reforms have not been? The Fitzgerald inquiry listened to whistleblowers like police officer Col Dillon, who we might remember today especially as the police officer who came into the Fitzgerald inquiry and held up the expensive bottle of alcohol that had been given to him, he thought, in an attempt to bribe. But the Fitzgerald reforms left Inspector Col Dillon to suffer in a corridor gulag under observation of the CJC. So we suggest you go back to parliament.

Regarding the protection of the whistleblowers' function that we say has been long abandoned by the CMC, we recommend a whistleblower protection authority—a shield organisation, as we term it—be established separate from any sword organisation, including the Ombudsman's office. Whistleblowers pose the greatest threat to corruption of agencies. You will be able to recognise that in the immediate action that is taken by vested organisations of its whistleblowers. I understand that your terms of reference are drawn from one such recent case. We take that back to the cases of Col Dillon and Jim Leggate. The reasons we are today contemplating the situation that the destruction of the Heiner documents pose to all our institutions is that that particular whistleblower survived when many others have not. The survival of that whistleblower has ensured that the disclosure, the pressure for an investigation of that disclosure, continues. If you are able to preserve the survival of whistleblowers in your agencies, that pressure remains.

Regarding the research function, also entrusted to the CMC, this function with respect to corruption within government agencies has been itself corrupted, we submit, by self-serving propaganda, WAG alleges. We recommend that that whistleblower protection authority be given part of the research function with respect to the protection of witnesses and their evidence. A clear example of that is with respect to termination, where the Griffith University study that the CMC initiated went into a group like this and asked a number of questions and the vital one was, 'How many of you have been terminated?' Of course, the answer was nil, because all the terminated people had left the Public Service. Those like Dr Pam Swepson, who was recommended to go to the Griffith University researchers, was told that they were not interested in her, because she was no longer in the Public Service. Then for that research body to come forward and say that their research indicates that very few people get terminated, I do not think is the experience of any of you in your observations of what happens in agencies when whistleblowers are named. Col Dillon, the hero of Fitzgerald, even he had to be removed.

CHAIR: Thank you very much for that.

Mr Callaghan: I have here a copy of *Time* magazine from 12 December 1988. This is history. This is what history looks like and Tony Fitzgerald is a part of Queensland's history. He can stand tall under its gaze and he is judged well by it. It is because of him that the CMC exists, it is largely because of his efforts that this parliamentary committee system is able to make a meaningful contribution to our democracy and it is because of his advice about this bill that there can be no excuse for this bill to pass in its present form.

Mr Fitzgerald has pointed out that there are no simple solutions to complex problems. But this bill contains a very simple problem. It is what Mr Fitzgerald has aptly described as the outrageous proposal that the government should decide on senior appointments to the commission irrespective of the views of the opposition or the advice of the Parliamentary Crime and Misconduct Committee. It is bewildering that such a notion could be supported by any parliament that claimed commitment to free enterprise.

The member for Toowoomba North would surely, as a result of his international experience, understand this much: that corruption and even the appearance of corruption can have a devastating effect on commerce. We would submit that Australia rates well on Transparency International's corruption perception index, but if Queensland were to be allocated a separate ranking we think that it would certainly fall at the very moment this bill was passed in this form. We ask you to please just take that thought through to its logical conclusion.

It is also impossible to understand how this bill could be sponsored by any parliament that actually understood elementary notions of fairness, freedom and democratic philosophy. The member for Broadwater invoked in her inaugural speech the wisdom of her conservative forefather Edmund Burke and the observation attributed to him that the triumph of evil requires only that good people do nothing. If nothing is done to fix this bill, this government will have helped to make Queensland a place where evil could thrive more easily. Our perceived worth at home, interstate and abroad will be devalued and all of this, in turn, will have made our state a more dangerous place.

This committee will, of course, eventually dissolve and its members will resume their seats alongside the others in the 54th Parliament. However, in time history will judge it and all of those responsible for this legislation, if it passes in this form, and at that point there will be nowhere to hide. We ask: who will stand tall then? Please do not let our parliament validate a bill that contains such a plainly unjustifiable provision.

CHAIR: I just tried to read your submission to find out whether there was actually something in here that would help us, but—

Mr Callaghan: Would you like me to take to you it?

CHAIR: No, we will come back to you.

Mr Leavers: Thank you, Mr Chair, and your other colleagues. With me is Mr Calvin Gnech. He is our principal lawyer at the Queensland Police Union and a former police officer himself. You have our submission before you. The main thrust of our submission, as you can see, is with regard to the new definition of 'corruption' as it applies to police. 'Official misconduct' has been removed from the act. The change in terminology from 'official misconduct' to 'corruption', or 'corruption offence', is very concerning for the Queensland Police Union of Employees and its members. It is highly concerning that, under schedule 2 of the bill, 'corruption', or a 'corruption offence', is defined as including police misconduct.

It is without doubt that most police misconduct is not corrupt in nature. In fact, very few instances of police misconduct are rarely ever corrupt in nature. The definition is so broad that we have recently had police found to have committed police misconduct for off-duty drink driving, the breach of the QPS no-pursuit policy for attempting to apprehend a violent offender, losing police property or an exhibit, incivility to a member of the public when issuing a traffic ticket. Police misconduct can also include conduct such as not wearing a police hat whilst in public on duty, not having your shoes polished or handing in paperwork in a tardy manner. All of these situations, I suggest, are not corruption at all and, in fact, to define it as corruption will destroy a police officer's career because they have been convicted of incivility to a member of the public. I suggest that it is not right, but it is not corruption. In fact, I would submit that this means that many MPs and ministers in the past would technically be found guilty of corruption under these ludicrous new definitions if they were police officers.

The stigma of corruption for a police officer, there can be nothing worse. It is the most serious allegation of all. I liken it to a member of the public being tabled as a paedophile—and I can say this. I have locked up many criminals for many offences, including paedophilia, manslaughter, and many other offences, but many of those criminals never want to be branded a paedophile. It is the most serious thing that affects teachers and many others. Just to be branded that destroys a career. As for the word 'corruption' for being not civil to a member of the public, you will be deemed to be corrupt. Your career is ultimately finished. I would suggest to a lawyer—as I know you are, Mr Chair—to make a mistake in the execution of your duty and be convicted of corruption would be career ending for a lawyer, or for any professional person, I would suggest.

The QPU demand the removal of police misconduct from the definition of corruption, and the corruption offence needs to be removed. Going on from previous speakers, it is important to note that the Queensland Police Union and the Fitzgerald inquiry was mentioned before. Under my leadership we now actively protect whistleblowers if they come forward. The Queensland Police Union actively supports whistleblowers. It may have been different in times gone by. We note the Callinan-Aroney review that large quantities of CMC time and resources are being spent dealing with complaints which are very trivial in nature. I believe the CMC should be there for the most serious offences and not trivial matters.

Mr DILLAWAY: I am happy to ask the first question. I want to draw attention to Mr Callaghan's address to the committee. It was quite strong language, to be honest, and I guess we all read that in Mr Fitzgerald's submission to the parliament. It has been raised a couple of times this morning. It has been raised by the department and in a number of submissions, and I want to put it on record and maybe get your comment on this. You mentioned that if we were to pass the bill in its current form, in particular as Mr Fitzgerald stated, it would remove bipartisanship. It is important to understand what was in his original report on page 310, which reads—

The chairman's position should be widely advertised and filled only after evaluation of and report under all applications by independent consultants. The government should consult the Criminal Justice Committee about the appointment.

I am just wondering if you could maybe give your opinion on that.

Mr Callaghan: Absolutely. I was listening this morning. While I did not necessarily hear all of what has happened this morning, I think the chair has made observations earlier today about how times change and how the changing needs of an organisation like the CMC might produce a change in the way that the chair is selected. To that we would say that the need for bipartisanship in the selection of the person in charge of the CMC is greater now than it was even then. To the extent that Mr Fitzgerald made those recommendations in those terms, I would suggest that they were right for the time, but you are looking at what you should do now and you should take his advice as he has given it to you now and we endorse it, to adopt the word that the chair used earlier today, as a deal breaker. With respect, Mr Chair, I know you do not see it as a deal breaker; we do.

CHAIR: I appreciate that but you lead with a *Times* magazine, an Australian edition, I assume, of 1998. I just assumed that was the position you were taking in terms of the Fitzgerald inquiry. I did not realise that you are taking his submission, but you are saying now that the submission by the Hon. Fitzgerald is the appropriate one, not back in 1998.

Mr Callaghan: I quoted the submission that he has made to this committee word for word from a passage of his submission.

Mr WATTS: A lot has been said about bipartisan appointment and how in other jurisdictions it is bipartisan appointment. I want to get your comment because it is not at a federal level and it is not in Tasmania. There is a veto power in New South Wales but it is by majority vote of which the government of the day holds the majority of the parliamentary committee. It is a veto power in Victoria by a majority vote of which the government of the day holds the majority. There has been this conversation that it is bipartisan everywhere where in actual fact that is not the reality of the systems.

Mr Callaghan: I do not think we have ever said that.

Mr WATTS: All of these other authorities are not necessarily bipartisan, as has been described. I am wondering why there is such an issue with it not being bipartisan if that is operating in other jurisdictions.

Mr Callaghan: For a start, I do not know that in Queensland we have ever been particularly beholden to the way that other jurisdictions do things. I think the important thing to recognise is that sometimes it is only because a job is being done well that you do not notice it being done at all. Mr Chair, I think earlier today you asked the question, 'How many people really know it is bipartisan?' I think perhaps the question reflects that concern that it has not really been such an issue until now. We would suggest that is because it has been working well and there is no need to change it. The fact that perhaps people do not understand that it is a bipartisan appointment may well be true, but can I tell you this: they will understand it now. If this bill goes through, more will understand it and at the first glitch, at the first hard decision that has to be made by the person who holds the job in favour of the party that appointed him or her or against the party that is in opposition, everyone will know that it was not a bipartisan appointment.

CHAIR: We have had instances when there was a bipartisan chair.

Mr Callaghan: Of course, but why make things harder? Why make the decisions more controversial by changing the situation? Please take those examples where you have had those instances where there has been controversy and magnify them 100-fold because the decision is being made perhaps completely validly but nonetheless being made by someone who could be perceived to be beholden to the party that appointed them.

Mr WELLINGTON: Bring on the election.

Mr Callaghan: The problem—

CHAIR: Just excuse me for one moment.

Mr WELLINGTON: I apologise, Mr Chair.

CHAIR: Does anyone want to ask a question?

Mr McMahon: I think the bipartisan issue, whatever its merits, is so remote from the critical issue. The poor whistleblower who goes to the CMC and is referred back to the department against whom he is making the claim for them to investigate his claim is a conflict of interest situation. Over the 4,000 cases, that is by far a greater magnitude event than this focus that you have on bipartisanship. I know it has its merits but—

CHAIR: I know but—

Dr Swepson: I have one example of why I am saying the CMC does not work. As Professor Sampford said earlier, there is a danger that the CMC gets captured by agencies or captured by government. In the case of my public interest disclosure in terms of fire ants, I believe it was because my complaint was referred back to the department, which changed the terms of my complaint and investigated something else and then the CMC took 2½ years to investigate during which time nothing can happen. I would say that is an example of the CMC being captured by government. That happened under two chairs who were both appointed by a bipartisan process, and that did not matter because the issue is that the CMC was not independent of government. Whether it is a chair who is appointed by one government or not, bipartisan appointment reduces the chances of the CMC being captured by an agency, but it is only a very small part of the very small process of the CMC having been captured by government.

CHAIR: When you talk about the CMC not being independent of government, is that because the CMC referred it back to the department?

Dr Swepson: That is part of the process. Part of the process is that they referred it back to the department to investigate. They referred it back to the department to protect me from reprisal. The campaign from reprisal came from the department. Any information I gave to the CMC went back to the department for its assessment. None of the information that went from the department to the CMC about me ever came back to me to assess, and it went on for 2½ years during which time I am asking the Premier to do something about the fire ant program. He said, 'I cannot do anything because it is being investigated.' So the length of time that the CMC takes holds things up.

Mr McMahon: It is a $250 million program now to try to contain—

Dr Swepson: It is up to $400 million.

Mr McMahon: It is only fire ants.

Dr Swepson: I have written to the chairman about this. Because of the length of time, I in part hold the CMC responsible for the spread of fire ants.

Mr BYRNE: Mr McMahon, some of that conversation was about public interest disclosures. You are probably aware that the CMC is a proper authority to receive certain disclosures under the Public Interest Disclosure Act, for example, against judicial officers and the like? The Public Interest Disclosure Act allows a person to make a disclosure to a proper authority in any way including anonymously. From my perspective, this appears to be in direct conflict to the requirement for complaints to the CMC to be made by statutory declaration. Do you have any views or observations about that?

Mr McMahon: There would be whistleblowers to whom the need to make anonymous disclosures would be very important because of the state of corruption of the organisation that they are in. If we want to pick on someone who is neutral to our situation, a priest in a Catholic Church about paedophilia, for example, would have an expectation of severe repercussions. In that circumstance we need to preserve an ability for people in good faith to come forward anonymously because there is systemic corruption within their environment. Maybe someone in the racing industry in Queensland may have with good reason had the same apprehension. With respect to statutory declaration, I heard the comment made that if they sign a statutory declaration and it is proven that what they put in the statement is not true, if we clip them for that what is the penalty for a false declaration? That will dissuade people from making vexatious comments but that is not the context. In a corrupt organisation or in an organisation perceived to be corrupt, that will be seen to be a weapon against a good faith whistleblower.

Mr BYRNE: So you would argue that the CMC—

Mr McMahon: The CMC investigated Heiner to the nth degree. Well, did they?

Mr BYRNE: You would argue that the provision of anonymous information or complaint should be retained?

Mr McMahon: It should be, yes. I would go against the stat dec if it is really set up to punish the vexatious whistleblower because I cannot think in all my years of experience of anybody who made a vexatious whistleblowing complaint outside of politics. In the Public Service people who do so are very brave because they are more than well aware of what will happen to them. There is a saying, 'If you are going to tell the truth in government, you need a fast horse.'

Dr Swepson: If I can add to that, there was a suggestion that when you sign a stat dec you agree to the confidentiality. I did not require a stat dec; I made my disclosure, but if I had to maintain confidentiality for 2½ years while the CMC did not do anything confidentiality is just shutting down the whistleblower.

Mr McMahon: For your research officer, you might remember the name Stigler-Becker and a thing called the Chicago theory, Chicago being a town noted for corruption. They came to the view that agencies like watchdogs because they are able to capture them. That body of theory goes to recommending that you do not allow watchdogs to reduce the power of the parliament because what corrupt organisations really fear is the power of the parliament. If you look at the health inquiry, the Matthews inquiry, the Forde inquiry and the racing inquiry, the reason we had to have all those inquiries is that all the whistleblowers who went before those inquiries were not listened to. What you have got is the CMC, when it does act, acting at the end of a process when things are already bad, rather than capturing these things early on by and making proper corrections when the corruption is less systemic than it has become in all of those circumstances.

Mr WATTS: If I might change tack, I had a question for Mr Leavers and your submission in relation to corruption and misconduct. I just wanted to gain some clarity around what it is you are suggesting should happen in defining that so that police who maybe haven't worn their hat are not found guilty of corruption. I just wanted to get some clarity around what it is you are asking for.

Mr Leavers: I will hand over to Mr Gnech.

Mr Gnech: What we are asking for is the removal of the definition 'including police misconduct'. Police misconduct should not always incorporate a corrupt aspect of it. The practical effect that this bill in its current form would have is—a police officer's duty is to attend court, prosecute offenders and give credible evidence to the court. It has been routine for a number of years now for defence lawyers to subpoena the personal records of police officers giving evidence in a court. As soon as there is a suggestion that a police officer has a finding of corruption against their name, it would be very difficult for a court to accept any evidence that the police officer gave. So a police officer who had previously made a mistake in regards to filing paperwork, dress standards, even off-duty drink driving, would have a finding of corruption next to their name that would be taken into account as to the credibility of the evidence they could give.

Mr WATTS: You would say that if it was separate from corruption but just misconduct that would meet your requirements?

Mr Gnech: Yes, that is correct.

Mr Leavers: Absolutely.

Mr CHOAT: Just following on from the member for Toowoomba North's comments, the Department of Justice and Attorney-General this morning touched on this, and I do believe they are giving a bit of a summing-up, so perhaps those officers may be able to provide some insight. They seemed to indicate that they had looked at this. If I can just ask you for general information and I look at these things not wearing a police hat. I got sent home from school for wearing the wrong socks, and I do not know that that really went on my report card and nor should it have. Would I be correct in saying that as an officer who graduates from the academy and goes through, like anyone else they may be subject to making mistakes, I guess. Is there a process by which those things could be identified and classified differently so that by no means can they come into the realm of misconduct or corruption as you are saying here? Is there any thought to that? Has there been any activity?

Mr Leavers: We have a very firm view on that, and I think you are right: it is not corruption. Corruption by nature is someone who is involved in serious criminal activity where you are abusing your position, where the trust is gone. For many of these other matters police make mistakes, and I will be straight up: they think on their feet. They make instantaneous decisions. They do not have the view of hindsight and everything like other professions, and in fact they make mistakes each and every day. As Commissioner Scipione said in New South Wales, there are over 20,000 pages of policy for police to follow. They cannot be expected not to make mistakes in the nature of their job, and to be convicted of corruption I think is a bit harsh. I think misconduct, breach of discipline and all of these things have their place; but corruption is a different issue.

Mr Gnech: Just to address the member for Ipswich West, there is currently a review of the police discipline system that I believe is being considered, and there is a police union proposal put forward that there should be concentration on corrective strategies such as mentoring and retraining rather than automatically jumping to the discipline process which we currently do. So for those minor matters such as late paperwork, et cetera, at the moment there is a tendency to lean towards the discipline process instead of dealing with that on a management basis. The union is supportive of changing that strategy and adopting an educative management style discipline process.

Mr BYRNE: Just following on from that earlier question, did you happen to hear the department's evidence this morning as has been referred to by the member for Ipswich West? Because this issue particularly, what your submission is all about, was addressed by the Director-General and my interpretation was that it was minimised as being a nonissue from the departmental position. I was hoping to get your comment on what the department had said, but clearly you have not heard that or seen that transcript or evidence this morning. It might have shaped your position now; I do not know. But we certainly hear what you are saying. The issue is the department is well aware of it because it was part of the submission this morning.

Mr Gnech: We are unaware of what was said this morning. But it is certainly a front-line issue for operational police having corruption against their name in that sense.

Mr Leavers: Not only as a police officer, but in their future careers after that. You could go on to any agency, whether it be public office or aspiring to be members of parliament like yourselves; if you are convicted of corruption, your life is over.

Mr McMahon: Another matter came up this morning regarding CEOs and whether they should be lawyers or not. I was wondering if it would be helpful to the committee to appreciate the difference between general management and technical control.

CHAIR: Before you start, Mr McMahon, the difficulty about 'lawyer' is that it all means different things to different people. Is it a 'lawyer' meaning a person with experience? Is it a person with a law degree? Is it a person who has practised law? On that basis we will use the all-encompassing definition, so if you could refer to your submission on that basis.

Mr McMahon: Because it is often important for one functionary to be showing a leadership role with respect to the critical task of organisation. If you take the military organisation, the way they allow the commander to get away from the desk to command is by having a chief of staff who looks after all the administrative sorts of things. But in project management, we would have a project manager who runs the management function, but reporting to him or her would be technical specialists who have a technical control role. So even though the project manager might be a civil engineer, he is trained to work with a multidisciplinary team and to respect the decision or advice given by the technical control person (civil). And there are two of a number of arrangements whereby who is in the role of general manager is understood and the role of technical specialist is understood, and that would seem to be a model that is applicable to a watchdog dealing with legal matters. In fact, some of those legal matters may involve, as for the flood inquiry, an additional technical speciality as well. We are talking about experienced people from other authorities—

CHAIR: I am talking about professional people.

Mr McMahon:—and I think it might be an educational understanding that is needed and the briefing of these people, that they understand which role they have and the obligation put upon them to respect the other roles and to work out a teamwork basis for that. So it may have been the original design, if it was correctly reported this morning, where some legal roles within the CMC were governor in council appointments. It may have been—

CHAIR: Chair, I think.

Mr McMahon:—that they were seen to be the technical control people and that the original design was for the head of the CMC to fulfil a general management role. But without coaching, the lawyer becomes the lawyer and 'I have got a higher position than you, therefore I will dominate you or try to dominate your legal affairs.'

CHAIR: Yes, it really ultimately comes down to what the chairman is today, because he wears many hats: leadership, the ability to be able to move people, generate ideas, the CEO to help implement them. It is just a different creature than it was 15 or 20 years ago. That is just an observation, by the way.

Mr WATTS: Can I just clarify my comments this morning. I was not being critical of lawyers in any way, shape or form. I was suggesting—and what was put forward—that it needs to be a more representative type of selection, and I was merely saying that what had then been proposed by the Law Society was that we should have a very narrow definition of who can widely represent; in other words, a large percentage must in fact have a law degree. I was simply saying that if there was a model of wide representation, by its very definition the parliament is in fact representative of the people.

CHAIR: Thank you for that. I feel comforted.

Mr BYRNE: I have a question for Mr Callaghan. There has been evidence that part of this bill sort of establishes a hierarchy between organised crime and corruption, and there have been pieces of material put to the committee so far and parts of legislation reflect on a priority towards organised crime, should there be a resource issue. Given that others who have given evidence have talked about the Police Service primarily being function-driven by crime, and organised crime in particular, what do you think about that sort of possibility where choices are made to emphasise organised crime at the expense of corruption?

Mr Callaghan: I have read some of the submissions in and around it, and I would defer really to the expertise of those with greater experience in actual law enforcement, because that really is a law enforcement issue, I would suggest, rather than a law administration issue, which is more the sort of thing that we feel we can contribute to.

Mr BYRNE: What about the union? Have you guys got any view on that?

Mr Leavers: In relation to the crime department, say, at the CMC?

Mr BYRNE: Well, the CMC making a deliberate choice on a certain amount of resource with the priority going to organised crime rather than to corruption. Public service corruption, I mean.

Mr Gnech: There needs to be a priority towards crime, but also the findings from the Callinan and Aroney review report suggest that too many trivial matters in the misconduct field were being dealt with and using up resources. The QPU certainly supports that position. To lead on further to that, we currently have situations where the CMC are intervening in investigations into police misconduct under their review function and their appeal right for discipline proceedings, and they are intervening in matters where suitability to be a police officer is not in question. Recently we have had examples where they have used up resources to review matters to the Queensland Civil and Administrative Tribunal to change sanctions from a reduction in one pay level to two pay levels.

Our submission is that any intervention or involvement in police misconduct investigations or proceedings should be restricted to suitability issues to be a police officer; otherwise, they are significantly contributing to an already broken discipline system.

Mr CHOAT: My question is to either Dr Swepson or Mr McMahon. There has not been a lot of emphasis in today's hearings about the time lag, the sometimes very lengthy durations that the CMC has taken to investigate matters, but it is a consideration of this bill. Fire ants is something that I can tell you is very, very much of interest in my electorate, and I share the frustration of a lot of my local people in feeling as though they have been sitting with their hands tied or they have been hogtied and a paddock of ants poured all over them. That is the equivalent frustration. How significant do you think it is that something is done to ensure that things are investigated expeditiously?

Dr Swepson: What can I say? Extremely critical.

Mr CHOAT: Mr McMahon may happen to have some other views, and I understand certainly from a whistleblower's perspective you do not want storm clouds hanging over your head. But the criticality of that compared to some of the other aspects of what the CMC may have done or failed to do, how do you think that ranks?

Dr Swepson: I can only give you my one example. When I blew the whistle, there were issues that were serious then that needed to be addressed very quickly, in my view, to what was going on in the fire ant program. Nothing was done for two and a half years and still has not been done 10 years down the track. So that is my argument for why we have got fire ants in 10 times the area that we used to have, that they are reinfesting, that we do not know where they are, that we do not stop them from moving around. So that is my argument. The mess we are in now is because very little—no action has been taken. I blew the whistle in—

CHAIR: In that two-and-a-half-year break. Thank you for that. That concludes the committee's questions. Thank you for attending today. I really appreciate your input. The committee will now adjourn until 3.30 p.m.

Proceedings suspended from 2.54 pm to 3.24 pm

LANG, Ms Jenny, Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General

MASOTTI, Ms Susan, Acting Principal Legal Officer, Strategic Policy, Department of Justice and Attorney-General

ROBERTSON, Ms Leanne, Director, Strategic Policy, Department of Justice and Attorney-General

SOSSO, Mr John, Director-General, Department of Justice and Attorney-General

HOLM, Ms Katie, Assistant Deputy Commissioner, Workforce Policy and Legal, Public Service Commission

CHAIR: I welcome back representatives from the Department of Justice and Attorney-General and the Public Service Commission. Good afternoon. It has been a long time and we have been having fun. I understand that the director-general would like to make a couple of opening statements and then we can perhaps drill down to some of the things that concerned us. I do not think it will take an hour though. Director-General, if you could raise those matters you wish to clarify.

Mr Sosso: Yes, Mr Chairman, and I can say at the outset they will be mercifully short. The first clarification I wish to make is with respect to the interstate provisions regarding the role of parliament in the appointment of the head of the relevant integrity body. As the department noted on page 16 of its initial written submission to the committee and the accompanying table, all jurisdictions, apart from the Integrity Commissioner of Tasmania and the chief executive officer of the Australian Crime Commission, provide that the respective parliamentary committee must either approve the relevant appointment or have a right of veto, and there is a distinction between approving and a right of veto. In contrast, the bill provides for consultation with the committee, which is something different to approval or right of veto. I have done a little bit of research in the interim. In the New South Wales legislation, the Independent Commission Against Corruption Act, it provides that the minister is to refer a proposal to appoint a person as commissioner or inspector to the joint committee, and that joint committee is a committee of the lower and upper house. The committee has a right of veto—that is, section 64A. The procedure of the committee is set out at section 68 and it provides that the decision is made by a majority vote. So I just want to clarify that even within the other states there is not unanimity of the approach and a right of veto is quite different than a consultation approach.

The second is a clarification about a question I was asked by, I think, the member for Bulimba about other legislation and if there was anything similar to the Crime and Misconduct Act in terms of a requirement of bipartisan support. When I have looked at the situation more carefully I have been unable to ascertain any legislation where that applies. The relevant legislation requiring consultation only applies to the appointment of the Auditor-General, the Integrity Commissioner, the Criminal Organisation Public Interest Monitor, the Electoral Commissioner, the Right to Information Commissioner, the Privacy Commissioner and the Ombudsman and none of those pieces of legislation is bipartisan support. Mandated consultation, however, is mandated. That is all I wish to clarify, Mr Chairman.

Before I forget, I just go back to my request I made earlier this morning that I think it would be almost impossible for the department to provide written comments by tomorrow and we would be seeking an extension of time until next Wednesday.

CHAIR: That sounds reasonable to me. I do not think anybody has any dissenting views about that. No, that is acceptable.

Mr WATTS: I have a clarifying question in relation to your opening statement. Not only is that a veto power but my understanding is that that parliamentary committee is weighted in favour of the government of the day. Would that be correct?

Mr Sosso: I cannot answer that conclusively because time did not allow me to ascertain that, but if the committee is established as they normally are interstate that would be correct.

Mr WATTS: I stand to be corrected, but I understand it is seven government members against 11 members in total in New South Wales. So I just thought that that was relevant as everybody was holding that up as an example of a different process to what is being suggested when in fact I do not think it is at all.

Mr Sosso: No, I apologise. Because of the complexity and the volume of the work, we have looked at the interstate comparisons perhaps not as fulsomely as we should have. On a closer reflection, the situation is not as clear as we first thought it was.

CHAIR: There was one issue that was made by Dr Swepson, I think it was, and it was something that we really have only slightly touched upon in relation to the length of time it takes to investigate matters by the CMC. Is there any data or any evidence that we are able to use in terms of what is the average complaint time? Even that has its own difficulties, but is there anything that is able to assist us as to how effective it is now? What is the yardstick that tells us?

Mr Sosso: Mr Chairman, obviously that is a question perhaps better placed to Dr Levy, but we will have a look at the annual reports and in our written submission next Wednesday if we have any material we will submit it to the committee.

CHAIR: Thank you.

Mr DILLAWAY: I want to clarify a few things out of some of the submissions that we did not have a chance to touch on this morning but then were raised when we spoke to those people. The first one is in the submission by the CMC and I am just wondering if you could address their concerns surrounding the primary and secondary functions and in particular their ongoing ability to address matters of serious corruption.

Mr Sosso: I do not know whether they expressed any concern in their submission, did they, on that?

Mr DILLAWAY: It says—

If the bill is left unchanged, while recognising the wider role of the CMC compared to most other similar statutory bodies in Australia, Queensland will be the only state that does not have a primary function to deal with serious corruption.

Mr Sosso: I will say one thing: I think this was reflected in the submission of the Queensland Law Society. I think Queensland and one other integrity body are the only two in Australia that have two functions—that is, corruption and major crime. I think the Queensland Law Society said in an instance where you have two functions it always creates tension. I think their recommendation from memory was saying one was primary and one was secondary and they be co-equal. Clearly the view of the government is that the primary focus, but not the only focus, of the CMC now to be the CCC will be major crime. Clearly there was no suggestion that the body would have inadequate resources to do that, but it sends a signal that the government views major crime—paedophilia, murder, drug trafficking—as the most important but not certainly the only important function of the CMC. By basically ensuring that serious corruption is now the focus of the CMC, what we are hoping is that there will be an alignment of their resources to achieve maximum results.

Mr DILLAWAY: Thank you.

CHAIR: The Queensland Law Society certainly came up with a fairly comprehensive submission and, to use the president's vernacular, it was a submission outside the box on some of the issues. It is a matter whether you have the statutory declarations where you make exceptions, because they are suggesting there ought to be some more exceptions or even doing away with the statutory declarations, and I suppose we are really trying to get a happy medium. We understand the reason for the statutory declarations as being a portal through which people must travel in order for their complaints to be viewed, listened to or acted upon. The reason for that is that there are a large number of complaints and it is a matter now of using the resources of the CMC more aptly. If I could just have you comment upon the Queensland Law Society's submission, particularly having regard to perhaps expanding the exceptions to the stat dec—in other words, keep the portal but make it a little wider. Is that something which could still achieve the same object in making sure that we get those bits of gold, as I think Professor Martin may have referred to in his submission?

Mr Sosso: Mr Chairman, I suppose I am somewhat constrained because it is a question which touches on policy, as I explained this morning. However, subject to that in that I am somewhat constrained—

CHAIR: You give me your views without necessarily referring to policy.

Mr Sosso: I might have a very short career. I think, Mr Chairman, clearly—

CHAIR: Let me put it to you—

Mr Sosso: It is all right; I can answer the question, Mr Chairman, in the best way I can. I think that, as I said this morning, the reason for the inclusion of a statutory declaration is to ensure that frivolous and vexatious matters are not as prominent and to ensure that political advantage is not taken by misusing the CMC/CCC. I think that has been recognised in a number of the submissions

and it was recommended as a result by Callinan-Aroney. The issue is how far we should go along that track to ensure that the misuse of the CMC is curtailed but genuine people who have real concerns are able still to put their matters before the CMC. There are a couple of issues that have been touched upon. One is information, one is complaint and one is matter. The other is the role of other legislation—the whistleblower legislation for one, which provides that people in public can disclose to other entities, including the CMC, matters by any means, including anonymously, if my memory serves me correctly of that legislation, and that legislation is not amended, I might add, by this bill.

So what we are trying to achieve in this exercise is not to prevent in any way the Tahitian prince, for example, being disclosed—and that would not have effect under this bill—but we are also keen to ensure that people who are under a disadvantage—illiteracy, remoteness or under fear of their lives or are somewhat constrained in that there could be a concern about their job—are not inhibited in coming to the CMC. One solution, if the committee were of the view having heard from the submitters that the existing provisions need supplementation, would be to expand the list of examples of what is an exceptional circumstance, and I think that would have merit. The issue for the committee would be whether it can draw up a list of matters that would assist in expanding the list of exceptional circumstances. You also have before you the recommendation of the CMC where it wishes to make a distinction between electoral matters and the more general matters. That is another policy matter I cannot comment about, but that is another option. You have heard Professor Martin—I was not able to listen to all of the material—but I think Professor Martin said he wanted the matter around the other way so that all matters could be put before the CMC but they had a discretion—

CHAIR: To ask for a stat dec.

Mr Sosso: Yes, to seek a stat dec. I am not sure which of the above gets the right balance. Reasonable people could argue about this forever and a day. Clearly the government has made a decision in that they think the approach in the bill is the best one. If you were to accept those policy parameters, then I would say that it could be improved and clarified by expanding the list of exceptional circumstances. I do not think I can assist you much further, Mr Chairman.

CHAIR: No. Thank you very much for that.

Mr DILLAWAY: I want to touch again on the CMC submission. In the submission by the CMC in their preventative function can you clarify for the committee that the CMC still would be able to report in relation to a specific investigation which includes comments on corruption prevention measures or educational outcomes such as we have seen and they made highlight of in terms of Queensland Health and the University of Queensland in 2013? Will that capability still be available to the CMC?

Mr Sosso: Yes.

Mr DILLAWAY: Thank you.

Miss BARTON: Mr Sosso, I am not sure if you had a chance to see the QPU submission as yet. It did come in late yesterday. You did touch on this a little bit in your opening statement, but it was raised by Mr Leavers this afternoon as being of particular concern to them and I was just wondering if you might be able to allay some of their concerns about the definition of corruption and where that might encompass what is now known as official misconduct within the QPS. They have a concern, for example, that not acting in a civil manner towards a member of the public or not wearing your hat whilst on duty has the potential to fall within the definition of corruption and they have serious concerns about what that might mean for a police officer's future, both within the QPS and outside of that. I was just wondering if you might be able to allay their concerns with regard to the scope of the definition, particularly with regard to police misconduct.

Mr Sosso: Thank you. I have not had a chance to peruse that submission in any depth, so I will rectify that over the weekend.

Miss BARTON: I am happy for you to take the question on notice.

Mr Sosso: However, the intent is—and I will be interested to look at Mr Leaver's concerns in more length—to not make one iota of change so far as the police are concerned. I will clarify that in our written submission next week, but if the committee is looking for a succinct response the intent is not to change matters. I will certainly ask my officers to look at it to see if in fact that intent has not been given effect to, but the intent so far as the police is concerned is to maintain the status quo.

Miss BARTON: Thank you.

Mr WATTS: There was some discussion in relation to the statutory declarations and it was suggested—I am not sure which submitter it was now—that a restriction on an ability to make public comment might achieve a similar purpose. I just wonder if that has been considered.

Mr Sosso: One of the recommendations of Callinan-Aroney with the statutory dec was maintain confidentiality and therefore preclude public comment. We did not go down as far as that. As I said, this is a balancing act. We believe that what is in the legislation strikes the necessary balance in that regard.

Mr WATTS: Thank you.

CHAIR: I think it was Professor Sampford who raised it, but I think the difficulty there was that, it seems to me, you can certainly have leaks. It is very difficult to stop people from leaking information out there that has been either received or given to the CMC.

Mr Sosso: I think if you go down that path you open up a whole new area of criminality and problems. But, as I said, that is a policy question. It is also throwing potentially the baby out with the bath water. The issue of the stat decs, as I understand it from Callinan-Aroney, is to ensure that people take the process seriously and do not misuse the institution for ulterior purposes or do not engage in a vexatious campaign using up the CMC's resources, and that is the intent in what is being given effect to in the bill. Clearly one way of furthering that objective would be to attempt to silence people once they have made a submission, ensuring they could not make any comments. However, if we did that then there could be prosecutions and so on and so forth.

CHAIR: To put it fairly, I think he said something to the effect of this: if you make the stat dec and then you go public with it, he said that if that is the case one means by which you could stop that happening is to abandon privilege so that anything you have said in your stat dec could be used for defamation perhaps et cetera. I think my question was something to the effect that you could surreptitiously leak anything; it does not necessarily mean from the person who is the complainant.

Mr Sosso: Yes.

CHAIR: To be honest, I do not know whether that takes us anywhere anyway, so I do not really need for you to comment.

Mr Sosso: I do not think I can assist you anymore.

CHAIR: No, it was hypothetical. It does not really matter.

Mr DILLAWAY: Again I go back to the CMC submission. It was not something that was necessarily, I guess, highlighted during the discussion with Dr Levy, but I did note in his submission that the proposed name, the CCC, may have an element of confusion with the WA model. Has the department given any consideration to maybe the suggestion in there that it be called the 'Queensland CCC'?

Mr Sosso: No, we have not given any consideration to that at this stage. It had not been raised with us previously. That was something novel.

Mr DILLAWAY: Do you see any issues with the name in Queensland being the same as what it is in WA? Do you see any issues with that?

Mr Sosso: No, but I have to say that I am agnostic on the issue.

Mr DILLAWAY: Okay; fair enough. The Queensland Law Society did highlight that they would appreciate, I guess, some more clarification surrounding what makes a piece of information versus what makes a complaint. I am wondering if you could expand on that for us.

Mr Sosso: As you would know, the CMC in its submission set out at some length what it regarded as information. There is not a definition of information in the legislation at the moment and one issue that we will be looking at is whether or not that could be clarified. A lot of it would depend on the approach taken on statutory decs. If the existing approach is taken, then an issue of whether or not you need a definition would have to be considered. If that is the case, would it be a broad definition or would it be a narrow definition? I am sorry Dr Levy was not asked the question, but I noted, for example, that the CMC said that information was information from a human source. Well, I do not know what other source you would get it from. So that could be a very broad definition. So I do not know. It is something we would look at. Can I also say in passing that I thought and the department thought that the submission of the Queensland Law Society was an excellent document obviously with some of the submissions for that side—the policy parameters of the bill. Some of them we do not agree with from a legal perspective, but I thought that the submission overall was a very helpful document and would provide some assistance to this committee.

CHAIR: As there are no further questions, that concludes the committee's hearing. Thank you for your attendance. It is very much appreciated. I want to thank all witnesses and advisers for their attendance and information and thank members of the public for their interest in the work of the committee. I declare the committee's public hearing for the examination into the Crime and Misconduct and Other Legislation Amendment Bill 2014 closed.

Committee adjourned at 3.45 pm