

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

Report No 71, October 2006

Three Year Review of the Crime and Misconduct Commission



Legislative Assembly of Queensland

Parliamentary Crime and Misconduct Committee Three Year Review of the Crime and Misconduct Commission

Report No. 71

Membership of the PCMC

CHAIRMAN:	Hon Geoff Wilson MP	Member for Ferny Grove
DEPUTY CHAIRMAN:	Mr Howard Hobbs MP	Member for Warrego
MEMBERS:	Mr Michael Choi MP	Member for Capalaba
	Mr Stuart Copeland MP	Member for Cunningham
	Mrs Liz Cunningham MP	Member for Gladstone
	Mr John English MP	Member for Redlands
	Ms Cate Molloy MP	Member for Noosa
	Ms Carolyn Male MP	Member for Glass House
	Mr Simon Finn MP	Member for Yeerongpilly
	Mr Paul Hoolihan MP	Member for Keppel

Note:

Hon Wilson MP stood down from the Committee on 13 September 2006 following his appointment as a Minister. Mr Hobbs MP became Acting Chairman from that time. Mr Choi MP stood down from the Committee on 19 September 2006 following his appointment as a Parliamentary Secretary. In accordance with Standing Order 195, the Speaker, Hon Tony McGrady MP, appointed Ms Male MP and Mr Finn MP to replace Hon Wilson MP and Mr Choi MP respectively. Following the general election on 9 September 2006, Mr Hoolihan MP was nominated by the Premier as a member of the Committee in place of Ms Molloy MP in accordance with section 301(3) of the *Crime and Misconduct Act 2001*.

TABLE OF CONTENTS

1.	INTRODUCTION	1
1.1.	Background.....	1
1.2.	The review process.....	1
2.	RESPONSIBILITIES, FUNCTIONS AND STRUCTURE OF THE CRIME AND MISCONDUCT COMMISSION	3
2.1.	Establishment of the Crime and Misconduct Commission	3
2.2.	Responsibilities and functions	3
2.3.	Structure of the Crime and Misconduct Commission	4
2.3.1.	<i>Chairperson and part-time Commissioners</i>	4
2.3.2.	<i>Role of the part-time Commissioners</i>	5
2.3.3.	<i>Qualification for appointment as the ‘civil liberties’ part-time Commissioner</i>	6
2.3.4.	<i>Tenure of senior Crime and Misconduct Commission officers</i>	7
2.3.5.	<i>Current structure</i>	8
2.4.	Resources and staffing	9
2.4.1.	<i>Staffing establishment</i>	9
3.	COMBATING MAJOR CRIME.....	11
3.1.	Jurisdiction – Major Crime	11
3.2.	Crime references.....	12
3.3.	Performing the crime function	12
3.4.	Concerns about the Crime and Misconduct Commission’s major crime role	13
3.5.	Major crime	14
3.5.1.	<i>Organised crime</i>	14
3.5.2.	<i>Paedophilia</i>	18
3.5.3.	<i>Serious crime</i>	22
3.5.4.	<i>Terrorism</i>	23
3.6.	Law enforcement partnerships	25
3.7.	Challenges for the future.....	27
4.	PROCEEDS OF CRIME.....	29
4.1.	Background.....	29
4.2.	Queensland’s legislative framework.....	30
4.2.1.	<i>Non-conviction-based (civil) confiscation</i>	30
4.3.	Conviction-based confiscation scheme.....	31
4.4.	Strategic framework	32
4.5.	Successful confiscation	33
4.6.	Resources and staffing	34
4.7.	Legislative review	35
4.8.	Challenges for the future.....	37
4.9.	Committee comment	38
5.	THE MISCONDUCT FUNCTION	41
5.1.	Introduction	41
5.2.	The Crime and Misconduct Commission’s misconduct function	41
5.3.	The misconduct function under the <i>Crime and Misconduct Act 2001</i>	42
5.4.	Capacity building initiatives of the Crime and Misconduct Commission	43
5.4.1.	<i>Analysis and comment</i>	43
5.5.	Timeliness.....	46
5.5.1.	<i>Introduction</i>	46
5.6.	The Crime and Misconduct Commission and local government.....	50
5.7.	Jurisdiction over private bodies exercising public functions	53
5.7.1.	<i>Introduction</i>	53
5.8.	The respective roles of the Crime and Misconduct Commission and the Office of the Director of Public Prosecutions	54
6.	COERCIVE POWERS	57
6.1.	Introduction	57
6.2.	Hearings by the Crime and Misconduct Commission.....	57
6.3.	Spousal privilege	58
6.4.	Telephone interception powers	60

6.5.	Recent Legislative Amendments to the Crime and Misconduct Commission’s powers – cross-border legislation	63
6.6.	Recent Legislative Amendments to the Crime Misconduct Commission’s powers – terrorism.....	64
7.	THE INTELLIGENCE FUNCTION	65
7.1.	Introduction	65
7.2.	Background.....	65
7.3.	Strategic Intelligence Unit	66
	7.3.1. <i>Strategic intelligence</i>	66
	7.3.2. <i>Target development</i>	66
	7.3.3. <i>Intelligence sharing</i>	66
	7.3.4. <i>Tactical intelligence</i>	67
7.4.	Oversight of the intelligence function by the Parliamentary Crime and Misconduct Commissioner.....	67
	7.4.1. <i>Whether intelligence data is held appropriately</i>	68
	7.4.2. <i>Security of material</i>	68
	7.4.3. <i>Unnecessary duplication of intelligence material</i>	68
	7.4.4. <i>Intelligence sharing with other agencies and the public</i>	68
7.5.	Conclusion	69
8.	RESEARCH AND PREVENTION	70
8.1.	Introduction	70
8.2.	The Crime and Misconduct Commission’s research and prevention roles.....	70
8.3.	Recent and current operations - policing	70
8.4.	Recent and current projects - crime	73
8.5.	Recent and current projects - misconduct prevention	75
8.6.	Misconduct prevention system reviews.....	76
8.7.	Misconduct research.....	76
8.8.	Capacity building - local government.....	78
	8.8.1. <i>Indigenous liaison</i>	78
8.9.	Interaction between the Crime and Misconduct Commission and the Queensland Police Service	79
8.10.	Appropriate scope of the research function of the Crime and Misconduct Commission.....	80
	8.10.1. <i>Conclusion</i>	81
9.	WITNESS PROTECTION.....	82
9.1.	Introduction	82
9.2.	The <i>Witness Protection Act 2000</i>	82
	9.2.1. <i>Recent legislative amendments</i>	83
	9.2.2. <i>National Witness Protection Program</i>	83
	9.2.3. <i>Giving evidence under a new identity</i>	84
9.3.	Structure of the Witness Protection Unit.....	84
9.4.	Admission to the Witness Protection program	85
9.5.	Activities of the Witness Protection Unit since the last Three Year Review	85
9.6.	WPU officer training – Witness Protection course	85
9.7.	Marketing the Witness Protection Unit	86
9.8.	Location and staffing of the Witness Protection Unit	86
	9.8.1. <i>Whether the WPU should remain located within the CMC</i>	86
	9.8.2. <i>Staffing of the Witness Protection Unit</i>	87
9.9.	Accountability of the Witness Protection Unit	87
9.10.	Memorandum of understanding with the Registrar-General of Births, Deaths and Marriages	87
9.11.	Research to examine procedures for new identities	88
10.	WHISTLEBLOWER SUPPORT	89
10.1.	Introduction	89
10.2.	The <i>Whistleblowers Protection Act 1994</i>	89
10.3.	The Crime and Misconduct Commission’s role	90
	10.3.1. <i>Capacity building and research</i>	92
10.4.	Adequacy of the Queensland whistleblower protection system	92
	10.4.1. <i>CMC – Supplementary Submission (Review of Whistleblowers Protection Act)</i>	93
	10.4.2. <i>Ombudsman’s Submission</i>	94
10.5.	Conclusion	95
11.	COPORATE SUPPORT AND GOVERNANCE	97
11.1.	Introduction	97
11.2.	Corporate Governance	97
11.3.	Internal Accountability.....	97

11.3.1.	<i>The Commission</i>	97
11.3.2.	<i>Internal Committees</i>	98
11.3.3.	<i>Internal Audit</i>	99
11.4.	External Accountability and Reporting	99
11.5.	Legislative Compliance.....	100
11.5.1.	<i>Charter of Service</i>	102
11.6.	Financial management and performance management	102
11.7.	Resource Management Practices	102
11.7.1.	<i>Human Resources</i>	102
11.7.2.	<i>Organisational Restructures</i>	103
11.7.3.	<i>Workforce Management Plan</i>	103
12.	EXTERNAL ACCOUNTABILITY OF THE CRIME AND MISCONDUCT COMMISSION	104
12.1.	Parliamentary Crime and Misconduct Committee	104
12.1.1.	<i>Introduction</i>	104
12.1.2.	<i>The role and functions of the Committee</i>	104
12.1.3.	<i>Monitoring and reviewing the performance of the functions of the CMC</i>	105
12.1.4.	<i>Reporting to the Parliament</i>	105
12.1.5.	<i>Participating in the appointment of the Chairperson and part-time Commissioners of the Crime and Misconduct Commission</i>	105
12.1.6.	<i>Complaints against the Crime and Misconduct Commission and its officers</i>	106
12.1.7.	<i>Other functions of the Committee</i>	106
12.1.8.	<i>Powers of the Committee</i>	107
12.1.9.	<i>Parliamentary oversight - analysis and comment</i>	107
12.2.	Office of the Parliamentary Crime and Misconduct Commissioner.....	108
12.2.1.	<i>Introduction</i>	108
12.2.2.	<i>Functions of the Parliamentary Crime and Misconduct Commissioner</i>	108
12.2.3.	<i>Annual intelligence review</i>	109
12.2.4.	<i>Powers of the Parliamentary Commissioner</i>	109
12.2.5.	<i>Extent of power to call for witnesses</i>	110
12.2.6.	<i>The need for the office of Parliamentary Crime and Misconduct Commissioner</i>	112
12.3.	Audits by the Parliamentary Commissioner	112
12.4.	<i>Cross-Border Law Enforcement Legislation Amendment Act 2005</i>	114
12.5.	The Parliamentary Commissioner – an own motion power?	114
12.6.	The Public Interest Monitor	115
12.7.	Review by the Minister	115

CHAIRMAN'S FOREWORD

I am pleased to present to the Legislative Assembly the report of the 6th Parliamentary Crime and Misconduct Committee (PCMC or Committee) on its Three Year Review of the operations of the Crime and Misconduct Commission (CMC). The review has been carried out as required by section 292(f) of the *Crime and Misconduct Act 2001*. The Act envisages that the review be conducted before the end of each (normally three year) term of the Parliamentary Committee.

The report follows an extensive review process which commenced in February 2006, when the Committee called for submissions from the public and from various stakeholder organisations. Further detail of the process is set out in the next section.

A total of 36 submissions were received, and most of those submissions have been tabled by the Committee. In its review, the Committee has had regard to all submissions received, regardless of whether they were appropriate for tabling.

The Committee took oral submissions at public hearings on 6 and 7 July 2006.

This review is the second three year review conducted since the Crime and Misconduct Act 2001 commenced. That act rang extensive changes to the legislative regime and foremost of these was the merger of the former Criminal Justice Commission and the former Queensland Crime Commission to form the Crime and Misconduct Commission.

The Committee places on record its appreciation for the assistance provided by the CMC to the Committee throughout the course of the review. We have also appreciated the assistance and insights provided by the Parliamentary Crime and Misconduct Commissioner, Mr Alan MacSporran SC

The Committee thanks all individuals agencies and organisations which assisted by providing written or oral submissions to the review. These contributions have been important and helpful to the deliberations of the Committee. The Committee also wishes to acknowledge the efforts of the Committee secretariat for their assistance with its review and in the preparation of this report.

The Committee needed to table this report before the new Legislative Assembly convened and appointed the incoming Parliamentary Crime and Misconduct Committee. There have therefore been some time constraints upon the Committee in finalising the report, and in some respects the report is not as comprehensive as the Committee would have liked.

The period of the Committee's operation has seen a number of legislative changes made to relevant legislation. Many of these changes came into effect only quite recently with the passage in August this year of the Crime and Misconduct and Other Legislation Amendment Act 2006. Some of these changes have been in response to recommendations in the report of our predecessor Committee's Three Year Review. Other recent legislative changes have dealt with issues that have arisen since the last Three Year Review, and which have been the subject of discussion and correspondence between this Committee, the Crime and Misconduct Commission and the Minister. Other changes have flowed from the introduction of a cross-border law enforcement scheme and from anti-terrorism measures.

Given this recent and extensive legislative activity, the practical operation of the recent changes can be monitored by our successor Committee.

The Committee has nonetheless made a number of recommendations, for legislative change and otherwise. The Committee commends its report and recommendations to the Parliament.

Mr Howard Hobbs MP
Acting Chairman

NOTES

References to public hearings refer to the hearings held by the PCMC as part of its Three Year Review process on 6 and 7 July 2006. Transcripts of those hearings are available on the internet at www.parliament.qld.gov.au/Committees/

This report and previous reports of the Committee and its predecessors are also available on-line at that address.

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During the term of the 6th PCMC, Committee staff included:

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ABBREVIATIONS AND TERMS USED IN THIS REPORT

ACC	Australian Crime Commission
ACS	Australian Customs Service
AFP	Australian Federal Police
CJA	<i>Criminal Justice Act 1989</i>
CJC	Criminal Justice Commission
CMA	<i>Crime and Misconduct Act 2001</i>
CMC	Crime and Misconduct Commission
Commission	The five Commissioners of the CMC
DPP	Director of Public Prosecutions
Fitzgerald Report	Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, <i>Report of a Commission of Inquiry Pursuant to Orders in Council</i> , (Commissioner G E Fitzgerald QC), 1989.
FOI	Freedom of information
IRAS	Intelligence Recording and Analysis System
ODPP	Office of the Director of Public Prosecutions
OPSME	Office of Public Service Merit and Equity
Parliamentary Commissioner	Parliamentary Crime and Misconduct Commissioner
PCJC	Parliamentary Criminal Justice Committee
PCMC or Committee	Parliamentary Crime and Misconduct Committee
PID	Public Interest Disclosure
PIM	Public Interest Monitor
PPRA	<i>Police Powers and Responsibilities Act 2000</i>
QCC	Queensland Crime Commission
QPS	Queensland Police Service
SIU	Strategic Intelligence Unit
SMG	Strategic Management Group
WPA	<i>Witness Protection Act 2000</i>
WPU	Witness Protection Unit

RECOMMENDATIONS

RECOMMENDATION 1	7
The Committee recommends that section 225 of the <i>Crime and Misconduct Act 2001</i> be amended so that the qualification for the ‘civil liberties’ Commissioner be a person who has had at least five years total actual practice as a lawyer, and has a demonstrated interest in civil liberties.	
RECOMMENDATION 2	7
Apart from this change, the Committee endorses the current structure of, and other legislative provisions, governing the five person Commission.	
RECOMMENDATION 3	8
The Committee recommends that future Parliamentary Crime and Misconduct Committees monitor the issues of succession planning and senior staff retention and renewal at the Crime and Misconduct Commission.	
RECOMMENDATION 4	39
The Committee recommends that the <i>Criminal Proceeds Confiscation Act</i> be amended to allow express provisions concerning its application to property held outside Queensland, including property held offshore.	
RECOMMENDATION 5	39
The Committee recommends that the current provisions be separated to distinguish between administrative orders and investigative orders; with notice to be required for administrative orders and with investigative orders to be available only to the State and to be available ex parte.	
RECOMMENDATION 6	39
The Committee recommends that, subject to the forthcoming decision of the Court of Appeal in <i>State of Queensland v Meredith</i> , the legislation make clear the scope of examination powers under the <i>Criminal Proceeds Confiscation Act</i>	
RECOMMENDATION 7	39
The Committee recommends that provisions be inserted into the <i>Criminal Proceeds Confiscation Act</i> to clarify ‘derivative uses of examination evidence’ and to clarify ‘the admissibility of examination transcripts in confiscation proceedings’	
RECOMMENDATION 8	39
The Committee recommends that the reversal of the onus of proof relating to proceeds assessment applications ought to be consistent with the onus in respect of forfeiture, in order to give full effect to the objects of the legislation.	
RECOMMENDATION 9	39
The Committee recommends that the making of a pecuniary penalty order ought not to prevent the court from later making a proceeds assessment order based on the same serious crime-related activity, and that the amount of any pecuniary penalty should be taken into account in the making of a subsequent proceeds assessment order.	
RECOMMENDATION 10	40
The Committee recommends that the <i>Criminal Proceeds Confiscation Act 2002</i> be amended to allow the court to make repatriation orders or property substitution orders in respects of forfeitable property.	
RECOMMENDATION 11	40
The Committee recommends that penalty provisions should attach to non-disclosure or, alternatively, forfeiture of non-disclosed assets should be available under provisions similar to recent amendments to the New South Wales civil confiscation legislation (see ss. 31A, 31B and 31C of the <i>Criminal Assets Recovery Act 1990</i> (NSW))	
RECOMMENDATION 12	40
The Committee recommends that the relevant legislation be amended to make clear the conditions precedent to the Public Trustee recovering its fees, charges and outlays.	
RECOMMENDATION 13	50
The Committee notes that timeliness continues to be a concern and recommends that the timeliness of misconduct assessments and investigations both by the CMC and by units of public administration continues to be carefully addressed and closely monitored by the CMC and by the incoming PCMC.	

RECOMMENDATION 14	51
Whilst acknowledging the concerns raised in the Committee’s review, on balance and having regard to the need for transparency, the Committee does not recommend any amendment to the <i>Crime and Misconduct Act 2001</i> to impose an obligation upon persons to keep the existence and nature of complaints against public officials confidential before finalisation.	51
RECOMMENDATION 15	52
The Committee does not recommend any amendment to the <i>Crime and Misconduct Act 2001</i> to impose any further sanction upon vexatious complainants other than presently prescribed.	52
The Commission should be vigilant in its assessment of evidence for investigation and prosecution of persons making frivolous or vexatious complaints.	52
RECOMMENDATION 16	54
The Committee recommends that government give consideration to extension of the misconduct jurisdiction of the CMC to private entities that exercise public functions and utilise public monies.	54
RECOMMENDATION 17	56
The Committee recommends future Parliamentary Committees closely monitor the operation of the arrangements regarding the referral of matters by the Crime and Misconduct Commission to the Office of the Director of Public Prosecutions.	56
RECOMMENDATION 18	59
The Committee supports any amendment to the <i>Crime and Misconduct Act 2001</i> that might be necessary to clarify that spousal privilege does not apply in CMC hearings.	59
RECOMMENDATION 19	63
The Committee recommends that the Queensland Government introduce legislation to enable the CMC and QPS to intercept telecommunications.	63
RECOMMENDATION 20	63
The Committee recommends that any telecommunications scheme must include a role for an Inspector, such as the Public Interest Monitor, in the application process for a telecommunications interception warrant.	63
RECOMMENDATION 21	63
The Committee recommends that the CMC be able to operate its own telecommunications interception facility and that it receive adequate funding to allow it to do so.	63
RECOMMENDATION 22	96
The Committee recommends that Government public interest disclosures received by an agency, other than those involving official misconduct, should be referred to the Ombudsman in the first instance with the Ombudsman either investigating the disclosure or referring it back to the agency to conduct the investigation. The Ombudsman would retain the power to monitor, take over or review the investigation.	96
RECOMMENDATION 23	96
The Committee recommends that the categories of persons who may make a public interest disclosure protected by the <i>Whistleblowers Protection Act</i> be expanded in cases involving danger to public health and safety, and negligent or improper management of public funds, to include any person or body.	96
RECOMMENDATION 24	96
The Committee recommends that:	96
(1) Whistleblowers should be able to escalate their complaint in the event that there is no satisfactory action taken by the relevant department within 30 days. If the matter is not resolved in that time to the satisfaction of the Ombudsman, the whistleblower should be able to make a public interest disclosure to a Member of Parliament; and	96
(2) If disclosure to a Member of Parliament does not result in resolution, to the satisfaction of the Ombudsman, within a further 30 days, the whistleblower should be entitled to make a further public interest disclosure to the media.	96
RECOMMENDATION 25	96
The Committee recommends that the Ombudsman takes the lead role (supported by the CMC) for ensuring that agencies are appropriately administering their responsibilities under the <i>Whistleblowers Protection Act 1994</i>	96

RECOMMENDATION 26.....**96**

The Committee recommends that the CMC (in conjunction with the Ombudsman and the Office of the Public Service Commissioner) work together to develop guidelines to assist agencies to properly handle and record details of public interest disclosures..... 96

RECOMMENDATION 27.....**111**

The Committee repeats the recommendation of its predecessor Committee that there be no restriction on the persons that can be required to give evidence at a hearing by the Parliamentary Crime and Misconduct Commissioner. 111

RECOMMENDATION 28.....**114**

The Committee recommends that its successor Committee monitor the operation of the inspection and reporting regime created by the Cross-Border Law Enforcement Legislation Amendment Act 2005. 114

1. INTRODUCTION

1.1. Background

This report is presented by the 6th Parliamentary Crime and Misconduct Committee (PCMC or Committee). That Committee was appointed as a Committee of the 51st Parliament of Queensland on 18 March 2004. The report communicates the details and recommendations flowing from this Committee's Three Year Review of the Crime and Misconduct Commission (CMC or Commission).

The PCMC is a seven member Committee of the Queensland Parliament. Established by section 291 of the *Crime and Misconduct Act 2001* (CMA), the Committee is a multi-party Committee. The principal role of the Committee is the oversight of the CMC. One of the most important elements of such oversight is the Committee's Three Year Review of the Commission.

The CMA provides that one of the functions of the PCMC is¹:

to review the activities of the commission at a time near to the end of 3 years from the appointment of the committee's members and to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission.

Predecessor Committees have reported on previous such reviews and details of the reports of those reviews are set out in Appendix 1. The most recent of those reviews was conducted by the 5th PCMC throughout 2003. The 5th PCMC noted in its report, tabled in March 2004, that its review had followed relatively soon after the commencement of the *Crime and Misconduct Act 2001* which had created the Crime and Misconduct Commission through a merger of the Criminal Justice Commission and the Queensland Crime Commission. That Act made extensive change to the jurisdiction and powers of what became the CMC. In its report, the 5th PCMC expressed the view that it was at that time "too early to draw any firm and considered conclusions regarding the major changes" brought about by the CMA. Accordingly, the 5th PCMC refrained from considering recommendations for wholesale changes in structure or approach. The present Committee believes that approach was correct.

Given that it is now some years since the new CMA commenced, sufficient time has passed for the present Committee to assess the changes it brought about, including the increased emphasis on devolution and capacity building under the CMA.

1.2. The review process

The Committee commenced its review process by advertising for written submissions in March 2006. At the same time, the Committee wrote to a large number of entities inviting submissions. (The Committee had in December 2005 written to most of those agencies foreshadowing that the review would commence in early 2006.)

A number of submissions were received from interested members of the public and various organisations. Most of those submissions were tabled in the Legislative Assembly on 15 June 2006, with further submissions being tabled on 6 July 2006 and 11 August 2006. [A list of tabled submissions is at Appendix 2. The tabled submissions can be accessed at the Committee's website.]

The Committee held public hearings on 6 and 7 July 2006. [A list of the witnesses who gave evidence at those hearings appears as Appendix 3. The transcripts of the hearings can also be accessed at the Committee's website.]

¹ *Crime and Misconduct Act 2001* section 292.

In preparing this report, the Committee has followed the approach of previous committees, examining the CMC by looking at the various functions of the CMC. The report is organised into chapters accordingly. There are also chapters dealing with the coercive powers of the CMC, whistleblowing and the various mechanisms that ensure the accountability of the CMC.

Since the last Three Year Review report, there have been a number of relevant legislative changes. Some relate to anti-terrorism powers, others give effect to those recommendations made by the 5th PCMC in its Three Year Review that were accepted by government, and others deal with cross-border law enforcement. Where appropriate, these developments are charted in this report.

2. RESPONSIBILITIES, FUNCTIONS AND STRUCTURE OF THE CRIME AND MISCONDUCT COMMISSION

2.1. Establishment of the Crime and Misconduct Commission

The CMC came into being on 1 January 2002, under the Crime and Misconduct Act 2001 (CMA) with responsibility, in broad terms, for performing those functions previously undertaken by the CJC and the QCC.²

2.2. Responsibilities and functions

The CMC's strategic plan for the period 2006 – 2010 identifies three key responsibilities³:

- (a) to combat and prevent major crime (i.e. serious crime, criminal paedophilia and organised crime);
- (b) to reduce misconduct and promote high standards of integrity in the public sector; and
- (c) to provide an effective witness protection service.

The CMC also has an additional role under the *Criminal Proceeds Confiscation Act 2002* in relation to the civil confiscation of the proceeds of crime.⁴

To enable the CMC to undertake these responsibilities the CMA⁵:

- provides the CMC with investigative powers, not ordinarily available to police, to enable effective investigation of particular cases of major crime and to support civil confiscation related activities. In addition
- requires the CMC to help build the capacity of units of public administration to deal with misconduct; and
- gives power to the CMC to investigate cases of misconduct itself, particularly more serious matters.

The CMC has the following functions under the CMA:

- prevention function – helping prevent major crime and misconduct⁶;
- crime function – the investigation of major crime⁷;
- misconduct function – raising the standards of integrity and conduct in units of public administration and ensuring that complaints or information about misconduct are dealt with in an appropriate way⁸;
- research function – undertaking research to support its other functions and research into criminal activity and other matters relating to the administration of criminal justice and misconduct⁹;
- intelligence function – undertaking intelligence activities to support the proper performance of its functions¹⁰;

² CMA section 220.

³ CMC *Strategic Plan*, 2006-10, page 2.

⁴ CMA section 4(2).

⁵ CMA section 5.

⁶ CMA section 23.

⁷ CMA section 25.

⁸ CMA section 35.

⁹ CMA section 52.

- witness protection – operating a Witness Protection Program¹¹;
- civil confiscation – undertaking civil proceedings for the recovery of proceeds of crime¹²; and
- a function conferred under another Act¹³.

These functions and the extent of the CMC's jurisdiction in respect of each are considered in more detail under the relevant chapters below.

2.3. Structure of the Crime and Misconduct Commission

2.3.1. Chairperson and part-time Commissioners

The CMC is headed by five Commissioners, comprising a full time Commissioner (the Chairperson), and four part-time Commissioners, who are community representatives. Collectively they are referred to as the Commission.¹⁴ Together the Commissioners exercise the primary decision-making role. They bear the legal responsibility for all CMC functions, determine policy and make decisions on the conduct of public hearings and the issuing of reports¹⁵.

The Chairperson must have served or be qualified for appointment as a judge of the Supreme Court of Queensland or another State, the High Court or the Federal Court.¹⁶ Part-time Commissioners must fulfil certain criteria:

- At least one Commissioner must be in actual practice as a lawyer and have a demonstrated interest in civil liberties (referred to as the 'civil liberties Commissioner'). [Further comment is made regarding the qualification for this position below.]¹⁷
- The remaining Commissioners must have one or more of the following¹⁸:
 - (1) qualifications in public sector management and review, criminology, sociology or research related to crime or crime prevention; or
 - (2) community service experience, or experience of community standards and expectations relating to public sector officials and public sector administration.

Section 230(4) also provides that at least one of the part-time Commissioners must be a woman.

The Minister¹⁹ is required to advertise nationally for applications for the Chairperson and throughout the State for applications for part-time Commissioners with the exception of the civil liberties Commissioner.²⁰ Nominations for the civil liberties Commissioner must be sought by the Minister from the Bar Association of Queensland and the Queensland Law Society.²¹

¹⁰ CMA section 53.

¹¹ CMA section 56(a) and see the *Witness Protection Act 2000*.

¹² CMA section (b) of the CMA and see the *Criminal Proceeds Confiscation Act 2002*.

¹³ CMA section 56(c).

¹⁴ CMA section 223 of the CMC.

¹⁵ CMC Annual Report, 2004-05, page 8.

¹⁶ CMA section 224.

¹⁷ CMA section 230(2).

¹⁸ CMA sections 225 and 230(3).

¹⁹ The Attorney-General and Minister for Justice and Women is the responsible Minister.

²⁰ CMA section 227.

²¹ CMA section 227(2).

Prior to nominating a person for appointment as a Commissioner, the Minister must consult with the Committee and may only appoint the proposed appointee with the bipartisan support of the Committee.²² In the case of part-time Commissioners, the Minister must also consult with the Chairperson prior to any nomination for appointment. A Commissioner must not hold office for more than a total of five years.²³

Current members of the Commission are:

Chairperson: Mr Robert Needham (appointed as Chairperson of the CMC on 1 January 2005)

Commissioners: Ms Julie Cork (appointed November 2004)
Hon. Douglas Drummond QC (appointed July 2005)
Dr. David Gow (appointed October 2005)
Ms Ann Gummow (appointed August 2006)

Ms Suzette Coates was appointed as a Commissioner in November 2004 and resigned her position in December 2005 due to her appointment as a magistrate.

2.3.2. *Role of the part-time Commissioners*

This Committee has taken a particular interest in the role of the part-time Commissioners and the interaction between them as representatives of the community on the one hand and the employed officers of the CMC on the other hand. There was considerable discussion of this issue during the hearings held as part of this review.

The Committee is of the view that the part-time Commissioners can bring a valuable range of insights to the Commission. The Committee acknowledges the enormous task that confronts the part-time Commissioners, and the challenges that come with the role.

It is to be expected that the Commissioners need to rely on information briefed to them by the CMC's senior officers. It is important that the Commissioners be properly and fully briefed by those officers. There is always a risk in any organisation that senior officers, who might in some cases have been with the organisation for a long time, become less open to different approaches and less receptive to alternative views. This is perhaps quite understandable, and does not reflect adversely on any officer.

At the Committee's hearings, current part-time Commissioner, Ms Julie Cork summed up the challenge for Commissioners nicely²⁴:

I think we have spoken before about the structure of the commission. Certainly, the way it is currently structured, with part-time commissioners and a full-time chair, presents challenges to those people to make sure the role we play is one that keeps a focus on the strategic direction of the commission. I think one of the things that is difficult when you are first a part-time commissioner is that you need to understand about the commission before you feel as if you can contribute in some meaningful way. Do I feel marginalised? No, I do not, but I think that means it requires me to become actively involved in some way. Keeping a strategic focus is a very difficult thing to do when you work in the commission, because casework is our bread and butter and casework is terribly interesting and intoxicating. We absolutely need to know about some of the cases, and our expertise is required in taking a view on those. But, as much as we need to be involved and have some knowledge of some of the casework, it is our

²² CMA section 228(3). Where there is no Committee in existence at the relevant time the Minister must consult with the Leader of the Opposition and the Leader of any other political party represented in the Legislative Assembly by at least 5 members: section 228(1)(b) of the CMA.

²³ CMA section 231(2).

²⁴ PCMC public hearings, 7 July 2006, page 67.

role to also keep a strategic focus, and there is a tension there. There is no doubt about that. I feel we need to work very hard at putting some long-term processes in place that make that easier. Those of us who have talked about that and who are part-time commissioners now are very conscious of our need to do that.

But, as Mr Needham said earlier, our individual expertise is also necessary in some instances. It is not an easy role. It is one that we need to keep a particular focus on. We need to make sure that during our term as commissioners we keep a very clear focus on our role and what it is we ought to be doing and bring ourselves back to that the whole time.

CMC Chairperson Mr Robert Needham told the Committee²⁵:

[O]ur part-time commissioners can go anywhere they want to in the commission at any time and talk to anyone they want to and they, in fact, avail themselves of that opportunity. There is no inhibition upon them going and talking to anyone within the commission at any time. ... There is no inhibition upon any of the part-time commissioners at any time to go anywhere they want or talk to any officer within the commission. In fact, personally I would encourage it—I do encourage it.

The Committee does not recommend any change to the current structure of a five member Commission, comprising a full-time Chair and part-time Commissioners as community representatives. The part-time Commissioners can bring independent minds to the table, shaped by their diverse skills and experiences, and reflecting community attitudes. As such, they can act as an important internal accountability mechanism.

2.3.3. Qualification for appointment as the ‘civil liberties’ part-time Commissioner

As mentioned earlier in this chapter, the CMA requires that at least one of the part-time Commissioners must “be in actual practice as a lawyer and have a demonstrated interest in civil liberties”. At the Committee’s hearings, Crime and Misconduct Commission Chairperson, Mr Robert Needham, referred to the possibility of some difficulty arising from the requirement that the person be in *actual* practice. As he observed²⁶:

One of the obvious problems with respect to the ... the legal commissioner, is that the requirement under the act is that that be a person who is involved in full-time legal practice or still involved in active legal practice. As I understand it, that is one of the difficulties that has been encountered in replacing our legal commissioner. Of course anyone who is involved in active legal practice—generally they are at the bar, in their own practice or part of a solicitor’s firm—does not have the time to be able to effectively carry out their role as a part-time commissioner.

As I think the committee is aware, we do work our part-time commissioners. They do not get their money for nothing. As I understand it, they are paid on the basis of three days a fortnight but paid at the Public Service sort of rates for members of committees. What they will have earned in those three days is not going to replace the amount of money that they would earn in active practice as a barrister or a good solicitor out there in private practice. Plus, if they are at the bar and to a lesser extent if they are a solicitor, having set commitments as we have with the commissioners of meeting every fortnight—other meetings can be more flexible and be staggered around their other activities—becomes very difficult when operating at the bar.

²⁵ PCMC public hearings, 7 July 2006, page 65.

²⁶ PCMC public hearings, 6 July 2006, page 23.

The Committee agrees with these observations. The requirement that the person be in actual practice can potentially reduce the pool of persons who make themselves available for nomination. This could lead, and apparently has led, to delays in having an appointment made. This can be disruptive to the work of the Commission (particularly given the two quorum requirements in section 264 of the CMA). It also has the potential to possibly restrict the availability of that person to attend, sometimes on short notice, to Commission business. The requirement for actual practice could be removed, but a requirement for experience in legal practice remain, to ensure the retention of the benefits brought to the Commission by having a legally qualified part-time Commissioner. The Committee proposes that experience in actual practice for a period or periods totalling at least five years would be an appropriate *minimum* requirement.

Recommendation 1

The Committee recommends that section 225 of the *Crime and Misconduct Act 2001* be amended so that the qualification for the ‘civil liberties’ Commissioner be a person who has had at least five years total actual practice as a lawyer, and has a demonstrated interest in civil liberties.

Recommendation 2

Apart from this change, the Committee endorses the current structure of, and other legislative provisions, governing the five person Commission.

2.3.4. Tenure of senior Crime and Misconduct Commission officers

Upon introduction, the CMA provided that Assistant Commissioners and certain other senior officers of the CMC “must not hold office in the Commission as an Assistant Commissioner or senior officer for more than eight years in total”.²⁷

In the course of the current Committee’s term, the Commission raised concerns that this restriction on tenure was causing difficulties in recruiting and retaining suitable staff. The Committee was consulted by the Premier and subsequently the Attorney-General as responsible Minister, and discussed the issue in correspondence and in meetings with the CMC.

The Committee understood the concerns raised by the Commission. At the same time, the Committee was eager to ensure there was healthy renewal in the senior ranks of the Commission.

The Committee expressed the view that it was paramount that the Commission engage in thorough and effective succession planning, and that any specific mechanism limiting tenure, and any debate regarding such a mechanism, should not detract from the need for the Commission to investigate and implement appropriate recruitment, training and retention strategies. The Committee and the Commission had a number of discussions regarding appropriate succession planning strategies.

The Crime and Misconduct and Other Legislation Amendment Bill introduced in April 2006 and passed in August 2006, made an amendment to the tenure provision, extending the limit from eight to ten years.²⁸

Further, this period can be extended in certain circumstances. An assistant Commissioner or senior officer who has held office in the Commission as an assistant Commissioner or senior officer for 10 years in total can now be reappointed for a further term if the reappointment is necessary for the efficient operation of the Commission, provided it does not result in the person holding office in the Commission as an assistant

²⁷ CMA section 247(3).

²⁸ CMA section 247(3A).

Commissioner or senior officer for more than 15 years in total. In the event of any such extension, the Commission must give notice of it to the PCMC.²⁹ The Committee is to be notified of:

- (a) the name of the person appointed for the further term;
- (b) the position the person holds in the Commission;
- (c) why the person's appointment for the further term is necessary for the efficient operation of the Commission; and
- (d) the period of the further term.

It would be appropriate to assess the impacts of this amendment over time on CMC staffing, as well as the succession planning initiatives of the CMC.

Recommendation 3

The Committee recommends that future Parliamentary Crime and Misconduct Committees monitor the issues of succession planning and senior staff retention and renewal at the Crime and Misconduct Commission.

2.3.5. Current structure

The CMC is structured in accordance with its outputs - crime, misconduct and witness protection and the various supporting business units. It has the following functional or work areas:

- crime;
- misconduct;
- protecting witnesses;
- research and prevention;
- intelligence and information;
- operations support; and
- corporate services.

Appendix 4 to this report outlines the CMC's current organisational structure.

The CMC's corporate policy and strategic directions as set by the Commission are implemented by the Strategic Management Group (SMG) which comprises the Chairperson (as CEO of the organisation), Assistant Commissioners, the Directors of the respective business units, and the Executive Director.³⁰ The SMG meets fortnightly and regularly with the Commission.

The CMA established the Crime Reference Committee which has responsibility for referring major crime to the CMC for investigation and coordinating the investigation of major crime undertaken by the CMC in cooperation with other agencies.³¹ The Committee is chaired by the Assistant Commissioner, Crime, and comprises the CMC Chairperson, the Commissioner of Police, the Chair of the Australian Crime Commission (ACC), the Commissioner for Children and Young People and two community representatives.³²

²⁹ CMA section 247A.

³⁰ CMC, *Annual Report 2004-2005*, page 55.

³¹ CMA section 275.

³² CMA section 278(1).

In addition to the SMG, the CMC has a number of internal committees which focus on particular areas of corporate governance. A brief description of the roles of these committees follows³³:

- Audit Committee - provides independent advice on areas of potential risk to the CMC and where the main attention of the audit functions should be directed.
- Commission Consultative Committee - provides a forum for elected employee representatives and senior management to exchange ideas, concerns and points of view.
- Equal Employment Opportunity Consultative Committee - ensures that administrative policies and practices adhere to the principles of equal employment opportunity.
- Finance Committee – assists the Commission with managing the budget process and ensures that there are appropriate and effective financial management practices.
- Information Steering Committee - ensures the CMC has a strategic plan for its information systems and that the information infrastructure is able to meet the CMC's needs.
- Legislation Committee - ensures compliance with relevant state and federal legislation and reviews the applicability of the legislation governing the CMC.
- Risk Management Committee - ensures the CMC maintains robust and effective risk management strategies and related practices.
- Workplace Health and Safety Committee – oversees compliance with workplace health and safety legislation and implements policies and strategies to safeguard health and safety.

The CMC also has five other internal committees that deal with operational matters:³⁴

- Misconduct Operations Review Committee;
- Misconduct Assessment Committee;
- Crime Operational Review Committee;
- Witness Protection Advisory Committee; and
- Crime Intelligence Review Committee, established during the 2004-2005 reporting period after a review of the CMC's intelligence function.

2.4. Resources and staffing

2.4.1. Staffing establishment

The CMC employs staff across a broad range of disciplines including police officers, legal officers, financial investigators, intelligence analysts, strategic management, complaints officers, technical officers, research officers and librarians. As at 30 June 2005, the CMC had 299 established positions.³⁵

The CMC's staffing establishment as at 30 June 2002 and 30 June 2005 is detailed in the following table.

³³ CMC, *Annual Report 2004-2005*, pages 59-60.

³⁴ CMC Annual Report, 2004-05, page 60.

³⁵ CMC Annual Report, 2004-05, page 64.

	As at 30 June 2002		As at 30 June 2005	
	Approved establishment	Staff on hand	Approved establishment	Staff on hand
Executive	14	14.2	18	19.1
Crime	30	34.1	43	38.8
Misconduct	85	82.4	85	83.6
Witness Protection and Operations Support	54	48.4	55	45
Research and Prevention	27	24.6	27	27.2
Intelligence	52	53.8	22	20.7
Corporate Services	19	19	49	50.8
Total	281	276.5	299	285.2

3. COMBATING MAJOR CRIME

3.1. Jurisdiction – Major Crime

The former Criminal Justice Commission (CJC) had, for some years, responsibility for investigating organised crime in Queensland, mainly through participation with the Queensland Police Service (QPS) in the Joint Organised Crime Taskforce. In 1998 the Queensland Crime Commission (QCC) was formed under the *Crime Commission Act 1997* to take over, and further develop, this organised crime function, with a special emphasis on criminal paedophilia. The partnership that was forged for this purpose between the QPS and the QCC continues, with the CMC and the QPS working together to fight major crime in Queensland.³⁶

The CMC does not have a general jurisdiction to investigate all criminal offences. Rather, its crime investigation function is limited to investigating major crime that has been referred to it by the Crime Reference Committee.³⁷ References from the CRC allow the CMC to investigate crimes using special investigative powers (such as the coercive hearings power) where conventional police methods have been ineffective.

The Crime Reference Committee, established under section 274 of the CMA, comprises law enforcement experts and community representatives. It currently consists of the Assistant Commissioner, Crime, the CMC Chairperson, the Commissioner of Police, the Commissioner for Children and Young People and Child Guardian, and two community representatives appointed by the Governor in Council.³⁸

‘Major crime’ is defined by the CMA as encompassing³⁹:

- (a) *criminal activity that involves an indictable offence punishable on conviction by a term of imprisonment not less than 14 years; or*
- (b) *criminal paedophilia; or*
- (c) *organised crime; or*
- (d) *terrorism; or*
- (e) *something that is –*
 - (i) *preparatory to the commission of criminal paedophilia, organised crime or terrorism; or*
 - (ii) *undertaken to avoid detection of, or prosecution for, criminal paedophilia, organised crime or terrorism.*

The Crime Reference Committee can refer a matter to the CMC upon its own initiative or at the request of the Commissioner of Police or the Assistant Commissioner, Crime.⁴⁰ The committee can, on its own initiative, refer major crime to the CMC where it considers that⁴¹:

- an investigation into major crime is unlikely to be effective using the powers ordinarily available to the police service; and
- it is in the public interest to refer the major crime to the CMC.

³⁶ CMC Annual Report, 2004-05, page 8.

³⁷ See Sections 25 and 26 of the CMA and see also CMC submission 2006, page 5.

³⁸ Section 278(1) of the CMA. The CEO of the Australian Crime Commission is also a member of the CRC, but only under the circumstances set down by section 278(1A).

³⁹ Schedule 2 of the CMA.

⁴⁰ Section 27 of the CMA.

⁴¹ Section 28(1) of the CMA. Section 28(3) details a number of matters the Crime Reference Committee may have regard to in determining whether it is in the public interest to refer the major crime to the CMC.

The Crime Reference Committee can refer a major crime to the CMC at the request of the Commissioner of Police only if it is satisfied⁴²:

- the police service has carried out an investigation (into the crime) that has not been effective;
- further investigation (into the crime) is unlikely to be effective using the powers ordinarily available to police officers; and
- it is in the public interest to refer the crime to the CMC.

The Crime Reference Committee is also given the authority to:

- give the CMC directions imposing limitations on a crime investigation, including limitations on the exercise of the CMC's powers for an investigation⁴³;
- direct the CMC to end a particular crime investigation⁴⁴;
- amend the terms of a referral to the CMC⁴⁵; and
- refer major crime to the Commissioner of Police if it is satisfied that the matter is not appropriate for investigation or continued investigation by the CMC.⁴⁶

3.2. Crime references

The CMC has five broad 'umbrella' referrals in the areas of organised crime, criminal paedophilia and counter-terrorism. Umbrella referrals allow the CMC to investigate individual cases of suspected criminal activity that fall within the terms of the referral, without obtaining a specific referral from the Committee to investigate that particular matter. Internal accountability processes require CMC lawyers to provide formal legal advice as to whether a proposed investigation can be undertaken under an umbrella referral.

3.3. Performing the crime function

Section 26 of the CMA provides that the CMC performs its crime function by:

- investigating major crime referred to it;
- gathering evidence for the prosecution of persons for offences;
- gathering evidence for the recovery of the proceeds of major crime; and
- liaising with, providing information to, and receiving information from, other law enforcement agencies and prosecuting authorities.

The CMC does not have the capability to conduct complex investigations without assistance from other law enforcement agencies. Accordingly, the CMA makes provision for the establishment of police task forces to assist the CMC to carry out its crime investigations.⁴⁷ The CMC's current taskforces with other law enforcement agencies such as the QPS, the Australian Crime Commission (ACC) and the Australian Federal Police (AFP), focus on disrupting organised crime and exposing sexual crimes against children. The CMC also shares research and intelligence information of mutual benefit and interest.

⁴² Section 28(2) of the CMA.

⁴³ Section 29(1) of the CMA.

⁴⁴ Section 29(2) of the CMA.

⁴⁵ Section 30 of the CMA.

⁴⁶ Section 31 of the CMA.

⁴⁷ Section 32(1) of the CMA.

3.4. Concerns about the Crime and Misconduct Commission's major crime role

A concern raised in the submissions to the 5th PCMC review was that in performing its misconduct function, the CMC might not deal with allegations of misconduct against CMC officers, particularly those facing high corruption risks, with a sufficient degree of impartiality and independence. It was feared that this might itself indicate the existence of misconduct and the potential for a 'conflict of interest' arising from the CMC's role in respect of both major crime and misconduct. There were also fears that there may be tension between the performance of the misconduct function (which at times requires the CMC to investigate the activities of police), and the crime function (which by legislative prescription requires an ongoing close partnership with the QPS). The CMC is satisfied that no such tension has emerged in any significant way.⁴⁸

This issue was addressed at the Committee's public hearing by the CMC Chairperson, who made the following comments:

It is inevitable that, when investigations are underway into organised crime, there is always the possibility that those investigators can see what might appear to suggest police involvement. That is always a possibility. That possibility is there whether the organised crime investigators are part of a stand-alone organisation, like the QCC, or whether they are part of a crime area within the combined organisation as we have now...If you are talking about the possibility of police within our investigators being corrupt, then we get back to the point I made before—that is, one of the extra benefits is the additional accountability that our crime unit is now subject to, in that they are subject to not just the accountability of the Crime Reference Committee of the commission itself as being part of the larger organisation but the accountability of the organisation to this committee....Under the act there is — it is section 329 — and also under the protocol we have with this committee. As soon as any indication comes to us or the senior officers, say, within the crime area that there is a possibility that Senior Constable X is involved in nefarious activities, then that has to be reported to this committee, and the investigation of that would then be under the guidance, or under perhaps the day-to-day control, of this committee. I would imagine what would happen is there would then be an investigation which would be oversights by the Parliamentary Commissioner. So there is that level of accountability.⁴⁹

Analysis and comment

The Committee is not satisfied that there are concerns sufficient to indicate that the integration of both functions within the one agency has resulted in a 'conflict of interest'.

The Committee considers that there are satisfactory safeguards in place to ensure that CMC officers involved in major crime investigations are subject to appropriate scrutiny, in particular, the requirement contained in section 329 of the CMA which requires the Chairperson of the CMC to notify the Committee of all conduct of a CMC officer that the Chairperson suspects involves, or may involve, improper conduct.⁵⁰

⁴⁸ CMC submission, page 2.

⁴⁹ PCMC hearings, 6 July 2006, transcript, pages 6-7.

⁵⁰ Section 329 defines improper conduct to mean –

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

3.5. Major crime

As outlined above, section 25 of the CMA prescribes the CMC's 'crime function' as the investigation of major crime referred to it by the Crime Reference Committee. Major crime is defined in the CMA⁵¹ to mean organised crime, criminal paedophilia, terrorism, or any criminal activity involving an indictable offence punishable by at least 14 years imprisonment (commonly referred to as a 'serious crime', such as murder, arson and extortion). Also included in the definition of a major crime is something that is preparatory to the commission of criminal paedophilia, organised crime or terrorism, or that is undertaken to avoid detection of, or prosecution for, such an offence.

The CMC's Annual Report for 2004-05 notes that of 24 investigations finalised in that financial year, 14 were for criminal paedophilia, 7 were for organised crime and 3 were into serious crime. As a result of CMC investigations in that period, 137 people were charged with 891 offences.⁵²

3.5.1. Organised crime

Organised crime is defined in the CMA⁵³ to mean two or more persons engaged in criminal activity that involves indictable offences punishable by at least 7 years imprisonment, and that uses substantial planning and organisation or systematic and continuing activity, done with a purpose of obtaining profit, gain, power or influence.

Organised crime matters are referred to the CMC by the CRC or may come to the CMC's attention via an umbrella referral which allows it to investigate without further/specific referral from the CRC. The current umbrella referrals for organised crime are "Freshnet" which relates to established criminal networks and "Gatekeeper" which relates to money laundering.⁵⁴

The CMC takes a holistic approach to its part in investigating and preventing organised crime in Queensland, drawing on a broad range of internal expertise and resources. Central to this approach is the implementation of proactive and innovative investigative strategies, based on sound crime research, and accurate, well-timed intelligence.

In determining its investigative priorities, the CMC uses a risk assessment method based on the likely threat that various criminal markets pose to Queensland. This requires ongoing evaluation of criminal markets and the threat rating of networks/individuals operating within those markets. The CMC's objective is to prevent further crime by dismantling or disrupting organised crime networks. This is typically achieved by incarcerating key members and, by confiscating their proceeds of crime, financially incapacitating the networks.⁵⁵

3.5.1.1. Attacking Organised Crime Networks

There are three key phases to the CMC's attack on organised crime networks:

1. **Target identification** - part of the strategic intelligence process, this involves developing business case proposals for consideration of tactical target development.
2. **Tactical target development** - here the conclusions reached in the identification phase are tested, and the investigation is progressed by both traditional and innovative investigative methods and, as appropriate, the CMC's special powers. Target development is undertaken by two multidisciplinary, structured, investigative teams. Each team consists of police investigators and civilian staff with

⁵¹ Schedule 2 dictionary.

⁵² CMC Annual Report, 2004-2005, page 4.

⁵³ Ibid.

⁵⁴ CMC Annual Report, 2004-2005, Table 3, page 14.

⁵⁵ See CMC submission, page 23.

skills in financial investigation and intelligence, operating under the direction of an Operations Coordinator. Legal support is provided on a case-by-case basis. The objective of this phase is to develop compelling cases for full tactical investigation.

3. **Tactical investigation** - as the CMC on its own does not have the independent investigative capacity to conduct complex and protracted investigations, its internal teams (see phase 2) largely depend for assistance on police taskforces established under the CMA. The joint QPS–CMC Executive Team provides strategic direction for all joint investigations. The multidisciplinary teams also utilise technical surveillance and other investigative resources from across the CMC.⁵⁶

3.5.1.2. *Trends in Organised Crime in Queensland*

The key area of focus for the CMC's organised crime operations is combating the manufacture and distribution of amphetamines (especially methylamphetamine), based on the Commission's assessment that these illicit drugs are the highest risk illegal commodity in Queensland.⁵⁷ In response to the burgeoning amphetamines problem the CMC conducts intelligence assessments of illicit drug markets and identifies organised crime networks and activities. Organised Crime Investigation Teams then conduct tactical operations to dismantle and disrupt those networks trafficking in illicit drugs.

A recent submission by the CMC to a Federal Parliamentary inquiry into the illicit amphetamines trade in Australia discussed drug trafficking and other identifiable trends in organised crime in Queensland.⁵⁸ It noted that members of outlaw motorcycle gangs have a significant involvement in organised crime in Queensland, especially in the amphetamine and other illicit drug markets.

The commission shared its observation that modern organised crime networks often deal simultaneously with a range of illicit commodities and that members of one network are frequently members of a number of other networks at the same time. The submission highlighted the continuing emergence in Queensland of multi-ethnic criminal networks and noted a significant level of temporary cooperation in crime markets in the more populated areas of the State, with members of different crime networks forming associations to achieve a joint short-term purpose. Modern networks are observed to be more loosely structured and opportunistic in their activities than their predecessor organised crime syndicates, with members having a broad range of criminal contacts that they call upon as needed.⁵⁹

A recent paper by the Australian Institute of Criminology profiling Australian organised crime trends found similar characteristics applied to organised crime networks throughout the nation. The AIC described organised crime in Australia as being characterised by a combination of⁶⁰:

- local criminal milieux which are typically loosely structured groups involved in a variety of illicit enterprises;
- networks or 'secret societies' based in other countries which have local networks in Australia, and are characterised by shared ethnic backgrounds; and
- other criminal groups, such as paedophile networks and outlaw motorcycle gangs.

The CMC told the federal parliament that it considers specialised joint agency investigations comprising both state and national law enforcement agencies (LEAs) could be established to work together and share intelligence information in order to successfully target and disrupt the amphetamines trade happening

⁵⁶ CMC submission, page 24.

⁵⁷ <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10751&cid=5298&id=169>.

⁵⁸ CMC submission to the Parliamentary Joint Committee Inquiry into the Australian Crime Commission's Amphetamines and Other Synthetic Drugs Special Intelligence Operations Determination, 7 March 2006, part c.

⁵⁹ Ibid.

⁶⁰ *The Worldwide Fight against Transnational Organised Crime: Australia* AIC, Technical and Background Paper No. 9, 2004, page 6.

within and across state borders. It stated that long term cross-jurisdictional and cross-agency task forces are needed to investigate the ongoing movement of illicit drugs between states and to successfully disrupt cross-border illicit drug activity.⁶¹ The CMC's current organised crime investigations are often conducted conjointly with federal and interstate law enforcement agencies such as the AFP, ACC and Australian Customs Service.⁶² Research and intelligence information is also shared with other law enforcement agencies across Australia by the CMC regularly contributing new information to the national Intelligence Recording and Analysis Database.⁶³ During 2004-2005, the CMC took part in 9 joint organised crime investigations conducted with the QPS and other law enforcement agencies.⁶⁴

The CMC in its submission to the federal inquiry also argued that the absence of telecommunications interception legislation in Queensland severely impedes the capability of law enforcement to make serious inroads into the organised crime groups involved in producing and trafficking amphetamines and other illicit drugs.⁶⁵ The CMC can gain access to telephone interception through joint operations with the AFP or ACC but only when there are federal or cross-border aspects to an investigation. As the CMC's investigative priorities might differ from those of Commonwealth and interstate agencies, telephone interception powers are not available for many of the CMC's major crime investigations.⁶⁶ The CMC's submission to this Three Year Review reiterated the importance of a capacity to intercept telecommunications in investigating organised crime. The submission further underlined the importance of telecommunications interception to the CMC's approach by acknowledging that its availability through a national agency is one of several factors considered by the CMC when targeting particular crime syndicates.⁶⁷

The issue of telecommunications interception is covered in greater detail in chapter 6 of this report.

3.5.1.3. Combating Organised Crime Networks

Despite the absence of dedicated telephone interception legislation in Queensland, a number of recent operations have been able to successfully target and disrupt organised criminal activity. The CMC's Annual Report 2004-2005 states that in that financial year, the CMC finalised seven organised crime investigations, arresting 114 offenders on 452 charges.⁶⁸ Some case studies are provided below.

Operation Alpha Submission Barrier

This operation targeted a person suspected of trafficking in dangerous drugs through a nightclub. In December 2003, a joint CMC-QPS operation commenced to target the principal offender and his organisation. The operation also had a wider focus on the distribution of drugs and the commission of property offences throughout nightclubs. CMC investigators gathered substantial evidence against all principal offenders through monitoring of electronic surveillance devices, intelligence analysis from CMC and QPS resources, and the deployment of tactical investigative strategies. This evidence identified

⁶¹ See footnote 60 above. Note also the *Cross-Border Law Enforcement Legislation Amendment Act 2005* (Qld) which allows certain investigate steps to be undertaken interstate through approvals obtained in Queensland. It aims to enable seamless cross-border investigation by LEAs of serious offences by conferring power on the QPS, CMC (for major crime only) and ACC, to obtain warrants and authorities that can operate here and interstate.

⁶² CMC submission, page 7.

⁶³ <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10751&cid=5298&id=169>. The CMC's *Annual Report 2004-05* noted that 470 intelligence reports were collated to the Intelligence Recording and Analysis System database during that financial year, of which 398 were passed on to partner agencies, 310 via electronic transfer to ACID (Australian Criminal Intelligence Database) for sharing with other law enforcement agencies who use the database (p.20).

⁶⁴ CMC Annual Report, 2004-2005, page 4.

⁶⁵ See CMC submission to the Parliamentary Joint Committee Inquiry into the Australian Crime Commission's Amphetamines and Other Synthetic Drugs Special Intelligence Operations Determination, 7 March 2006, part e.

⁶⁶ CMC Annual Report, 2004-2005, page 11.

⁶⁷ CMC submission, page 23.

⁶⁸ CMC Annual Report, 2004-2005, page 13.

strong links between the principal targets and members of their organisation and others known to be engaged in similar activities.

The involvement of the ACC as a joint agency partner allowed for telephone interception of the primary target's mobile telephones to gather evidence.

The tactical phase of this operation closed in December 2004 with the simultaneous execution of search warrants on 26 premises throughout South-East Queensland. Property seized that day included 6000 pseudoephedrine-based tablets, small amounts of cannabis and cannabis plants, ecstasy tablets, water pipes and syringes, and 56 items of illicit laboratory equipment. Proceedings were commenced against 25 offenders on 54 charges. Charges of trafficking, producing, and possessing methylamphetamine were laid against the six main targets. Crime confiscation proceedings were commenced to restrain more than \$1 million in property. Six offenders are still to be charged with serious drug offences.

The QPS-controlled Operation Alpha Submission closed in February 2005. It had involved 146 officers from State Crime Operations Command, Metropolitan Police Regions, the CMC, AFP and ACC. Forty-four people were charged with 239 offences including trafficking, producing and possessing a dangerous drug, possession and supply of weapons, possession of an explosive, fraud, and various offences relating to theft and possession of tainted property. In total, the CMC and QPS operations resulted in 98 persons being charged with 422 offences. A related money laundering investigation is also progressing.

Operation Mexico

Operation Mexico was approved on 15 October 2004 under the Freshnet referral. It targeted a criminal network engaged in the trafficking, production and possession of dangerous drugs (mainly methylamphetamine) and offences that contravened proceeds of crime confiscation laws.

A second tier member of this network came to notice during the joint CMC–QPS–ACC Operation Alpha Submission Barrier as a primary source of precursor chemicals for the target group. Electronic and physical surveillance supported by tactical operations elicited evidence of this person's direct involvement in the trafficking of dangerous drugs on behalf of the principal targets. It was further established that the principal targets were in consort with identified interstate based Italian organised crime figures engaged in the large scale production of high grade methylamphetamine, subsequently transported and trafficked within the greater Brisbane environs. The group had also acquired and distributed other drugs such as ecstasy and heroin.

The ACC provided joint agency partnership support in the form of telephone interception. Analysis of electronic surveillance product showed substantial evidence of the target group's involvement in criminal activities. The targets were subsequently arrested and charged with serious drug offences.⁶⁹

Operation Harvard

Operation Harvard began in March 2003 as an offshoot of Operation Aero/Soho. The joint investigation targeted a principal offender and his close criminal associates involved in the organised theft of semi-trailers, prime movers and other vehicles from within Queensland and interstate. The principal target had amassed several properties and other assets to a value in excess of \$1.4 million. His employment did not support this rapid accumulation of wealth.

Information had been passed on to CMC investigators that the principal offender from Operation Harvard was part of a three-person group involved in the armed robbery and shooting of a person in 1993. QPS investigators have re-opened this case and, with the assistance of the CMC and ACC, are following up several new leads.

⁶⁹ CMC submission, page 25.

On 30 April 2003 the second phase of this operation closed, with search warrants being executed on several addresses in South-East Queensland. Charges were laid for offences of production of dangerous drugs, unlawful possession of firearms, possession of stolen property, cash and various quantities of cannabis, ecstasy, amphetamine and precursor chemicals.

In total, stolen property (prime movers, trailers, tankers) to the value of approximately \$1.4 million has been located and approximately \$1.2 million worth of property and assets have been restrained under civil confiscation legislation.

New South Wales Police have also undertaken to investigate the role of a NSW based offender believed involved in the fraudulent transfer of \$190 000 from the principal offender in order to circumvent criminal confiscation investigations.

By 28 February 2006, 15 offenders had been arrested and charged with 83 offences.⁷⁰

3.5.2. *Paedophilia*

3.5.2.1. *Background*

Like the former QCC⁷¹, the CMC may investigate criminal paedophilia, defined in the CMA as⁷²:

criminal activity that involves any of the following –

- (a) offences of a sexual nature committed in relation to children; or*
- (b) offences relating to obscene material depicting children.*

Also considered to be ‘criminal paedophilia’ is anything that is preparatory to the commission of criminal paedophilia and anything undertaken to avoid detection of, or prosecution for, criminal paedophilia.⁷³

In its submission to the Committee, the CMC acknowledges that the QPS continues to be the law enforcement agency primarily responsible for the investigation of criminal paedophilia in Queensland, especially intra-familial offending (which represents the bulk of offending brought to the attention of law enforcement agencies).⁷⁴ Under the CMA, the CMC may only investigate matters involving criminal paedophilia if the matter is referred by the Crime Reference Committee, or if it falls within the terms of an existing ‘umbrella’ paedophilia reference which the CMC has for particular niche areas of offending. The CMC, through its Atrax and Artemis umbrella references, works to proactively identify and investigate networked extra-familial child sex offenders, extra-familial child sex offenders who offend against multiple victims, and offenders using the internet to aid in the commission of child sex offences.⁷⁵

3.5.2.2. *References targeting criminal paedophilia*

Since the commencement of the CMA in January 2002 the Crime Reference Committee has made the following references (including two broad umbrella references) in respect of criminal paedophilia.⁷⁶

⁷⁰ CMC submission, pages 25-26.

⁷¹ The former QCC had a standing reference from the management committee to investigate criminal paedophilia (see s.46(7) of the (now repealed) *Crime Commission Act 1997*. That standing reference ended on the Act’s repeal (see section 355(2) of the CMA).

⁷² Schedule 2 of the CMA.

⁷³ Ibid.

⁷⁴ CMC submission, page 26.

⁷⁵ CMC Annual Report 2004-05, page 24 and CMC submission 2006, page 26.

⁷⁶ Information sourced from 2001-2002, 2002-2003, 2003-2004 and 2004-2005 CMC Annual Reports.

Reference	Date referred	Description
01/02 Atrax	Jan 2002	An umbrella criminal paedophilia reference relating to internet based child sex-offending and child pornography.
02/02 Scorpion	Jan 2002	Previously identified suspected paedophile networks. <u>Completed</u>
07/02 Verona	April 2002	Suspected extra-familial paedophile activity in North Queensland. <u>Completed</u>
08/02 Anvil	April 2002	Suspected extra-familial paedophile activity in South East Queensland.
09/02 Alaska	April 2002	Suspected extra-familial paedophile activity in South East Queensland. <u>Completed</u>
Artemis	July 2003	An umbrella referral relating to extra-familial paedophile activity by networked offenders or by individuals who offend against multiple victims.
Bravo Flamingo	Feb 2004	Extra-familial networked offenders who offended against multiple victims before 1990. <u>Completed</u>

3.5.2.3. Targeting internet paedophiles

The CMC's paedophile investigations, including its ongoing internet-based investigations, are undertaken by a single multidisciplinary team, the Egret Team, made up of four police officers, an intelligence analyst, an assistant intelligence analyst and a lawyer. The CMC, through the Egret Team, has undertaken numerous covert internet investigations with a view to the prosecution of persons for offences against section 218A of the *Criminal Code 1899* which criminalises the use of the internet to target children for sexual purposes.⁷⁷

The first provision of its kind in Australia, section 218A of the *Criminal Code* commenced in May 2003. It provides for the offences of using the internet with intent to procure a person under the age of 16 to engage in a sexual act, or to expose, without legitimate reason, a person under the age of 16 to any indecent matter. Offenders are also caught by this provision where the offence is committed in respect of persons *believed* by the offender to be under the age of 16 or in the case of a fictitious person represented to the offender as a real person. The maximum penalty for an offence under section 218A is five years imprisonment, rising to ten years in cases where the child is, or is believed by the offender to be, under the age of 12.

From May 2003 to May 2006, as a result of CMC investigations, 40 people were charged with a total of 226 offences under section 218A (in addition to numerous other charges laid, such as the possession of child pornography). In all of these cases the offences were allegedly committed in respect of 'fictitious' persons – covert CMC police officers posing as children in an approved controlled operation. It is to be hoped that the high media profile given to prosecutions for these offences should deter some potential offenders.⁷⁸

The CMC's internet-based investigations have also been significantly aided over the past three years by its development and use of innovative computer software known as Chat-Trak (Internet Protocol

⁷⁷ For further information see CMC submission, pages 26-32.

⁷⁸ CMC submission, pages 27-28.

Identification). This software aids geographically focused internet investigations by pinpointing the precise geographic location of suspected paedophiles using the internet. As at May 2006, Chat-Trak was the only program providing law enforcement agencies with the capability to conduct investigations into internet offences specific to a geographical area. Chat-Trak training and access has been provided to officers of the QPS, the AFP, and a number of State police services to assist their detection of offenders using the internet to prey on children.⁷⁹

The CMC's submission to this review reports that the use of emerging technologies by criminals and crime syndicates is an ongoing concern. In the area of internet offending by paedophiles, the willingness of offenders to adopt new technology and use innovative encryption devices presents a constant challenge to the CMC, which must continually train its staff and enhance its own technical capabilities in response.⁸⁰

The CMC's submission argues that its paedophilia investigations would be significantly enhanced by a power to intercept telecommunications, in particular electronic communications over the internet. The CMC's experience has demonstrated that individual and networked paedophiles use sophisticated internet technology, yet the CMC considers it unlikely that it could obtain an interception capacity through a national agency to intercept these internet communications.⁸¹ The submission states:

The CMC already has the power to use data-surveillance devices....we have found that the use of data-surveillance devices on computers connected to the internet might not be permissible without a Telecommunications Interception Act warrant – that is, without TI powers.

*The power is still available for use by the CMC on stand-alone computers; however, the use of the power for the investigation of criminal paedophilia has been substantially limited by this restriction.*⁸²

Since the CMC was granted power to use data-surveillance devices there has been conjecture and doubt over whether their use constituted a telecommunications intercept. The CMC had taken the view that intercepting communications between people on the internet and emails was a telephone interception, but that it has the capacity to put data surveillance devices into stand-alone computers not connected to the internet. As a question mark remained over their use, the CMC refrained from exercising its power to use these devices. Federally, recent amendments to telecommunications interception legislation in respect of stored communications support the view that the use of data surveillance devices does not constitute a telecommunications intercept. The CMC has written to the Federal Attorney-General's Department seeking clarification on the issue in light of the recent federal amendments.⁸³

3.5.2.4. Key achievements in targeting internet paedophilia

There were 16 criminal paedophilia investigations during the 2004-05 financial year, 14 in relation to internet based offending and two in relation to networked offenders. These criminal paedophilia investigations resulted in the arrests of 20 offenders on 435 charges.⁸⁴ The internet based offenders accounted for 18 people charged with 418 offences.⁸⁵ Case studies of some key operations follow.⁸⁶

⁷⁹ CMC submission, pages 27-28.

⁸⁰ CMC submission, page 44.

⁸¹ CMC submission, page 28.

⁸² CMC submission, page 20.

⁸³ For further discussion see PCMC hearings, 6 July 2006, transcript, pages 20-21.

⁸⁴ CMC Annual Report, 2004-05, page 13.

⁸⁵ CMC Annual Report, 2004-05, page 15.

⁸⁶ CMC submission, pages 29-32.

Operation Atrax

Operation Atrax is the CMC's overarching investigation of internet-based criminal paedophilia. It is an approved controlled operation under the *Police Powers and Responsibilities Act 2000*. CMC police officers with specialist internet training, and approved as 'covert police operatives' by the Controlled Operations Committee, undertake internet engagements posing as children. The rules of engagement for Operation Atrax stipulate that covert operatives are not to initiate any sexually related conversation and must at all times adopt a 'passive' role in their dealings with targets. Between March 2004 and March 2006 Operation Atrax resulted in 37 targets being arrested on 550 charges. Charges included using the internet with intent to expose a person under the age of 16 to indecent matter, using the internet with intent to procure a person under the age of 16 to engage in a sexual act, possession of child abuse computer games and attempting to procure a person for prostitution.

Operation Verona

During this operation, the seizure of a computer elicited evidence of numerous pornographic images of children. Subsequent forensic analysis of chat logs found on the target's computers disclosed admissions by him of his sexual assault of two young boys. Forensic analysis also revealed that he was part of an international network of 13 alleged paedophiles located in Australia, the United Kingdom, Ireland and the United States. The CMC disseminated information obtained during its investigation to relevant law enforcement authorities in the countries concerned, resulting in charges being brought against some of these men for child rape, sodomy, conspiracy, and the production and distribution of child pornography. In February the primary target was charged with the indecent treatment of an eight year old boy. As at 28 February 2006, eight offenders had been charged with a total of 128 offences.

Operation Xena

In 2003 the QPS Task Force Argos sought the assistance of the CMC to identify the nature and extent of a suspected paedophile network. Two men had been arrested by the QPS and NSW Police in 2002 for a range of child sex offences allegedly committed in both states. Preliminary examinations of a computer belonging to one man indicated he was in communication with at least 11 other people, exchanging experiences of child sex offending and associated images. The identities of some of these other people, referred to by their online personas, were unknown. Extensive chat logs, image files and video files were seized by police. CMC intelligence analysts were asked to analyse this data to try to identify the other members of the network, and to identify further offences committed by the primary target. The CMC also hoped to find material to corroborate the existing charges against the target. Over 450 hours were devoted by CMC analysts to this task. The intelligence analysis indicated that the network comprised at least 12 paedophiles located in Australia, New Zealand and the United States. Three Queensland-based members of the network were arrested and charged. At least ten children were identified as actual or potential victims of the network, some of whom were 'shared' with other members. As at 28 February 2006, six offenders had been charged with a total of 239 offences.

Operation Bravo Flamingo

This investigation was a joint task force between the QPS and the CMC started in November 2003. It revolved around complaints of a sexual nature against a religious minister who managed a boarding college located in a remote Indigenous community. The investigation was triggered when a number of former students of the college made complaints that, while children at the college, they were sexually abused by the target. Investigations revealed that the target might have systematically abused both male and female children during the (approximately 30 year) period he had been employed there. In February 2004 the target was arrested and charged with historical offences relating to the sexual abuse of children at the college. The investigation process also raised similar suspicions about a number of other men and extensive inquiries were undertaken with the aim of ascertaining whether the primary target had been acting alone or had been a member of a paedophile network. Ultimately, no cogent evidence of networked offending could be obtained. The main target was charged with a total of 17 offences of indecent treatment of children and abuse of intellectually impaired children.

Analysis and comment

The lack of a standing statutory reference for the CMC in respect of criminal paedophilia was considered by the previous Three Year Review. The former QCC had enjoyed a standing reference to investigate criminal paedophilia but this was repealed when the *Crime Commission Act 1997* was repealed.⁸⁷

The Committee is of the view that the CMC demonstrates a strong commitment to eradicating criminal paedophilia activities falling within its purview and considers sufficient CMC resources are allocated to investigating criminal paedophilia despite the lack of a statutory reference. A number of paedophile references are actively furthered by the CMC on an ongoing regular basis. This is readily apparent from data in the CMC's *2004-05 Annual Report* which notes that in that financial year, 16 paedophilia investigations were conducted, with operations resulting in 20 people being charged with a total of 435 offences.⁸⁸ The Committee does not recommend any change to the CMC's present practice in this regard.

3.5.3. Serious crime

The term 'serious crime' commonly refers to crimes having a penalty of at least 14 years imprisonment, such as murder, rape, arson and extortion. The CMA permits matters involving serious crime to be referred to the CMC on the application of the Commissioner of Police, the Assistant Commissioner, Crime, or the Crime Reference Committee (CRC). To May 2006, all referrals by the CRC have been at the request of the Commissioner of Police.⁸⁹ Generally, such requests are made when police are unable to solve a case due to the non-cooperation of potential witnesses or other hindrances to a productive police investigation.

For all serious crime referrals, the CRC must be satisfied that the statutory preconditions prescribed under section 28(2) of the Act have been met. These being, that the QPS has carried out an investigation that has not been effective,⁹⁰ that further investigation is also unlikely to be effective using powers ordinarily available to police, and that it is in the public interest to refer the matter to the CMC. During the 2004-05 financial year, six serious crime investigations were referred by the Crime Reference Committee.⁹¹

The CMC's role in a serious crime investigation is essentially to gather evidence to progress the investigation. The key tools useful are the CMC's powers to conduct hearings and its coercive powers which enable it to secure information and evidence. Offences that have been the subject of serious crime referrals since 1 January 2003 include actual, attempted and suspected murders, other unlawful killings, grievous bodily harm, arson, the attempted destruction of a building by rioters, and perjury.⁹²

Analysis and comment

The Committee is of the view that there are no concerns such as would warrant a revision of the CMC's serious crime role. The Committee considers that the investigative powers currently given to the CMC for its crime jurisdiction should be maintained.

⁸⁷ See section 355(2) of the CMA and note the discussion at paragraph 3.6.2 (pages 18-19) of the 5th PCMC's *Three Year Review of the Crime and Misconduct Commission*, Report No. 64, March 2004.

⁸⁸ CMC Annual Report, 2004-05, page 4.

⁸⁹ CMC submission, page 32.

⁹⁰ Such as where the QPS investigation has failed to yield a body of evidence capable of sustaining a prosecution case with a reasonable prospect of success, see CMC submission at page 32.

⁹¹ CMC Annual Report, 2004-05, page 4.

⁹² CMC submission, page 32.

3.5.4. *Terrorism*

The September 11 attacks in the United States in 2001 and the bombings in Bali in 2002, Madrid in 2004 and London in 2005 have raised valid fears of a terrorist attack on Australian shores. This heightened sense of alert has led Federal and State law enforcement and intelligence agencies to continually examine their capacity to prevent, respond to, and recover from, the threat or actuality of a terrorist incident on Australian soil.

In the wake of the September 11 attacks, a summit of Australian First Ministers agreed in April 2002 to a new national framework to combat terrorism and multi-jurisdictional crime. Contained in the agreement was a commitment from all jurisdictions to review their laws and counter-terrorism arrangements to ensure their adequacy. Since that time Australian jurisdictions have entered into an intergovernmental agreement on counter-terrorism, replaced the National Anti-Terrorism Plan with the National Counter Terrorism Plan, and prepared a handbook to support the plan. These documents detail arrangements for responding to terrorist incidents in Australian states and territories, whilst the Commonwealth retains the major role in gathering intelligence and responding to national terrorist situations.⁹³

The fears of terrorism that were evoked by the September 11 attacks were further heightened when a large number of Australians were killed or maimed in the October 2002 bombings in Bali. In response to renewed community fears and LEA concerns, December 2002 saw the CRC approve an umbrella organised crime reference that enabled the CMC (at the request of the QPS) to use its coercive powers to aid a QPS investigation of terrorist threats and terrorism-related activity in Queensland. The counter-terrorism umbrella referral covered ‘a wide range of organised criminal activity undertaken to advance a political, religious or ideological cause with the intention of intimidating the government or the public’.⁹⁴ It was not intended that the CMC would undertake any independent or self-initiated investigation of terrorist-related activity.⁹⁵

The Queensland government had meanwhile commenced a legislation review to identify any legislative weaknesses that might hamper state law enforcement authorities in taking counter-terrorism action.

3.5.4.1. Legislative Reforms

Arising both from that review, and from QPS and CMC requests for additional counter-terrorism law enforcement powers, the *Terrorism (Community Safety) Amendment Act 2004* (Qld) was passed. That Act strengthened the powers of a number of state law enforcement agencies to prevent and respond to terrorist acts. It amended the CMA to refer legislative responsibility for investigating terrorism-linked major crime to the CMC. The Act was, in effect, a statutory endorsement of the umbrella referral already given by the CRC, and allowed the full range of the CMC’s coercive powers (including its investigative hearings power) to be used against terrorism-related major crime.⁹⁶

Of relevance to the CMC’s counter-terrorism purposes, the *Terrorism (Community Safety) Amendment Act 2004* amended the CMA by:

- including ‘terrorism’ (being criminal activity involving a terrorist act) within the CMA definition of ‘major crime’. The definition also now includes doing something preparatory to, the commission of terrorism and something undertaken to avoid detection of, or prosecution for, terrorism;
- providing an extensive definition of the term ‘terrorist act’ in a new section 22A;

⁹³ *Terrorism (Community Safety) Amendment Bill 2004 (Qld), Explanatory Notes*, pages 1-2.

⁹⁴ CMC Annual Report, 2004-05, Table 3, page 14.

⁹⁵ CMC submission, page 34.

⁹⁶ *Terrorism (Community Safety) Amendment Bill 2004 (Qld), Explanatory Notes*, page 2.

- broadening the CMC's power to obtain surveillance devices to allow warrants to be obtained for a 'relevant place' even where a named person could not be identified as a suspect; and
- extending the 'additional powers' warrant provisions. Additional powers warrants allow the CMC to enter premises to inspect and copy financial records held there; to seize passports, title deeds, securities and other financial documents; and to require a person to provide information about property and financial transactions. The warrants power was extended by the *Terrorism (Community Safety) Amendment Act 2004* to apply to a 'crime investigation relating to terrorism'.⁹⁷

3.5.4.2. *Recommendations of the previous Three Year Review*

These amendments reflected issues that had been recognised by the previous PCMC as requiring attention.⁹⁸ The 5th PCMC had, in its report of the previous Three Year Review, recommended that the CMA and the *Police Powers and Responsibilities Act 2000* be amended to allow a surveillance warrant to be issued in respect of specified premises on the basis that there are reasonable grounds for believing that a major crime constituting a 'terrorist act' has been, is being, or is likely to be, committed, and that the use of a surveillance device at the premises is necessary for investigating that (suspected) major crime or for enabling evidence to be obtained in respect of it.⁹⁹ The Government response was that:

The Government has already substantively implemented recommendation 21 as a matter that required immediate attention. The Terrorism (Community Safety) Amendment Act 2004 amended ss 121, 123 and 124 of the CMA to provide for 'place' warrants. The terrorism legislation made corresponding amendments to the PPRA. The amendments were not limited to a 'terrorist act' being a condition precedent for an application for such warrants. Rather, these warrants are available to the CMC for investigating 'major crime' (which, due to the terrorism legislation, now includes terrorist acts) and are available to the QPS for investigating 'serious indictable offences' (which likewise now includes terrorist acts).¹⁰⁰

The 5th PCMC also recommended that the CMA be amended to allow additional powers warrants to be utilised by the CMC in its major crime investigations (previously additional powers warrants could only be obtained for misconduct investigations).¹⁰¹ The Government partially implemented this recommendation. In the *Terrorism (Community Safety) Amendment Act 2004* the availability of additional powers warrants was extended, but only to terrorism-related investigations (rather than all major crime investigations). This restricted implementation was explained as being "because these [additional powers] warrants appear never to have been used and the Government considered there was no clear justification to extend them beyond terrorism investigations."¹⁰²

The other terrorism-related recommendations from the previous Three Year Review were not supported or implemented by the Government. Recommendation 22 had sought statutory amendments to the CMA and PPRA to allow the exercise of covert search powers without a warrant where the Chairperson of the CMC, or a police officer of at least the rank of inspector, reasonably believed a major crime constituting a terrorist act had been, was being, or was likely to be, committed, and a thing at a place was evidence of that major crime that was likely to be concealed, destroyed or forensically compromised unless the place was immediately searched. Recommendation 23 sought provisions that would require an application to be

⁹⁷ CMC submission, page 13.

⁹⁸ *Three Year Review of the Crime and Misconduct Commission*, Parliamentary Crime and Misconduct Committee, Report No. 64, March 2004, see especially recommendations 21-24 at pages viii-ix.

⁹⁹ Recommendation 21.

¹⁰⁰ *Government response to the Parliamentary Crime and Misconduct Committee Report No. 64 - Three Year Review of the Crime and Misconduct Commission*, September 2004, page 11.

¹⁰¹ Recommendation 24.

¹⁰² *Government response to the Parliamentary Crime and Misconduct Committee Report No. 64 - Three Year Review of the Crime and Misconduct Commission*, September 2004, page 12.

made to a Supreme Court judge for (retrospective) approval of the emergency use of covert search powers (as envisaged by recommendation 22) within 2 business days after that emergency use. It was also recommended that the Public Interest Monitor be advised of that application so that the PIM could appear and make submissions to the judge regarding the approval application. The Government did not consider that there was adequate justification to override the existing safeguard requiring officers to apply to the Supreme Court for covert search warrants *before* exercising search powers.¹⁰³

3.5.4.3. The CMC's role in terrorism investigations

Subsequent to the *Terrorism (Community Safety) Amendment Act 2004* (which amended the CMA to include 'terrorism' as a separate head of power for the CMC's major crime ambit) the CMC sought a fresh umbrella referral from the CRC, based on its counter-terrorism rather than its organised crime jurisdiction. This was done to reinforce its capacity to respond rapidly to requests for assistance from the QPS in relation to any suspected terrorism-related criminal activity. It remains the case that any CMC investigation of terrorism, acts preparatory to terrorism, or actions taken to avoid detection of, or prosecution for, terrorism, will occur on receipt of a request from the QPS.¹⁰⁴

As the CMC Chairperson explained in his evidence to the Committee¹⁰⁵:

Our role in terrorism is really very limited. We have no operations in it on a day-to-day basis at all. We are, in effect, one might say, sitting, waiting and ready... my understanding—and the way it operates now—is that it was placed as a standing reference to our crime area, the reason for that being that if we had the power in particular of coercive hearings, of bringing people in and making them answer questions—the Queensland Police Service does not have that. If they felt the need to utilise that power in a terrorism related matter, if they had to go through and make an application through the Crime Reference Committee, again, there are ways that has to be done and that is a process that can take some little time. Of course, if it were urgent it would be done very quickly, but it could still delay it for a period of days... By having it as a standing reference it means the police can come to us with a situation where they say that they need to bring this person in. We would look at that. If it fitted within all the requirements then we would be able, as a matter of urgency, to convene an urgent hearing... our role is really to assist the police who have the lead role in Queensland.

Analysis and comment

The Committee supports the CMC's current terrorism reference. The Committee regards the CMC's existing coercive powers, particularly those not available to the QPS, as integral tools which must be available to aid in the prevention and investigation of terrorism offences.

3.6. Law enforcement partnerships

Most investigations into major crime in Queensland continue to be conducted by the QPS. The CMC undertakes general and targeted investigations of certain major crime activities that come within the terms of a specific or an umbrella reference from the CRC. The CMA permits these investigations to be conducted by the CMC with the assistance of a QPS taskforce, or through operational agreements with other LEAs.¹⁰⁶ Section 26 of the CMA provides that one of the ways the CMC performs its crime function is by liaising with, providing information to, and receiving information from, other LEAs and prosecuting authorities, including those in other states or overseas.

¹⁰³ Government response to the Parliamentary Crime and Misconduct Committee Report No. 64 - Three Year Review of the Crime and Misconduct Commission, September 2004, pages 11-12.

¹⁰⁴ CMC submission, page 34.

¹⁰⁵ Transcript Of Proceedings Of The Three-Yearly Review Of The Crime And Misconduct Commission, Thursday 6 July 2006, p.12.

¹⁰⁶ CMC submission, page 5.

The development and strengthening of key partnerships with other LEAs has been acknowledged as a priority of the CMC in its *Strategic Plan 2006–10*.¹⁰⁷ The CMC's effectiveness is dependent upon partnerships with other LEAs (particularly the QPS) as the CMC is not resourced to undertake major investigations on its own.

Through strategic partnerships each agency can deploy its expertise and staff resources to address particular operational needs. The CMC, for example, might provide intelligence and financial analysis support while a partner agency provides investigative resources or conducts other activities requiring the short-term deployment of its staff.

Major crime such as organised crime, paedophilia and terrorism typically involves cross-border criminal activities. To combat this effectively, the CMC has fostered strong partnerships with numerous state, federal and international LEAs including other state police services, QPS, ACC, AFP, ACS, and Europol. Through regular liaison with these agencies and membership of a variety of state and national law enforcement forums the CMC has been able to share intelligence and operational resources to further its mission.¹⁰⁸ The CMC also meets on an ad hoc basis with agencies such as the Department of Corrective Services, the New South Wales Crime Commission and AUSTRAC.¹⁰⁹

The CMC often seeks to involve in its operations those national law enforcement agencies that have the legislative capacity to intercept telecommunications between suspected crime syndicate members. The CMC largely attributes its recent successes in organised crime investigations to the capability to intercept telecommunications that comes through the involvement of national agencies such as the ACC.¹¹⁰ As a result of joint investigations (involving CMC, QPS and the ACC) 35 offenders were charged with 117 serious offences under various Acts between 1 July 2005 and 31 March 2006, including trafficking/producing a dangerous drug and using the internet for paedophilia activities.¹¹¹

The CMC also acknowledges that while it is not an alternative police service, it does have special powers, not possessed by other LEAs, which enable it to be a valuable contributor to joint investigations. The CMC's closest partner is the QPS, with which it conducts operations under joint multidisciplinary taskforce arrangements and shares operational resources. The use of the CMC's coercive powers allows the QPS to expedite investigations and to dismantle and disrupt the criminal activities of organised crime groups and those engaged in criminal paedophilia. The CMC's coercive hearing powers can also help the QPS solve serious 'cold case' offences such as murders, arson and extortion. Conversely, the alignment gives the CMC access to police resources and the skills and knowledge of experienced police investigators to help the CMC in its fight against major crime.¹¹²

The QPS said of this alliance¹¹³:

The Service is cognisant of the CMC's complementary role in preventing and investigating major crime with the CMC and State Operations Command sharing a positive working relationship. A number of investigations have been enhanced through joint efforts and access to coercive hearings. The Ethical Standards Command's investigative and intelligence areas have also benefited from information and intelligence sharing.

¹⁰⁷ CMC Strategic Plan 2006-10, page 16.

¹⁰⁸ A comprehensive list of state and national forums in which the CMC participates is provided in its submission at pages 35-36.

¹⁰⁹ The Australian Transaction Report and Analysis Centre. AUSTRAC monitor cash transactions throughout Australia and flags for the attention of LEAs movements of cash of \$10 000 or more in a single transaction.

¹¹⁰ CMC Annual Report, 2004-05, page 18.

¹¹¹ 2006-07 Queensland State Budget – Ministerial Portfolio Statement – CMC, pages 6-3.

¹¹² CMC Annual Report, 2004-05, page 8.

¹¹³ Queensland Police Service submission, page 3.

Occasionally the issue of duplication of effort still arises, however, the inclusion of the CMC on the Operations Management Board is designed to address this issue.

The strategic direction of joint operations between the CMC and the QPS is co-ordinated by the Joint Executive Team. Inter-agency co-operation is overseen at a strategic level by the Queensland Joint Senior Law Enforcement Liaison Group, which comprises the Assistant Commissioner, State Crime Operations Command (QPS), the Regional Director (ACS), the Regional Manager (AFP), the General Manager, National Operations (ACC) and the Assistant Commissioner, Crime (CMC). Operationally, regular liaison occurs between the agencies through meetings of the Queensland Joint Intelligence and Operations Coordination Group. The CMC's proceeds of crime unit also liaises with the QPS and the ODPP on civil confiscation matters.¹¹⁴

3.7. Challenges for the future

The CMC's *Strategic Plan 2006-10*¹¹⁵ has identified the following challenges in strengthening the law enforcement impact on major crime:

- developing targets and conducting multidisciplinary tactical operations that have a high probability of disrupting and/or dismantling sophisticated and entrenched organised crime syndicates;
- identifying, investigating and charging networked extrafamilial offenders, or extrafamilial offenders who offend against multiple victims, and offenders who use the internet as an aid to committing sexual offences against children;
- drawing upon the CMC's research, intelligence, investigative and legal resources so as to inform the public, our partner LEAs and policy makers about organised crime threats, environments where there is a heightened threat of criminal paedophilia, and the ways in which such threats and environments may be addressed by preventive, legislative, investigative and social initiatives;
- ensuring a cooperative and well coordinated investigative approach with partner agencies, especially the QPS, to maintain an effective response to organised crime and criminal paedophilia;
- developing new and innovative investigative strategies to keep abreast of the increasingly sophisticated information technology environment in which criminals operate; and
- maintaining effective investigative resources to ensure continuity in organised crime and criminal paedophilia investigations.

In its future undertakings, the CMC has committed to continue to¹¹⁶:

- use strategic intelligence assessments and innovative investigation methods to proactively identify and target organised crime networks and crime markets;
- proactively identify and investigate networked, extra-familial offenders and extra-familial offenders who offend against multiple victims;
- use the latest technologies and methodologies to expose paedophiles using the internet, to deter such offenders and to inform the public about paedophile activity on the internet;
- investigate unsolved serious crime referred by the CRC where conventional policing methods have proven ineffective;
- proactively identify and target facilitators of money laundering;

¹¹⁴ CMC Annual Report, 2004-05, page 18.

¹¹⁵ Strategic Plan, 2006-10, CMC, page 13.

¹¹⁶ 2006-07 Queensland State Budget – Ministerial Portfolio Statement – CMC, pages 6-3 and Strategic Plan 2006-10, CMC, page 12.

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- maintain a high state of readiness to participate where necessary in counter terrorism investigations;
 - conduct effective multidisciplinary investigations into major crime such as organised crime and paedophilia;
 - use a range of investigation, intelligence, research and prevention initiatives with a special emphasis on alerting other law enforcement agencies and the community to specific dangers;
 - take an integrated approach and draw upon a wide range of expertise and resources, and to use strategic intelligence and research to identify and develop targets for tactical investigations that have a high probability of success;
 - work in partnership with other law enforcement agencies, particularly the QPS, the Australian Crime Commission and the Australian Federal Police, building upon advances already made, and playing a key role in combating organized crime and criminal paedophilia;
 - prioritise its use of investigative resources to target organised crime markets that are assessed through the strategic intelligence process as presenting the greatest risk to the community;
 - to conduct and sponsor research projects that will provide policy makers and law enforcement authorities with information that can be effectively integrated with operational activities; and
 - take advantage of opportunities to prevent organised crime and criminal paedophilia through research and intelligence resources, by publishing information to the law enforcement community and, where possible, to the public, on emerging threats, problematic environments and possible law reform issues.

Conclusions

The Committee is of the view that there are no concerns that would warrant a revision of the CMC's major crime role. The Committee considers that the investigative powers currently given to the Commission for its crime jurisdiction should be maintained.

4. PROCEEDS OF CRIME

4.1. Background

The fundamental premise underlying confiscation laws is that people who break the laws of society should not be allowed to profit from doing so. Confiscation laws therefore seek 'restitution' for society by taking back from criminals their 'ill-gotten spoils' of organised crime. Asset confiscation serves the dual purpose of deterring participation in organised crime by making it less profitable and preventing the reinvestment of unlawfully derived proceeds into further criminal activities.¹¹⁷ Most confiscation laws have three core elements, being restraining orders to prevent disposal of an asset before determination by a court, forfeiture orders which permit the court to forfeit tainted property, and pecuniary penalty orders which order the repayment of a monetary sum equal to the benefit received from the offence.¹¹⁸ In 1983 the Australian Police Ministers Council recommended that all Australian jurisdictions develop laws to combat the accumulation of criminal wealth.¹¹⁹

The *Crimes (Confiscation) Act 1989* introduced into Queensland a conviction-based confiscation scheme in line with similar schemes introduced into all other Australian jurisdictions between 1985 and 1993. Under that Act, restraining orders could be sought to prevent the dissipation of the proceeds of crime but forfeiture orders and pecuniary penalty orders could only be obtained against a defendant on conviction. Forfeiture orders dealt with property used in (or in connection with) the Commission of a serious offence, or property derived from such an offence. Pecuniary penalty orders dealt with benefits derived from the Commission of an offence.¹²⁰

The experience of all jurisdictions became that, in isolation, the conviction-based schemes failed to adequately satisfy the key aim of confiscation legislation, namely, to deprive criminals of the assets they derived from crime. This failure was generally attributed to it being too difficult for recovery agencies to establish a link between a convicted criminal and a particular asset. In response to such difficulties, the New South Wales government moved to radically strengthen its proceeds of crime legislation and their changes were followed by similar civil forfeiture legislation in Victoria, Western Australia and the Northern Territory. As a result of these developments and the constraints of the Commonwealth conviction-based system,¹²¹ many assets that were identified and investigated by Commonwealth agencies such as the Australian Federal Police (AFP) were ultimately referred to state agencies like the NSW Crime Commission for confiscation.

It soon became apparent that the conviction-based schemes were nowhere near as effective as the more advanced state models in aggressively pursuing the proceeds of crime.¹²² Indeed, in its 1999 Report reviewing the (then)¹²³ Commonwealth's *Proceeds of Crime Act 1987*¹²⁴ the Australian Law Reform Commission (ALRC) concluded that the very modest returns achieved under the Commonwealth regime had fallen well short of the goal of depriving criminals of the proceeds of their crime. The ALRC recommended the incorporation of a non-conviction-based regime into the *Proceeds of Crime Act* to

¹¹⁷ Australian Law Reform Commission Media Briefing Paper - *Confiscation That Counts: A Review of the Proceeds of Crime Act 1987* (ALRC 87) - 16 June 1999.

¹¹⁸ "Great Expectations - Australia's new Proceeds of Crime Bill", Tim Morris, *Platypus Magazine*, No.73 Dec 2001, pages 31-36 at page 33.

¹¹⁹ "Recovering the proceeds of transnational crime through civil proceedings", AFP Commissioner Mick Keelty, *Platypus Magazine*, No.75 June 2002, pages 20-25 at page 20.

¹²⁰ Explanatory Notes to the Criminal Proceeds Confiscation Bill 2002 (Qld) at pages 1-2.

¹²¹ From 1979 the *Customs Act 1901* provided for a non-conviction-based (civil) confiscation regime (Part XIII, Div.3) for specified narcotics dealing, but that regime was limited to the making of pecuniary penalty orders and was [according to the ALRC, see f.n.1] not often used.

¹²² "Recovering the proceeds of transnational crime through civil proceedings", AFP Commissioner Mick Keelty, *Platypus Magazine*, No.75 June 2002, pages 20-25 at pages 22-23.

¹²³ See now the *Proceeds of Crime Act 2002* (Cth)

¹²⁴ *Confiscation That Counts: A Review of the Proceeds of Crime Act 1987*, ALRC, Report No. 87, June 1999.

enable confiscation on the basis of proof to a civil standard. Consequently, by the early part of this century, the Commonwealth, and most other State and Territory jurisdictions had introduced non-conviction-based (commonly referred to as ‘civil’) confiscation laws to either replace or complement their existing conviction-based confiscation schemes.¹²⁵

Often referred to as ‘second generation’ proceeds of crime legislation,¹²⁶ these new civil confiscation schemes did not depend on a conviction being obtained in order for asset recovery action to be instituted.¹²⁷ The Australian Institute of Criminology recognised the emergent trend towards civil forfeiture regimes in its 2004 paper *The Worldwide Fight against Transnational Organised Crime: Australia*. In that paper the AIC noted that¹²⁸:

From the prosecution point of view the emphasis has, until recently, been mainly on prosecuting individuals and disrupting organised crime activities. In recent times, far greater emphasis has been placed on tackling the profit motive for organised crime, seeking to target and recover the proceeds of crime. Such initiatives [Nationally] reflect state-based civil forfeiture regimes.

Similar legislative models, whereby a conviction-based confiscation scheme operated alongside a civil confiscation scheme, had also been operating for some time in the United States, Ireland, the United Kingdom and other countries.¹²⁹

4.2. Queensland’s legislative framework

4.2.1. Non-conviction-based (civil) confiscation

In Queensland, the *Criminal Proceeds Confiscation Act 2002*, (the ‘CPCA 2002’), which commenced on 1 January 2003, substantially reformed the law governing the confiscation of assets derived from crime. The Act repealed the *Crimes (Confiscation) Act 1989* and introduced a non-conviction-based confiscation scheme (often referred to as a civil confiscation scheme), which continues today.¹³⁰ That new civil scheme was modelled on the ground-breaking New South Wales *Criminal Assets Recovery Act 1990*.¹³¹

The civil confiscation scheme does not require that the state secures a prior conviction on criminal charges, or that it links the property to a criminal offence, before it can be confiscated from the respondent. Forfeiture and pecuniary penalty orders can be made even if a person is not charged or convicted of any criminal offence.¹³² All the state must show, to a civil standard of proof¹³³, is that the ‘prescribed respondent’ engaged in ‘serious crime related activity’ within six years of the date of the forfeiture application. If that threshold test is met, any or all of the property belonging to, or under the effective control of, the respondent, is vulnerable to forfeiture unless the respondent can show, again to the civil standard, that the property in question has been lawfully acquired.

¹²⁵ Civil confiscation schemes have only recently been introduced into South Australia and the Northern Territory (see CMC submission, page 50).

¹²⁶ “Great Expectations -Australia’s new Proceeds of Crime Bill”, Tim Morris, *Platypus Magazine* No.73 Dec 2001, pages 31-36 at page 31.

¹²⁷ See Explanatory Notes for the Criminal Proceeds Confiscation Bill 2002 (Qld) at pages 1-2.

¹²⁸ Technical and Background Paper No.9, 2004 at page 48.

¹²⁹ “Recovering the proceeds of transnational crime through civil proceedings”, AFP Commissioner Mick Keelty, *Platypus Magazine*, No.75 June 2002, pages 20-25 at page 21.

¹³⁰ CMC submission, page 45.

¹³¹ See Explanatory Notes for the Criminal Proceeds Confiscation Bill 2002 (Qld) at page 2

¹³² *Ibid.*

¹³³ The civil standard of proof is ‘on the balance of probabilities’. This can be contrasted with the more stringent criminal standard of proof which is “beyond a reasonable doubt”.

Property found to be derived from illegal activity is subject to forfeiture, however the civil confiscation scheme is not available to confiscate property actually used in the Commission of an offence.¹³⁴ Unlike the situation under a conviction-based scheme, recovery action in a civil confiscation proceeding is not limited to the profits from a particular offence, but can apply to all criminal proceeds accumulated by a person engaged in the serious criminal activity in the prior six years.

The civil confiscation scheme is administered by the CMC. The CMC initiates the civil confiscation action, either from its own investigations or from investigations conducted by the Queensland Police Service (QPS) and other law enforcement agencies. The associated court proceedings are conducted on behalf of the CMC by the Office of the Director of Public Prosecutions (ODPP), with matters being heard in the Supreme Court. The civil confiscation scheme allows only the Supreme Court to make restraining and forfeiture orders over property, and to make proceeds assessment orders to recover the value of proceeds derived from the offending activity.¹³⁵

Restricting the jurisdiction to hear restraining and forfeiture applications to the Supreme Court was a feature of the Commonwealth's conviction-based confiscation regime under the *Proceeds of Crime Act 1987* criticised by the ALRC in its 1999 review of that Act.¹³⁶ As well as making recommendations in respect of jurisdictional issues for the conviction-based scheme¹³⁷, the ALRC concluded that if a non-conviction-based (civil) confiscation regime were to be introduced into the POC Act, then the Federal Court and State and Territory Supreme Courts should have unlimited jurisdiction to hear matters under that Act. The ALRC also concluded that State intermediate courts and State and Territory lower courts should have jurisdiction to hear matters within *their* respective civil jurisdictional limits.¹³⁸

4.3. Conviction-based confiscation scheme

The civil scheme in Queensland operates independently but alongside a conviction-based scheme also provided for in the *CPCA 2002* which is similar to the former conviction-based scheme introduced into Queensland in 1989. The current conviction-based scheme allows for a forfeiture order or a pecuniary penalty order to be obtained only where the defendant has been convicted of an applicable offence or is within a category which is treated as equivalent to such a conviction. For a forfeiture order to be issued, whereby the defendant's property is forfeited to the state, that property needs to be 'tainted' (i.e. used in, or derived from, the Commission of the offence). Alternatively, a pecuniary penalty order requires a defendant pay to the state an amount representing the benefits derived from commission of the offence. The enhanced conviction-based scheme introduced in 2002 expanded the range of predicate offences attracting automatic forfeiture to cover all indictable offences punishable by five years or more in prison.

The conviction-based confiscation scheme is administered by the Office of the Director of Public Prosecutions, although that Office litigates confiscation matters for both schemes. The need to secure a prior conviction and to link the 'tainted' property to the offence means the conviction-based scheme is generally more restrictive in its application than the civil. Those pre-conditions under the conviction-based scheme limit both the extent of property that can be subject to forfeiture, and the proceeds of crime that can be subject to a pecuniary penalty order.¹³⁹

¹³⁴ CMC submission, pages 45-46.

¹³⁵ CMC submission, page 46 and see *CPCA 2002*, sections 28, 56 and 77.

¹³⁶ *Confiscation That Counts: A Review of the Proceeds of Crime Act 1987*, Australian Law Reform Commission Media Briefing Paper, ALRC 87 – 16 June 1999.

¹³⁷ As the POC Act stood in 1999, only Supreme Court judges (with limited exceptions) could determine applications to issue restraining orders. This meant that even a minor matter required high level judicial involvement if property was to be restrained for forfeiture under that Act. The ALRC thus recommended that intermediate courts (District or County Courts) be given unlimited power to issue both restraining and confiscation orders for any criminal offence, where the trial of the actual offence was before their jurisdiction.

¹³⁸ *Confiscation That Counts: A Review of the Proceeds of Crime Act 1987*, Australian Law Reform Commission Media Briefing Paper, ALRC 87 – 16 June 1999.

¹³⁹ CMC submission, page 46.

4.4. Strategic framework

In broad terms, the CMC's function in civil confiscation involves the investigation of activities which may found the basis of restraining orders, forfeiture orders and proceeds assessment orders under the *CPCA 2002*. In practice, processes under the Act occur concurrently with investigative activity by the QPS and other law enforcement agencies and are integrated into the overall major-crime strategy of the CMC, particularly in the organised crime area.

Generally the process of recovering the proceeds of crime involves the following distinct phases:

- identification of potential proceeds of crime;
- financial investigation and asset tracing;¹⁴⁰
- restraint action;
- collation of evidence;
- various interlocutory steps; and
- settlement (either by negotiation or litigation)

Under the civil confiscation scheme¹⁴¹ the key agencies are:

- the QPS (and to a lesser extent other law enforcement agencies such as the CMC, the ACC and the AFP), whose primary role is the initial identification of matters and provision of police investigative resources;
- the CMC, which prepares matters for restraint and provides financial investigative resources;
- the ODPP, which makes the applications to court and acts as solicitor on the record. Its confiscation workload is driven by the rate of referrals from the CMC (for civil confiscation) and the QPS (for conviction-based matters); and
- the Public Trustee, who may be court-appointed to take control of restrained property.¹⁴²

Key to both confiscation schemes is initial identification of the proceeds of crime. Generally, in Queensland, the QPS is the primary agency, although other state and federal law enforcement agencies may be the initial identification point. All QPS matters are channelled through a specialist Proceeds of Crime Unit within the Major Fraud Investigation Group of State Crime Operations Command. Here they undergo a first assessment (initial financial inquiries and asset identification) to determine the appropriate scheme given the specific circumstances of each matter.

Potential civil confiscation matters are referred by the QPS (or other law enforcement agencies) to the CMC and potential conviction-based matters are referred by the QPS to the ODPAGES. There is almost no opportunity for the CMC to identify potential civil confiscation matters independently, except where the chance arises during CMC investigations. Unfortunately, those police officers nominally dedicated to the proceeds-recovery function are regularly called on to perform other policing duties. Inevitably these

¹⁴⁰ For example, a 'notice to produce' is particularly effective for obtaining financial records, to enable money trails to be established in a fraud or corruption investigation. The notices require the recipient to (by a specified time) provide information or produce a stated document or thing that the CMC reasonably believes is relevant to an investigation. Between March 2004 and May 2006, the CMC issued 284 production notices for civil confiscation investigations. The power is most often used to seek the production of financial records from banks and other third-party institutions in order to build a financial profile of targets, their close relatives and associates, and other people of interest. There is also scope for a production notice to include a confidentiality clause if deemed necessary (for further information, see CMC submission at pages 9-10).

¹⁴¹ See CMC submission, page 47. Note also that each of these agencies has a role under the conviction-based scheme, although that role may differ from its role under the civil confiscation scheme.

¹⁴² Administration of property under restraint may rest with the Public Trustee or the seizing authority; or the property may remain in the custody of its owner.

distractions from their core function adversely affect their capacity to support the CMC's investigative activity when required.¹⁴³

There are several notable advantages to the CMC's administration of the civil confiscation scheme:

- It separates proceeds of crime recovery from the investigative function of law enforcement agencies so that allegations of trade offs between the imposition of criminal charges and asset forfeiture do not arise;
- It separates the asset confiscation function from the ODPP's criminal prosecution function thereby obviating any potential for plea bargaining to seek lesser charges or sentences in exchange for asset forfeiture; and
- It imposes levels of accountability through the oversight of the Crime Reference Committee, the CMC, the PCMC and the Parliamentary Commissioner to ensure the appropriate use of powers and conduct of investigations.

4.5. Successful confiscation

The first application of the *Criminal Proceeds Confiscation Act 2002* occurred just two weeks after its commencement (on 14 January 2003), when the CMC restrained property totalling \$4.3 million including real estate, boats, a luxury motor vehicle and bank accounts during the culmination of 'Operation Soho/Norwegian'. Operation Soho/Norwegian was an 18 month joint operation between the QPS, CMC, AFP and ACC, assisted by Australian Customs Service, Australian Tax Office, Insolvency and Trustee Service Australia and the NSW police service. Those arrested were charged with a number of serious drug offences as well as with possession of tainted property.¹⁴⁴

Other examples of property recovery proceedings were outlined in the CMC's *Annual Report 2004-05*.¹⁴⁵

- *Operation Alpha Submission Barrier* - drug and weapons offences - civil confiscation proceedings commenced to retrieve cash/property valued at around \$1 million;
- *Operation Mexico* - serious drug crimes and money laundering - assets worth \$1.334 million (houses, vehicles, bank accounts and share portfolios) restrained;
- *Operation Cleo* - drug crimes and money laundering – target used friends and family to launder money from crime - restraining orders for several people involved; and
- *Operation Charlie Yield* - drug crimes - \$0.62 million in assets (houses, vehicles, and bank accounts) restrained, steps taken to restrain further \$1.3m worth of assets.

A statement by the Queensland Attorney-General Hon. Linda Lavarch MP on 20 July 2006¹⁴⁶ noted that more than \$11 million worth of boats, cars and other illegally obtained assets were frozen in 2005-06, and that since the inception of the *Criminal Proceeds Confiscation Act* in January 2003, the CMC in conjunction with the Office of the DPP has frozen a total of \$36.6 million in ill-gotten assets such as real estate, cash and bank accounts, motor vehicles, vessels, shares, livestock, plant and equipment, gold and jewellery. Of the \$11 million civilly restrained by 38 orders in 2005-06, \$2 million in 25 matters had been permanently forfeited. Of the total \$36.6 million civilly restrained since 2003, \$4.4 million has been forfeited. Under the ODPP's conviction-based confiscation scheme, \$582 000 was forfeited in 2005-06

¹⁴³ CMC submission, pages 47-48.

¹⁴⁴ *Major amphetamine syndicate closed down*, (joint) QPS, CMC, AFP and ACC media release, 14 January 2003.

¹⁴⁵ *Annual Report 2004-05*, Crime and Misconduct Commission, pages 21-22.

¹⁴⁶ *Queensland garners \$11 million in proceeds of crime*, Hon. Linda Lavarch MP, Attorney-General, 20 July 2006.

and \$2.99 million since 2003. As at 31 March 2006, a total of \$48.7 million was the subject of Proceeds Assessment Orders.¹⁴⁷

4.6. Resources and staffing

The CMC's Proceeds of Crime Unit, which administers its civil confiscation function, commenced operation in July 2003. The CMC notes that the increasing workload for the civil confiscation function has made it necessary to more than double staffing of this function from 5 officers at its inception in 2003 to 10.6 (FTE) in 2006. The Commission expects this rate of growth will continue for several years. Initial staffing costs for the civil confiscation function were met from cost savings arising from the merger of the QCC and CJC, and have since always been met from within the CMC's budget. As the resource commitment to the function grows the Commission is finding it increasingly difficult to meet the additional salary costs within existing budget constraints.¹⁴⁸

It was recommended by the Committee in the last review that the adequacy of the CMC's funding to meet current and anticipated demands in respect of its civil confiscation function be the subject of ongoing review by the Minister, and this recommendation was supported by the Government.¹⁴⁹ The Government response to the previous *Three Year Review of the CMC* in 2004 noted that a contingency fund of up to \$0.2M per annum (from 2004-05 onwards) had been budgeted to cover the CMC's expenses associated with the civil confiscation scheme. In the *2006-07 State Budget*, the Office of the DPP received \$0.53 million (\$1 million over two years) to improve its capacity to restrain and confiscate the proceeds of crime by providing an additional four staff, including experienced legal counsel.¹⁵⁰

One of the challenges that both the CMC and the ODPP have had to grapple with has been the recruitment of adequately qualified and experienced staff. Only a limited number of accountants have relevant financial investigation and asset-recovery experience, and the accountancy recruitment market is tight. This has led to the CMC recruiting less-experienced staff which they then train in the specific skills required of financial investigators who are engaged to recover proceeds of crime.

The CMC staffing complement for its civil confiscation function is 10.6 (FTE) staff, comprising:

- one SO1 Manager;
- one PO6 Principal Financial Investigator;
- three PO5 Senior Financial Investigators;
- two PO3 Financial Investigators;
- one PO2 Financial Investigator;
- one AO3 Assistant Financial Investigator;
- one AO3 Administration Support Officer; and
- one PO1 Financial Investigator (part-time).

As at 21 March 2006, staffing resources were committed to 61 matters subject to ongoing litigation; and a further 21 matters involving property valued at \$6 million were subject to preliminary inquiries or awaiting availability of resources before initiating proceedings.¹⁵¹ As noted previously,¹⁵² those police

¹⁴⁷ *2006-07 Queensland State Budget – Ministerial Portfolio Statement – Attorney-General and Minister for Justice - Crime and Misconduct Commission*, at 6-2.

¹⁴⁸ CMC submission, page 49.

¹⁴⁹ *Government Response to Recommendation 1 of the Parliamentary Crime and Misconduct Committee Report No.64 – Three Year Review of the Crime and Misconduct Commission*, at page 1.

¹⁵⁰ *2006-07 Queensland State Budget - Budget Highlights, Department of Justice and Attorney-General*, at page 2.

¹⁵¹ CMC submission, page 49.

officers nominally dedicated to the proceeds-recovery function are regularly called on to perform other policing duties. Inevitably this affects their availability to support the CMC's investigative activity.

The CMC's submission provided data showing a comparison of CMC resources committed to civil confiscation activity with the resource commitment of the New South Wales Crime Commission (NSWCC) and the AFP (Queensland Office). The CMC has 10.6 FTE staff working in civil confiscation activities, while the Queensland office of the AFP has 14.6 and the NSWCC has 25 staff.¹⁵³

4.7. Legislative review

The CMC submission advocates that a number of changes should be made to the Act to improve operational effectiveness:

7. *"The CMC submits that the Criminal Proceeds Confiscation Act should contain express provisions concerning its application to property held outside Queensland, including property held offshore. Its current failure to do so represents a major inadequacy in the legislation and provides a simple means of avoiding its application."*

Background: Property of a respondent that is sought to be restrained may be located elsewhere in Australia (outside Queensland) or overseas. There is some conjecture as to whether the CPCA applies to Australian property outside of Queensland, but the Act has no extra-territorial powers to reach property held offshore/overseas. (see CMC submission, page 53)

8. *"The CMC submits that the current provisions be separated to distinguish between administrative orders and investigative orders, notice be required for administrative orders, but that investigative orders be available only to the state and be available ex parte".*

Background: At present ancillary orders available under the CPCA are a mix of administrative orders and information gathering powers. Application for an ancillary order may be made by any of the State, the respondent and the Public Trustee and notice of the application is given to the other parties. The CMC considers that the present requirement to give the respondent notice of an application for orders with an investigative capability significantly impedes the investigative process. (see CMC submission, pages 53-54)

9. *"The CMC submits that, subject to the decision of the Court of Appeal [in State of Queensland v Meredith (2006) QSC], the legislation make clear the scope of examination powers under the Criminal Proceeds Confiscation Act."*

Background: A recent challenge to the examination provisions, in particular s.38(1)(c)(i), has led to a very narrow judicial interpretation of what constitutes 'the affairs' of the examinee. The CMC considers that decision to be contrary to judicial rulings in other jurisdictions¹⁵⁴ and to be based on the specific wording of the Queensland provision. The decision is being appealed by the State but the CMC considers the provision as it is currently interpreted represents a significant limit on the state's ability to use the examination provisions in confiscation proceedings. (see CMC submission, page 54)

10. *"The CMC submits that provisions be inserted into the Criminal Proceeds Confiscation Act clarifying derivative use of examination evidence and the admissibility of examination transcripts in confiscation proceedings."*

¹⁵² See f.n.24.

¹⁵³ See CMC submission, Table 1 on page 49.

¹⁵⁴ The CMC submission has cited, by way of illustration, the case of *New South Wales Crime Commission v. Murchie* (2000) 49 NSWLR 465.

Background: Recent changes pertaining to the privacy of examinations have raised doubts as to the ability of the state to either disseminate information obtained during an examination to other investigative agencies, or to make derivative use of the evidence obtained during an examination. There also remains considerable uncertainty as to the admissibility of examination transcripts into evidence at trial. (see CMC submission, page 54)

11. *“The CMC submits that the reversal of the onus of proof relating to proceeds assessment applications ought to be consistent with the onus in respect of forfeiture, in order to give full effect to the objects of the legislation.”*

Background: Currently the CPC Act reverses the usual onus of proof by requiring the respondent to establish his/her property has been lawfully derived and thus prevent its forfeiture to the state. There is however only a limited reversal of onus in respect of proceeds assessment orders – a respondent is not obliged to explain the derivation of unexplained income even where there is no apparent legitimate source. For those orders, the state must prove the illegal activity from which the allegedly unexplained income is derived. (see CMC submission, pages 54-55)

12. *“The CMC submits that the making of a pecuniary penalty order ought not to prevent the court from later making a proceeds assessment order based on the same serious crime-related activity, but that the amount of any pecuniary penalty should be taken into account in the making of a subsequent proceeds assessment order.”*

Background: Currently, the making of a pecuniary penalty order on conviction precludes the state seeking a proceeds assessment order based on that same criminal activity. The sum recoverable under a pecuniary penalty order will almost always be much less than what might otherwise be recoverable under a proceeds assessment order. (see CMC submission, page 55)

13. *“The CMC submits that the ability of the court to make orders substituting other property, instead of the disposed property, in a forfeiture order would render ineffective attempts to dispose of forfeitable property and give full effect to the objects of the Criminal Proceeds Confiscation Act.”*

Background: The CPC Act does not provide for the making of repatriation orders or property substitution orders. Enforcing orders for property held offshore or in other parts of Australia is subject to treaties or other arrangements between the jurisdictions. The CMC considers cross-jurisdictional difficulties could be alleviated if courts were empowered to order a respondent to repatriate property to Queensland. A property substitution order could be made where illegally acquired property is disposed of before or after a restraining order is made and the proceeds of that disposal cannot be traced to subsequent tangible property. (see CMC submission, page 55)

14. *“The CMC submits that penalty provisions should attach to non-compliance or, alternatively, forfeiture of non-disclosed assets should be available under provisions similar to recent amendments to the New South Wales civil confiscation legislation (see ss. 31A, 31B and 31C of the Criminal Assets Recovery Act 1990 (NSW)).”*

Background: Currently the CPC Act empowers the court to make a property particulars order requiring an owner of restrained property to give the CMC or Public Trustee a sworn statement of all particulars of property and dealings with property in which that person has an interest. There is however no statutory penalty for non-compliance and accordingly little incentive for a person to comply and fully disclose their property dealings and interests. (CMC submission, page 56)

15. “The CMC submits that the legislation should be amended to make clear the conditions precedent to the Public Trustee¹⁵⁵ recovering its fees, charges and outlays.”

Background: A good deal of ambiguity surrounds the proper operation of the provisions about the Public Trustee’s fees and charges and the circumstances necessary before the Public Trustee can appropriate property to recover its fees and charges. (CMC submission, page 56)

Generally speaking, these amendments are intended to clarify the scope of individual provisions, to address difficulties arising in their application, and to further improve transparency of the civil confiscation process. More detailed discussion of each desired reform is contained in the CMC submission at pages 53-56. The Parliamentary Crime and Misconduct Commissioner gave his endorsement to these submissions.¹⁵⁶

4.8. Challenges for the future

The significance of the civil confiscation scheme to Queensland continues to grow. The CMC’s *Strategic Plan 2005-09* considered ‘recovering the proceeds of crime’ to be a developing area, but it is now recognised as a priority area under the *Strategic Plan 2006-10*.¹⁵⁷

That plan identifies ‘combating and preventing major crime’ as a strategic goal of the CMC. To reach that goal the Plan cites one key strategy, being to ‘undermine the financial basis of, and incentive for, crime, by identifying and targeting the proceeds of crime for confiscation’. To this end, various performance indicators are promulgated by the Plan, including:

- the number of proceeds-of-crime restraining orders issued;
- the number of proceeds-of-crime matters finalised;¹⁵⁸
- the time taken to assess referrals for criminal proceeds confiscation;
- the percentage of tactical crime investigations finalised that result in charges, restraints or forfeitures; and
- the estimated net value of assets subject to criminal proceeds confiscation action.¹⁵⁹

The *Strategic Plan 2006-10* identifies the following challenges in meeting the CMC’s stated priority of recovering the proceeds of crime:¹⁶⁰

- to continue to enhance the systems developed to remove the financial gain and increase the financial loss associated with illegal activity, whether or not a person is convicted because of the activity;
- to maintain cooperative arrangements with interstate and national law enforcement agencies in recognition of the cross-border implications of money laundering;

¹⁵⁵ Matters are referred to the Public Trustee under the *Criminal Proceeds Confiscation Act 2002*, with the Public Trustee usually taking possession of goods that could be, or are to be, forfeited to the State - (see *2006-07 State Budget – MPS – Public Trust Office*, at 4-8)

¹⁵⁶ Three-Yearly Review, Submission of Mr A.J.MacSporran SC, Parliamentary Crime and Misconduct Commissioner, 28 July 2006, at page 5.

¹⁵⁷ *Strategic Plan 2006-2010*, Crime and Misconduct Commission, page 2.

¹⁵⁸ The *2006-07 Queensland State Budget – Ministerial Portfolio Statement for the Attorney-General and Minister for Justice* shows for the CMC output of ‘Combating Major Crime including Organised Crime and Paedophilia’ that during 2005-06 there were 33 ‘Criminal Proceeds Restraining Orders obtained’ but only 20 ‘civil confiscation matters finalised’. Similarly there is a considerable difference between the ‘net - value of criminal proceeds restrained’ (\$8m) and the ‘net-value of assets forfeited’ (\$2m). The accompanying notes state that: “The value of assets forfeited relates substantially to restraining action taken in previous years. The delay between restraint and forfeiture is due to the litigation process and is impacted by continuing challenges to the legislation. It is expected more timely outcomes will be achieved as legal precedents are established.” (MPS 6-5)

¹⁵⁹ *Strategic Plan 2006-2010*, Crime and Misconduct Commission, page 6.

¹⁶⁰ *Strategic Plan 2006-2010*, Crime and Misconduct Commission, page 18.

- to maintain strong working partnerships with the QPS and the Office of the Director of Public Prosecutions;
- to develop cost-effective brief-preparation and litigation processes; and
- to contribute to the review of the *Criminal Proceeds Confiscation Act 2002* as soon as practicable after 1 January 2006, as required under section 266 of the legislation, and [to] assist the Minister.

The Plan considers that the CMC's success in meeting those challenges will be demonstrated by:

- the timely assessment and actioning of confiscation matters referred to the CMC for its consideration;
- [the CMC's] ongoing liaison with the QPS and related law enforcement agencies, and the use, to the greatest extent possible, of opportunities for confiscation;
- the maintenance, with the QPS and other law enforcement agencies, of levels of service relating to criminal proceeds confiscation; and
- the introduction of refined systems and processes necessary to execute and report on the confiscation function properly and efficiently.¹⁶¹

The CMC's submission to the Three Year Review also highlighted some emerging challenges which may impact on the confiscation of proceeds of crime in the future¹⁶²:

- Incidents of property being moved offshore and superannuation funds being used to hold illegally derived property¹⁶³;
- Legislative reforms in other jurisdictions to allow the restraint and forfeiture of property that may later be needed to meet victim compensation and restitution orders made by the court¹⁶⁴; and
- The creation of 'confiscated asset trust funds' in other jurisdictions to meet the costs of the confiscation function, and for other purposes, such as the sharing of confiscated proceeds among contributing agencies.¹⁶⁵

4.9. Committee comment

The Committee supports the present role of the CMC in respect to civil confiscation. Civil confiscation is recognised as an important enhancement to law enforcement powers in Queensland, enabling the CMC to attack the profitability of crime, and prevent and deter future criminal activity.

¹⁶¹ *Strategic Plan 2006-2010*, Crime and Misconduct Commission, page 19.

¹⁶² CMC submission, pages 56-57.

¹⁶³ Superannuation benefits, as 'property' are subject to restraint, but there is doubt as to whether funds held in a superannuation account are forfeitable. Regulation 13.13 of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) prevents a trustee of a superannuation fund from recognising any charge over superannuation benefits (except as permitted by that regulation or the parent Act) and would seem to prevent any forfeiture order from taking practical effect. Legislation at both the state and Commonwealth levels (*Public Officers Superannuation Benefits Recovery Act 1988* (Qld) and the *Crimes (Superannuation Benefits) Act 1989* (Cth) enabling forfeiture of superannuation benefits is applicable only in cases of public officers acting corruptly and does not apply to the circumstances seen in most confiscation matters. Recently in Queensland an arrested individual took immediate steps to move a large sum of cash held in a bank account into a superannuation product, before a restraining order over his assets could be obtained. The CMC considers the payment into the superannuation product was intended to protect the accused's funds from possible forfeiture. (See CMC submission, page 57)

¹⁶⁴ The Victorian *Confiscation Act 1997* enables property to be restrained to satisfy an order for compensation or restitution under the *Victorian Sentencing Act 1991*, where that order is likely to exceed \$10 000. (CMC submission, page 57)

¹⁶⁵ Queensland is the only jurisdiction that does not place forfeited proceeds of crime into a special fund which can be used to reimburse the costs of confiscation, with the balance being applied to other specified purposes. Such a fund permits flexibility in funding the variable costs of confiscation and transparently links confiscated proceeds of crime to purposes that seek to prevent, deter, detect, or ameliorate the effects of, crime. (CMC submission, page 57)

The Committee believes that the amendments sought by the CMC to the current legislative regime would address some of the problems currently encountered when implementing confiscation laws. The Parliamentary Commissioner in his submission stated that the amendments sought:

*Appear to be worthwhile and directed at fine-tuning the Criminal Proceeds Confiscation Legislation, which after all, is a major plank in the CMC's armoury to combat crime.*¹⁶⁶

The Committee is satisfied that the amendments sought by the CMC are necessary to improve present inadequacies in the legislation and to enhance operational effectiveness.

Recommendation 4

The Committee recommends that the *Criminal Proceeds Confiscation Act* be amended to allow express provisions concerning its application to property held outside Queensland, including property held offshore.

Recommendation 5

The Committee recommends that the current provisions be separated to distinguish between administrative orders and investigative orders; with notice to be required for administrative orders and with investigative orders to be available only to the State and to be available ex parte.

Recommendation 6

The Committee recommends that, subject to the forthcoming decision of the Court of Appeal in *State of Queensland v Meredith*, the legislation make clear the scope of examination powers under the *Criminal Proceeds Confiscation Act*.

Recommendation 7

The Committee recommends that provisions be inserted into the *Criminal Proceeds Confiscation Act* to clarify 'derivative uses of examination evidence' and to clarify 'the admissibility of examination transcripts in confiscation proceedings'.

Recommendation 8

The Committee recommends that the reversal of the onus of proof relating to proceeds assessment applications ought to be consistent with the onus in respect of forfeiture, in order to give full effect to the objects of the legislation.

Recommendation 9

The Committee recommends that the making of a pecuniary penalty order ought not to prevent the court from later making a proceeds assessment order based on the same serious crime-related activity, and that the amount of any pecuniary penalty should be taken into account in the making of a subsequent proceeds assessment order.

¹⁶⁶ Three-Yearly Review, Submission of Mr A.J.MacSporran SC, Parliamentary Crime and Misconduct Commissioner, 28 July 2006, at page 5.

Recommendation 10

The Committee recommends that the *Criminal Proceeds Confiscation Act 2002* be amended to allow the court to make repatriation orders or property substitution orders in respects of forfeitable property.

Recommendation 11

The Committee recommends that penalty provisions should attach to non-disclosure or, alternatively, forfeiture of non-disclosed assets should be available under provisions similar to recent amendments to the New South Wales civil confiscation legislation (see ss. 31A, 31B and 31C of the *Criminal Assets Recovery Act 1990* (NSW)).

Recommendation 12

The Committee recommends that the relevant legislation be amended to make clear the conditions precedent to the Public Trustee recovering its fees, charges and outlays.

5. THE MISCONDUCT FUNCTION

5.1. Introduction

One of the major outputs of the CMC is its misconduct function. This function involves reducing misconduct and improving public sector integrity. This chapter examines the CMC's misconduct function. The historical background is briefly examined. As well, the Committee will make specific comment in the following particular areas:

- devolution of responsibility back to public sector agencies;
- capacity building;
- timeliness;
- local government issues;
- jurisdiction over private entities exercising public functions;
- frivolous and vexatious complaints;
- confidentiality regarding complaints; and
- the respective roles of the CMC and the Office of the Director of Public Prosecutions.

5.2. The Crime and Misconduct Commission's misconduct function

The CMC, and its predecessor the CJC, have had an important part to play in the investigation and prevention of misconduct by police and public officers since the CJC began in 1990, following recommendations of the Fitzgerald Inquiry.

Whilst the CJC filled an important role in investigating suspected police or official misconduct, in its last years the CJC placed an increasing emphasis on the prevention side of its misconduct role. Coupled with this, moves were made towards devolving responsibility for dealing with misconduct (both by investigation and prevention) back to the relevant agencies themselves. These agencies included the Queensland Police Service and other public sector agencies. The specific issue of the handling of police misconduct was examined in some detail by the 4th PCJC. As part of its Three Year Review of the then CJC that Committee examined the appropriate balance between external oversight by the Commission and internal handling of misconduct matters by the Queensland Police Service itself.¹⁶⁷ The Committee considered the effectiveness of a joint initiative of the Queensland Police Service and the CJC undertaken in 2000. This initiative – Project Resolve – was a trial of a new approach to handling complaints against police. It involved a level of devolution of responsibility for handling such matters back to the Queensland Police Service itself. At the same time, a range of managerial responses to complaints against police were developed.

In reporting on its review in March 2001, the 4th PCJC recommended that, whilst the CJC should retain the overall responsibility for investigation of complaints against police, its policy of devolving responsibility to the Queensland Police Service ought to continue.¹⁶⁸

In its response to the 4th Committee's report, the government stated its support for this approach.¹⁶⁹ The approach was also reflected in the provisions of the CMA which was introduced by the government at that time.¹⁷⁰

¹⁶⁷ See the 4th PCJC's Three Year Review report at pages 22 and following.

¹⁶⁸ Ibid at page 37.

¹⁶⁹ Government response to Parliamentary Criminal Justice Committee report No 55, Three Yearly Review of the Criminal Justice Commission, tabled 30 October 2001, page 2.

5.3. The misconduct function under the *Crime and Misconduct Act 2001*

Under the CMA, the CMC has the following functions regarding misconduct¹⁷¹:

- (a) *to raise standards of integrity and conduct in units of public administration; and*
- (b) *to ensure a complaint about, or information or matter involving misconduct is dealt with in an appropriate way, having regard to the principles set out in section 34.*

The principles set out in section 34 of the Act are:

- cooperation;
- capacity building;
- devolution; and
- public interest.

In short, the CMA gave statutory force to the twin concepts of devolution and capacity building. When referring to capacity building, section 34 provides that the Commission has a lead role in building the capacity of units of public administration to prevent and deal with cases of misconduct effectively and appropriately. The section stipulates that devolution involves the principle that, subject to the cooperation and public interest principles and to the capacity of the unit of public administration, action to prevent and to deal with misconduct within any particular unit of public administration should generally happen within that unit of public administration itself.

The cooperation principle requires the Commission and the units of public administration to work cooperatively to prevent and to deal with misconduct. The public interest principle has a number of facets. It makes it clear that it is the overriding responsibility of the Commission to promote public confidence in public sector integrity and in the way public sector misconduct is dealt with. It requires the Commission to have regard to various elements when exercising its power to deal with cases of misconduct:

- the capacity and resources of the unit of public administration to effectively deal with the misconduct;
- the nature and seriousness of the misconduct, including whether it is prevalent or systemic; and
- whether public confidence will likely be increased by the Commission itself dealing with the misconduct.

In its submission to the Three Year Review of the 5th PCMC, the CMC expressed support for this new statutory framework. In reporting on its review, the 5th PCMC stated that it supported the new focus on devolution and capacity building.¹⁷²

In its submission to the current Committee's review, the CMC again states its support for devolution, and expresses the roles of the agencies and the Commission in the following terms¹⁷³:

The Commission remains strongly convinced that responsibility for continuously improving the integrity of the Queensland public sector, and reducing the incidence of misconduct within

¹⁷⁰ The explanatory notes to the Crime and Misconduct Bill 2001 (at page 2) made it clear that one of the objectives of the bill was to legislatively recognise these changes in approach.

¹⁷¹ Section 33 of the CMA.

¹⁷² 5th PCMC, Three Year Review, page 26.

¹⁷³ CMC submission, page 58.

it, must not rest solely with monitoring bodies such as the CMC. This responsibility must be part of the core business of the public sector agencies themselves, including the QPS. The biggest challenge for the CMC is to embed that notion in the public sector.

A strong culture of integrity requires that public sector managers accept responsibility for integrity within their domain, but are supported in that responsibility. Managers who are secure in the knowledge that they have the support of senior management and the bodies that oversee them are better placed to play this vital role in a way that will survive the normal turnover of management.

The CMC recognises that “to fully ensure a truly integrated system, the agencies and monitoring bodies must continue to collaborate fully”.

5.4. Capacity building initiatives of the Crime and Misconduct Commission

The CMC has developed a number of mechanisms to assist in building the capacity of the Queensland Police Service and other agencies to both prevent and deal with misconduct. The CMC has set these out in some detail in its submission to the Committee.¹⁷⁴

Some of these initiatives include:

- developing and providing written resources such as training materials and toolkits for agencies. Examples include the Facing the Facts guide to dealing with complaints of misconduct, a toolkit to deal with conflicts of interest, guidelines for fraud and corruption control, and the Building Capacity series, as well as other information which is provided on the CMC website;
- an electronic newsletter which is sent to all agencies’ liaison officers and other stakeholders (including the PCMC);
- regular liaison meetings with agencies, including weekly meetings with the Ethical Standards Command of the Queensland Police Service and monthly meetings with some other agencies;
- protocols for the handling of complaints where there is an overlap in jurisdiction, for example, with the Commission for Children and Young People and Child Guardian and the Department of Child safety;
- outreach activities, including regional visits and other seminars and presentations;
- building partnerships with various key agencies, including by regularly meeting with the Ombudsman, the Public Service Commissioner, and the Crown Solicitor; twice-yearly meetings of CMC Liaison Officers; and visits to Directors-General and Chief Executive Officers; and
- the provision of misconduct prevention advice, by providing prevention input in complaints assessments and during misconduct investigations and conducting misconduct prevention system reviews.

A wide range of departments and other agencies responded to the Committee’s call for submissions and many made comment on the issues of capacity building and devolution. The vast majority of these submissions made positive comments regarding the CMC’s capacity building initiatives.

5.4.1. Analysis and comment

The Committee has had some time to consider the development of the new approach of devolution and capacity building. From time to time concerns are raised that an agency should not deal with allegations

¹⁷⁴ CMC submission, pages 69-76.

against its own officers – the “Caesar judging Caesar” argument. This is a valid concern, but is best managed by ensuring:

- adequate distance between subject officers and those investigating and adjudicating on any complaint, to avoid the reality or the perception of a lack of impartiality or independence; and
- where appropriate (particularly in cases where such distance cannot be provided or in cases of allegations of serious misconduct) oversight, review, or full investigation by the Commission itself.

The Committee has been regularly briefed by the Commission on its capacity building initiatives, has from time to time examined various resources produced by the Commission, and has been represented at some of the Commission’s presentations to public sector officers.

The current Committee supports the concepts of devolution and capacity building and supports the current legislative framework and role of the CMC. Agencies can learn and grow from dealing with misconduct themselves and can implement policy and procedural changes and educative and preventive measures as needed. Done properly, this can in time lead to both a more mature organisation, and enhanced public confidence in the organisation.

A number of submissions from various departments commented on the liaison between them and the Commission. These comments were generally quite positive

It is important that agencies, particularly smaller ones, are adequately resourced and assisted to fulfil their roles of preventing and dealing with misconduct. It is critical that the CMC maintain its lead role and supports agencies as required. The positive reactions by the agencies to the capacity building activities of the CMC support the conclusion that the CMC is doing good work in this regard. It has been pleasing to see the CMC working on occasion in collaboration with similar agencies interstate to produce prevention materials for use in more than one jurisdiction. [An example is the CMC combining with the New South Wales Independent Commission Against Corruption to produce a joint publication containing guidelines for managing conflicts of interest in the public sector.¹⁷⁵] Such collaboration involves a sensible and commendable sharing of resources, and allows each oversight agency to learn from the other’s input and experiences.

The 5th PCMC observed in its Three Year Review that, based on material sighted by it from time to time, it was not yet confident that agencies were able to or adequately equipped to deal with misconduct. The Committee noted there was a “wide variation in the extent of the corporate experience, structures, and policies of the various agencies.”¹⁷⁶

So too, the present Committee has seen some evidence of the capacity of agencies, particularly in dealing with cases of misconduct. The Committee concludes that there has been an ongoing steady improvement in the extent to which agencies are able, and have the resolve, to deal with and prevent misconduct themselves.

The 5th Parliamentary Crime and Misconduct Committee in its review made a number of recommendations regarding capacity building and devolution.¹⁷⁷ These are set out below, together with a brief summary of the relevant government response in each case¹⁷⁸:

¹⁷⁵ CMC submission, page 70.

¹⁷⁶ 5th PCMC, Three Year Review, page 26.

¹⁷⁷ 5th PCMC, Three Year Review, page 27.

¹⁷⁸ Government response, pages 1-5.

Recommendation 2

The Committee recommends that the CMC continue its efforts to enhance the capacity of agencies to deal with misconduct.

Response
Supported

Recommendation 3

The Committee recommends that there be careful oversight and monitoring by the CMC of the performance of agencies in dealing with and preventing misconduct.

Response
Supported

Recommendation 4

The Committee recommends that the agencies be required to report to the CMC, to the Parliament and to the public as fully and openly as possible regarding their performance in these respects.

Response
The Government responded that it would introduce a new scheme whereby Directors-General would report annually to the Premier about their departments' performance in building their capacity to prevent and deal with misconduct. However, the Government was not convinced that agencies should be required to report to the CMC and the public/Parliament about their performance in building their capacity to prevent and deal with misconduct.

Recommendation 5

The Committee recommends that the agencies be adequately resourced to ensure they are able to fulfil their responsibilities to deal with and prevent misconduct.

Response
The recommendation was supported in principle. The government noted that agencies that seek funding to ensure that they are able to fulfil their responsibilities to deal with and prevent misconduct have the opportunity to make submissions to the Cabinet Budget Review Committee. Such requests would be considered in light of the justifications for the request and against the Government's competing funding priorities. It was considered, however, that agencies' base funding should already have some provision for preventing and dealing with misconduct.

Recommendation 6

The Committee recommends that the Department of Premier and Cabinet have the primary role in monitoring and ensuring:

- that agencies take up CMC capacity building initiatives in a timely and responsive manner;
- that there is adequate public reporting by agencies of information on misconduct prevention initiatives and outcomes; and
- the adequacy of the resources of agencies to deal with and prevent misconduct.

Response
The Government supported recommendation 6 in part. Whilst it announced the scheme of reporting referred to in its response to recommendation 4 above, it did not support extending the proposed reporting scheme to all units of public administration, of which there are more than 300. The Government said it was not convinced that the statutory scheme in the CMA relating to the principles of devolution and capacity-building was inadequate or that the CMC had lost real oversight capacity in relation to units of public administration preventing misconduct and undertaking misconduct investigations.

Recommendation 7

The Committee recommends that there be close monitoring by the Department of Premier and Cabinet of the extent (if any) to which the devolution process has reduced the effectiveness of oversight by the PCMC and the Parliamentary Commissioner of the CMC's misconduct function.

Response

The Government supported recommendation 7 in principle. It advised that "the Government will consider any effect of devolution on the Committee and the Parliamentary Crime and Misconduct Commissioner's oversight of the CMC's misconduct function. No doubt, the Committee will itself be monitoring the effectiveness of its oversight in light of devolution and would consider writing to the Premier or reporting to Parliament on the matter if it believed it necessary"

5.5. Timeliness

5.5.1. Introduction

The history of various reviews conducted by predecessor Committees and the nature of the submissions to the Three Year Review conducted by the 5th PCMC were such as to lead that Committee to observe¹⁷⁹:

Undoubtedly the strongest theme in submissions to this review, and indeed to the reviews conducted by predecessor committees, is the need for the CMC to complete its assessment and investigation of allegations of misconduct in a timely manner. This issue has also been at the heart of a number of complaints made to the Committee and its predecessors over a number of years, although the number of such complaints is, pleasingly, less now than previously.

The issue was again raised in a number of submissions to the current review.¹⁸⁰ From those submissions it appears that previous concerns regarding timeliness, at least amongst the agencies, might be in the process of being eased with improved procedures. A submission from the Minister for Communities, Disability Services and Seniors welcomed improved turnaround times for matters referred to the Commission for assessment. A submission from the Director-General of the Department of Corrective Services noted that the CMC's handling of complaints relating to that department "has in the main been professional and timely". The Director-General of Queensland Transport on the other hand reported that there were some aspects of the CMC that could be improved, and "these mainly relate to issues of timeliness in managing or responding to matters referred to [the CMC]." He went on to note that he was advised that the CMC was aware of the issue and had a number of initiatives planned or in process to streamline its complaint management. The Deputy Premier advised the Committee in response to its call for submissions:

...the Crime and Misconduct Commission wrote to all agencies advising them of a number of protocol changes to the referral of complaints of official misconduct. These proposed changes have the potential to alleviate time delays with respect to referrals from the Commission to the Department. These time delays have been a concern to the Department for some time and would have been the subject of a submission to your Review. However, with the issuing of the proposed complaints handling procedures the concerns of the Department, as well as my own Office, have now been removed. The proposed new protocols are going to provide to the

Department a greater opportunity to be more proactive and timely in the handling of official misconduct complaints.

¹⁷⁹ 5th PCMC, Three Year Review, page 28.

¹⁸⁰ Such submissions include those from the Deputy Premier, the then Minister for Communities, the Directors-General of the Department of Corrective Services and of Queensland Transport, as well as submissions from the Local Government Association of Queensland and the Caboolture Shire Council.

[The procedures or protocols to which the minister referred are the section 40 directions referred to a little later below.]

The Director-General of the Department of Tourism, Fair Trading and Wine Industry Development also noted a proposed new referrals process for complaints “which should allow [that] agency to deal with complaint matters in a more expedient and timely manner.”¹⁸¹

At another level, the current Committee has continued to receive complaints (usually from members of the public who have either made a complaint to the Commission or have been the subject of a complaint being dealt with by the Commission) raising issues of timeliness, some of which have been warranted. It appears that such complaints continue to reduce in number.

The Committee has followed issues of timeliness closely, examining statistics provided regularly by the Commission and receiving briefings on initiatives by the Commission to reduce timeframes, both in matters it deals with itself and in turnaround times in referring matters back to agencies. It appears that the improvement reported by the 5th PCMC in its review is continuing. The Commission is aware of the need to address the issue, and has taken steps accordingly. In its submission to this review, the Commission made the following observations regarding timeliness in the assessment process¹⁸²:

The first significant increase in complaints received occurred in 2003–04, with 36 per cent more complaints received than in the previous financial year. This increase had a major impact on our complaints-handling resources, and by August 2004 the backlog of work and the timeliness performance figures had reached critical levels.

A major review of complaints-handling began, and by August 2005 — 12 months later — outstanding matters on hand had been reduced by 65 per cent (from 597 to only 209). The timeliness of assessments had also improved during this 12-month period, to a point where almost 93 per cent of complaint matters were being finalised within four weeks, despite the increase in complaints received.

For the six months ended 31 December 2005, 71 per cent of all complaints were assessed within one week, 87 per cent within two weeks and 92 per cent within four weeks. The equivalent figures for the six months to 31 December 2004 were 58 per cent, 73 per cent and 89 per cent respectively.

Of the complaints referred from agencies to the CMC during the six months ended 31 December 2005, 83 per cent were assessed within one week, 91 per cent within two weeks and 95 per cent within four weeks.

The net result of our efforts over the last three years has been a dramatic fall in the number of complaints to the PCMC about lack of timeliness on the part of the CMC in the assessment of complaints.

One of the reasons for this improvement is that the Commission has extended the delegation of its authority to assess the most appropriate action for dealing with a complaint.....

As previously stated, complaints are categorised at their highest level of possible seriousness in the circumstances disclosed.

The intention has been to reduce multi-handling of complaints and enable assessment

¹⁸¹ Department of Tourism, Fair Trading and Wine Industry Development submission, page 1.

¹⁸² CMC submission, page 61.

decisions to be made as expeditiously as possible at the appropriate level. Previously all complaints were considered by either the Misconduct Assessment Committee or the Complaints Services Assessment Committee.

Each complaint is case-managed through task allocation with expected completion dates, reminders, and regular reviews by senior managers of matters under assessment. New, more detailed performance indicators have been introduced in relation to the timeliness with which complaints are assessed and weekly targets achieved.

Meanwhile, a CMC Liaison Officer who needs a complaint to be assessed urgently can advise the CMC accordingly and we will give the matter appropriate priority.

The Commission also explained its recent development of protocols or directions under section 40 of the CMA, aimed at reducing timeframes¹⁸³:

Under section 38 of the CM Act, public sector agencies must notify us of complaints on a case-by-case basis. However, section 40 of the Act enables the CMC to modify that obligation. To enable agencies to start dealing with complaints promptly, and to allow us to carry out assessments more rapidly (by minimising the processing of these complaints), directions under section 40 of the Act were developed for three major agencies, enabling them to deal straight away with certain categories of complaints ... and advise the CMC of those complaints by schedule on a regular basis. We are in the process of extending the section 40 directions to all departments and larger agencies, and to some of the larger councils in the local government sector. This process is well advanced.

At the public hearings, the Commission's Assistant Commissioner Misconduct provided an update on the roll-out of the section 40 directions¹⁸⁴:

... the section 40 directions have been applicable to three of the major agencies—that is, Health, Education and the Brisbane City Council—for some time and more recently a number of other departments were brought into the loop and now, as of 1 July, all departments have been issued with section 40 directions. We are now about to roll out to the local government area.

The CMC informed the Committee of steps taken to address issues of timeliness in the context of its role of monitoring agencies in their dealing with matters¹⁸⁵:

Timeliness of the resolution of complaints is also an issue for agencies. We have a process for monitoring complaints that are with agencies to deal with (and which are to be reviewed by the CMC) and are older than six months. For each agency with which our Complaints Services section has a regular liaison meeting there is a standing agenda item in relation to this category of matters. As mentioned previously, we are developing an instrument to capture information about the reasons for delay, with a view to helping agencies develop strategies to resolve complaints more promptly.

We regularly send out schedules seeking advice of the outcome of those matters referred to the agencies to deal with (other than those that warrant review on an individual basis). These include a summary of the matters outstanding after less than three months, between three and six months, and more than six months.

¹⁸³ CMC submission, page 62. Section 40(1) of the CMA provides that the CMC can issue directions about how and when a public official must notify the CMC of complaints of misconduct.

¹⁸⁴ Public hearing transcript, 6 July 2006, page 126.

¹⁸⁵ CMC submission, page 67.

The Local Government Association of Queensland (LGAQ) also expressed concerns regarding timeliness, reporting that it was an issue commonly raised with it by local councils.¹⁸⁶ The LGAQ saw this as “clearly the result of the paucity of resources available to the CMC...” and urged that further resources be provided to the CMC. In oral submissions, the LGAQ expressed the view that the timeliness of reviews by the CMC might be eased if the CMC could appoint to its staff officers with particular knowledge of local government¹⁸⁷:

We urge the state government to increase the CMC’s resources to allow them to employ appropriately experienced local government people—people from our sector of government—to improve the timeliness and effectiveness of reviews.

This has been the subject of discussions between the CMC and the LGAQ. In its further submission to the review, the CMC responded to this suggestion¹⁸⁸:

The Commission agrees that this is highly desirable and has made attempts to recruit or second people with experience in local government, both in the prevention area and in the complaints services area. These efforts have been largely unsuccessful. However, recent discussions with the Executive Director of the LGAQ have opened up opportunities for secondments from the LGAQ to the CMC. This would no doubt be of considerable long-term benefit to both the LGAQ and the CMC.

In relation to the issue of timeliness regarding local government matters, the CMC stated¹⁸⁹:

The CMC is most mindful of the effect of extended investigations on councils, subject officers, complainants and other stakeholders. However, most matters involving local government require financial inquiries to be conducted, and these by their very nature are time-consuming.

The Committee acknowledges and applauds the various steps taken by the Commission to minimise timeframes. At the same time, the Committee believes it is important that the Commission sustain its efforts. It has become almost traditional for a Parliamentary Committee to recommend in its Three Year Review that its successor Committee closely monitor the performance of the Commission in this regard. Whilst mindful of recent improvement, the present Committee has no hesitation in continuing that approach, as it is in the interest of complainants, subject officers, agencies, and the public at large that matters be finalised as quickly as possible. With this in mind, there is a clear need for ongoing monitoring both by the Commission and the Parliamentary Committee.

Under section 260 of the CMA the CMC must report to its Minister regarding issues of timeliness of its operational processes. At the moment this is reported every six months.¹⁹⁰

¹⁸⁶ Local Government Association of Queensland submission, page 7.

¹⁸⁷ Public hearing transcript, 7 July 2006, page 126.

¹⁸⁸ CMC supplementary submission, page 20.

¹⁸⁹ CMC supplementary submission, page 21.

¹⁹⁰ CMC submission, page 127.

Recommendation 13

The Committee notes that timeliness continues to be a concern and recommends that the timeliness of misconduct assessments and investigations both by the CMC and by units of public administration continues to be carefully addressed and closely monitored by the CMC and by the incoming PCMC.

5.6. The Crime and Misconduct Commission and local government

Issues arising from the operations of local government have in recent times been the subject of examination by the CMC, sometimes with a high profile. In 2005, the CMC conducted a public inquiry into certain issues arising from the 2004 elections for the Gold Coast City Council. The CMC's public hearings and subsequent report attracted considerable media and public interest and some criticism.

The CMC has prepared valuable capacity building materials specifically targeting local authorities. These include a local government module of the *Facing the Facts* manual for dealing with suspected misconduct. The Committee also has a program of visits to regional centres, which include a focus on local government to assist councillors and senior officers in those areas.

A number of specific issues regarding local authorities were canvassed during the current review. The Local Government Association of Queensland appeared at the Committee's hearings. Concerns raised by the LGAQ that the CMC needed to have staff with expertise in local government operations are referred to in the discussion of timeliness earlier in this chapter.

In its submission, the LGAQ argued that the CMA should be amended to impose an obligation of confidentiality upon complainants. The LGAQ said¹⁹¹:

In the LGAQ's view public confidence in the honesty and integrity of the system of both State and local government is waning, due in no small part to the inappropriate level, and unbalanced nature, of publicity that presently occurs after the mere making of a complaint, regardless of its merits.

It is the LGAQ's submission that complainants should be obliged to keep the existence and nature of complaints against Councillors (and other public officials) confidential until a proper and balanced investigation of the matters of complaint has occurred and the person subject of the complaint and complainant has received the CMC advice of the outcome.

Confidentiality is clearly appropriate prior to the conclusion of an investigation so that the presumption of innocence (in the public's mind) is not lost.

In response, the CMC noted that this issue had been raised some time previously, but was not supported by the then government.¹⁹² The CMC observed:

It is not difficult to understand why there would be reluctance on the part of any government to introduce such legislation, as it would leave itself open to the criticism that both the government and the CMC would be less open and accountable. There would also be significant difficulties in enforcing any such legislation if the media were to publish details asserting them to be from 'anonymous sources'. Further problems would arise in maintaining confidentiality in the course of an investigation.

The Commission's view is that it would be difficult to justify such an amendment where there

¹⁹¹ Local Government Association of Queensland submission, page 4.

¹⁹² CMC supplementary submission, page 21.

is a public expectation that the work of the Commission in politically controversial or sensitive matters be open and transparent. It is important that public debate is not stifled by any legislative proscription. Consequently, the Commission does not support such an amendment.

However, we will continue to publish on our website, before the next local government and state elections, a message to all candidates seeking their cooperation to ensure that the CMC's complaint processes are not misused for political purposes. The Chairperson will also make media statements at the appropriate times to reinforce this message.

The Committee understands the concerns raised by the LGAQ that inappropriate disclosure can damage reputations and undermine public confidence. At the same time, the comments of the Commission have merit. The Committee shares the Commission's concerns that any amendment as sought by the LGAQ would have the disadvantage that it would be open to criticism, that it was reducing accountability and openness, and such legislation would often be difficult to enforce, thus removing any real benefit.

It is in those circumstances better that the problem be addressed by the preventive approach adopted by the Commission and referred to above.

Recommendation 14

Whilst acknowledging the concerns raised in the Committee's review, on balance and having regard to the need for transparency, the Committee does not recommend any amendment to the *Crime and Misconduct Act 2001* to impose an obligation upon persons to keep the existence and nature of complaints against public officials confidential before finalisation.

The LGAQ also urged amendment so that a person who made a frivolous or vexatious complaint face a sanction such as paying for the costs of any investigation. The LGAQ stated that such a sanction¹⁹³:

... should go some (if not a significant) way toward discouraging baseless, politically motivated complaints leaving the Commission (and, in appropriate circumstances Council CEOs) free to concentrate their resources on dealing with legitimately founded complaints.

Concerns regarding vexatious complaints were also raised in other submissions. Councillor Barry Lansdown of Cardwell Shire Council submitted that the CMC should seek to recover all costs from the complainant where a complaint has been found to be frivolous or vexatious, with such costs to include the costs of agencies in responding to requests from the CMC for information. Caboolture Shire Council stated that a "more genuine attempt to discourage frivolous complaints must be made by the CMC" although the submission did not expand on this statement. The Director-General of the Department of Corrective Services also raised concerns that the Commission might be too reluctant to take action against those who make frivolous complaints¹⁹⁴. He stated:

*Unfortunately, at times the Department has experienced some reluctance by the CMC to initiate proceedings against complainants whose complaints have been found to be either false or misleading as prescribed in section 217 or 218 of the *Crime and Misconduct Act 2001*. In this regard, and while the Department understands the stated position of the CMC that such prosecutions might deter complaints, including whistleblowers, from bringing their complaints to the CMC, it is the Department's view that a failure to take immediate and decisive prosecution action against these persons undermines public confidence in the CMC's objectivity, and acts to further disenfranchise staff who have been the subject of those*

¹⁹³ Local Government Association of Queensland submission, page 4

¹⁹⁴ Department of Corrective Services submission, page 1.

complaints.

The CMC made the following points¹⁹⁵:

... it is a challenge to find the right balance. People must be protected against frivolous, vexatious and false complaints (and their unwarranted consequences); but members of the community must not be discouraged from coming forward with their honest (if sometimes mistaken) concerns.

For a complaint to be false, frivolous or vexatious, the complainant has to be aware that they are making such a complaint. The Crime and Misconduct Act 2001 (CM Act) provides that it is an offence to knowingly make a false or misleading statement to the CMC, and it (and its predecessor, the CJC) has prosecuted a number of people for making false complaints and misleading statements.

The difficulty arises in establishing to the criminal standard, beyond reasonable doubt, that the person making the complaint or the statement made it knowing it was false or misleading.

Nevertheless, people who knowingly tell the CMC things that are untrue waste valuable resources, damage innocent reputations and cause a good deal of unnecessary suffering. Where there is evidence, we will prosecute such people. In every matter investigated by the CMC, officers involved in the investigation have an obligation to consider the question of whether there is evidence to support the prosecution of a person for making a false complaint. Indeed, the investigation file cannot be closed without an entry in the CMC computer database indicating that the question has been considered.

We will continue to be vigilant in our investigation and prosecution of those making false, frivolous or vexatious complaints.

The Committee shares the concern that frivolous complaints have the potential to cause damage to an agency or an individual through loss of reputation and confidence, or wasted use of resources, expense and anxiety. At the same time, the Committee accepts that it is often difficult to determine whether a complaint, though proved to be without substance, is frivolous or vexatious. It is, as stated by the Commission, a question of finding the balance. It is important that genuine complainants, particularly whistleblowers, not be deterred from raising allegations with the Commission by a fear of being required to pay what might prove to be a substantial amount for costs of an unsuccessful investigation.

The Committee does not believe further sanction is necessary, beyond the provisions in the CMA. The Committee notes concerns that the Commission might not be diligent enough in taking action under the current provisions in the *Crime and Misconduct Act 2001*. The Commission has told this review that where there is evidence it will prosecute.

Recommendation 15

The Committee does not recommend any amendment to the *Crime and Misconduct Act 2001* to impose any further sanction upon vexatious complainants other than presently prescribed.

The Commission should be vigilant in its assessment of evidence for investigation and prosecution of persons making frivolous or vexatious complaints.

¹⁹⁵ CMC supplementary submission, page 3.

5.7. Jurisdiction over private bodies exercising public functions

5.7.1. Introduction

In its submission to this review, the CMC referred to its submissions to the Three Year Reviews conducted by 4th PCJC in 2000-2001 and the 5th PCMC in 2003-2004 regarding an extension of its jurisdiction to private bodies which exercise public functions. Increasing reliance on corporatisation has accentuated a trend towards an increasing number of private bodies having roles previously discharged by public entities. The 5th PCMC supported an extension of the CMC's jurisdiction to such bodies in principle. However, it stated¹⁹⁶:

This issue raises difficult questions of policy, as well as issues of the practicality of provision of adequate resources. As a matter of principle, the Committee believes that entities that carry out public functions utilising public monies ought to be subject to external scrutiny by a body such as the CMC. It is difficult to justify the result that the actions of such agencies and their staff should be beyond the jurisdiction of the CMC, simply by virtue of the private nature of the organisation.

However, any legislative amendment would need to be carefully drawn, to avoid any unintended result. It is also inevitable that any legislative amendment would increase the workload of the CMC, with resourcing consequences. This would be the case not only for the Commission, but also for the various entities that would become 'caught' by the increased jurisdiction, having regard to the principles of devolution and capacity building underpinning the current legislative regime. Whilst it is likely that some of the larger Government-owned corporations already have well-developed internal and external audit and accountability processes, and could adapt relatively easily to a regime governed by the CMA, it is by no means certain that this could be said of all the bodies that would come within the wider net cast by any increase in jurisdiction.

The Committee is concerned that it is too soon after the commencement of the CMC to make what would be another major change regarding the jurisdiction of the CMC.

The Committee therefore recommended that careful consideration be given to legislative amendment, at an appropriate time, so that the misconduct jurisdiction of the CMC is extended to private entities that exercise public functions and utilise public monies. The Committee also expressed the view that any such extension of the CMC's jurisdiction would need to be accompanied by adequate resourcing of both the Commission and the entities involved.¹⁹⁷

The government response to these recommendations was¹⁹⁸:

The Government supports the sentiment that now is not the time for any broad extension to the jurisdiction of the CMC. In the future, when the operation of the new Act is further settled, the Government might reconsider the ambit of the operation of the Act, especially if the matter is the subject of a recommendation in the Committee's next three-year review report.

The CMC stated in its submission to the current review that it remained "of the view that such entities should be subject to scrutiny by the CMC, especially where public money is involved".¹⁹⁹ The Commission did not expressly call for an extension of jurisdiction at any specific time.

¹⁹⁶ 5th PCMC, Three Year Review, page 4.

¹⁹⁷ 5th PCMC, Three Year Review, page 35.

¹⁹⁸ Government response, page 7.

¹⁹⁹ CMC submission, page 15.

This Committee too supports the principle. As regards timing, it is the case that the CMA has now been in operation for some time. The matter is a little more complex though. We note the 5th PCMC referred to statements made by the CMC's Assistant Commissioner Misconduct, Mr Stephen Lambrides, at its Three Year Review hearings when he cautioned that any amendment would require 'very careful consideration' and a 'lot more resources'.²⁰⁰

The Committee has reservations regarding any extension of jurisdiction without prior careful examination of the likely resource implications, both for the Commission and for the entities that would come under its umbrella as a result. It is clearly desirable that Commission oversight of those entities would rest on the same principles of devolution and capacity building as underpin the approach established by the CMA. For this to work, the agencies themselves would need, to varying degrees, their own frameworks for preventing and dealing with misconduct themselves. As stated earlier in this chapter, the Committee is not satisfied that that statutory regime is necessarily working as well as it could, and that at least some public sector agencies still have some way to go in reaching an appropriate capacity to deal with and prevent misconduct. This in turn requires the CMC to devote resources to building such capacity to the desirable level.

The financial and other resource implications of any extension of the CMC's jurisdiction to private bodies are unknown. Accordingly, at this time the Committee recommends that the notion of extending the jurisdiction of the CMC to private bodies be considered rather than implemented. Any subsequent extension of the CMC's jurisdiction in this regard would need to be accompanied by adequate resourcing of the Commission and of the entities involved.

Recommendation 16

The Committee recommends that government give consideration to extension of the misconduct jurisdiction of the CMC to private entities that exercise public functions and utilise public monies.

5.8. The respective roles of the Crime and Misconduct Commission and the Office of the Director of Public Prosecutions

Section 49 of the CMC provides:

Reports about complaints dealt with by the commission

- (1) *This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, misconduct and decides that prosecution proceedings or disciplinary action should be considered.*
- (2) *The commission may report on the investigation to any of the following as appropriate-*
 - (a) *the director of public prosecutions, or other appropriate prosecuting authority, for the purposes of any prosecution proceedings the director or other authority considers warranted; ...*

Thus some cases are referred by the CMC to the Office of the Director of Public Prosecutions (ODPP) for advice. The previous Committee, in making enquiries prompted by concerns regarding timeliness in some matters, ascertained that some matters were taking a long time to be finalised because of delays at the ODPP. The Director of Public Prosecutions, for her part, raised concerns with that Committee that the CMC's practice of seeking advice from her office had resource implications for that office, and resulted in delays in responding to briefs referred to it by the CMC.

²⁰⁰ Transcript 19 June 2003, page 35.

In its Three Year Review, the previous Committee considered whether the CMC should lay criminal charges without seeking the prior advice of the ODPP, or should itself carry out the prosecution of misconduct matters.²⁰¹ That Committee received submissions on the issue from both the Office of the Director of Public Prosecutions and the CMC, and heard from the then Parliamentary Commissioner on the issue. The Committee was also informed of administrative arrangements being explored by the two agencies with a view to easing the difficulties being experienced.

In a further submission to that review, the CMC argued that legislative change “appeared necessary” to enable the Commission to lay criminal charges of its own initiative. After analysis, the previous Committee, referred to the CMC’s opinion in this regard and, whilst noting that the opinion was not “unequivocal”, recommended certain legislative changes so as to put the legal position beyond doubt.²⁰²

The government in its response advised that it was not convinced that a legislative amendment was required in order to address the issues of potential delay and duplication of resources.

In its submission to the current Committee’s review, the CMC stated that it was now of the view that legislative amendment was not required²⁰³:

The CMC agrees that the issue of which matters should be referred to the DPP can be dealt with on an administrative basis and that legislative amendment is not required to allow police officers seconded to the CMC to charge in appropriate cases.

In its response to the previous Committee’s review, the government also referred to the administrative arrangements being considered and said²⁰⁴:

Following consultations with the DPP and the CMC, the Government understands that those agencies have been working together and will continue to do so in order to address the issues on an administrative basis. The Government will continue to monitor the situation.

From that time, the CMC and the ODPP have worked together to try to settle an appropriate administrative solution. This is a process that appears to have taken some time. In its submission to the current Committee’s review, the CMC stated²⁰⁵:

The CMC has continued to liaise with the DPP in relation to these issues, and now considers that they can be dealt with on an administrative basis. We consider that an appropriate protocol can be developed between the CMC and the DPP about the classes of serious matters that should continue to be referred to her office, and that in other cases seconded police officers at the CMC can prefer charges.

The CMC would not undertake the prosecution of such matters, which would be dealt with in the normal course by the Police Prosecutions Corps or by the ODPP. The only, rare, exception to this would be for offences against its own Act. In these cases, the CMC considers that, like any other government agency that operates under a statute, it bears the primary obligation to see that breaches of its Act are prosecuted.

By way of update, the CMC’s Chairperson, Mr Robert Needham, advised the Committee at its public hearings regarding the proposed protocols²⁰⁶:

²⁰¹ 5th PCMC review, pages 37-42.

²⁰² 5th PCMC review, pages 42 -43.

²⁰³ CMC submission, page 21.

²⁰⁴ Government response, page 8.

²⁰⁵ CMC submission, page 21.

That has been resolved. We have put in place a protocol with the Director of Public Prosecutions whereby we have reached agreement on which matters will be referred to the DPP. Those matters will be those that are of considerable public interest, those which may call for the exercise of the prosecutorial discretion and any other matter in which the commission feels the need to seek the advice of the DPP for any reason.

Apart from those matters, it is envisaged that the commission—because finally, of course, it has to be the exercise of discretion by the individual police officer—will ask the appropriate police officer within the organisation to consider whether he or she should commence the charges. We will do it that way. At the last three-yearly review this issue was looked at to ascertain whether it required a legislative change. With respect, my view is that it does not. I am reinforced in that view now, and it has been put beyond doubt, by the recent change which came in just last week to the Crime and Misconduct Act which, amongst many other changes, inserted an additional subsection in section 255 to make it utterly plain that police officers who are seconded to the commission retain all their powers as individual police officers. Fortuitously, there has been an amendment put in place brought about by the cross-border legislative changes that has put that issue beyond doubt. Hopefully that should assist to avoid the problem that there has been in the past of delays in commencing prosecution after the finalisation of the investigation in some of the matters. Of course, some will still be referred to the DPP.

In the circumstances, the Committee believes it is appropriate to leave the matter to be governed by the administrative arrangements recently finalised between the CMC and the ODPP. The Committee recommends that the incoming PCMC monitor the operation of those arrangements closely.

Recommendation 17

The Committee recommends future Parliamentary Committees closely monitor the operation of the arrangements regarding the referral of matters by the Crime and Misconduct Commission to the Office of the Director of Public Prosecutions.

²⁰⁶ PCMC hearings, 6 July 2006, transcript, page 4.

6. COERCIVE POWERS

6.1. Introduction

The CMC has a number of coercive powers to facilitate its investigations of misconduct and major crime, and in some cases its witness protection function.

This chapter examines some changes made to those powers since the last Three Year Review. The Committee also considers further changes to those powers which the CMC has sought in its submission to the present review. These further changes are in relation to the issues of spousal privilege and telecommunications interception.

6.2. Hearings by the Crime and Misconduct Commission

The CMC can hold hearings in relation to any matter relevant to the performance of its functions.²⁰⁷ Further, the CMC Chairperson can issue a notice requiring a person to attend a CMC hearing in relation to a crime investigation or misconduct investigation for one or more of the following purposes²⁰⁸:

- to give evidence;
- to produce a document or thing stated in the notice; or
- to establish a reasonable excuse or a claim of privilege.

A similar notice can be issued for a hearing in relation to the CMC's witness protection function - to establish the reasonable excuse or claim of privilege which is the subject of the hearing.

The CMC states that hearings are mainly used to²⁰⁹:

- secure the evidence of uncooperative persons to whom the suspect is believed to have admitted involvement in the crime under investigation;
- overcome the concerns of a cooperative witness relating to professional confidentiality issues (e.g. doctor-patient confidentiality);
- secure the evidence of numerous uncooperative eyewitnesses to a serious crime, and thereby reinforce the 'rule of law' in a small rural community; and
- test the version of a suspect so as to assess (and possibly exclude) the suspect's involvement in the serious crime.

Hearings can be either open (public) or closed.²¹⁰ Under the CMA, hearings are generally closed. However, the CMC can hold a public hearing in the following circumstances:

- For a hearing for a crime investigation - if the Commission considers opening the hearing will make the investigation to which the hearing relates more effective and would not be unfair to a person or contrary to the public interest; and
- For a witness protection function hearing - if the Commission considers opening the hearing will make the hearing more effective, would not be unfair to a person or contrary to the public interest, and would not threaten the security of a protected person or the integrity of the witness protection

²⁰⁷ CMA section 176.

²⁰⁸ CMA section 82(1).

²⁰⁹ CMC submission, page 8.

²¹⁰ CMA section 177(2).

program or other witness protection activities of the Commission. Further, the Commission must approve that the hearing be a public hearing; and

- For any other hearing (for example, a misconduct hearing) - if the Commission considers closing the hearing to the public would be unfair to a person or contrary to the public interest. Again, the Commission must approve that the hearing be a public hearing.

The CMC held public hearings as part of its inquiry into allegations of misconduct regarding the Gold Coast City Council. The CMC heard from 51 witnesses over a number of days.

Under the CMA, public hearings must be conducted by the Chairperson of the CMC.²¹¹

In its submission to this review, the CMC advised that²¹²:

The CMC considers that its current powers to hold public and closed hearings are appropriate and effective, subject to a proposed amendment to the CM Act that will allow the Assistant Commissioner, Crime, or the Assistant Commissioner, Misconduct, to preside at public hearings, as well as the Chairperson.

The amendment to which the CMC referred has now been effected, with the passage in August 2006 of the *Crime and Misconduct and Other Legislation Amendment Bill 2006*. That amendment arose from concerns raised by the CMC that the requirement that a public hearing be conducted by the Chairperson was potentially restrictive. One concern was the difficulty that could arise if circumstances warranted the holding of two such hearings at the same time, particularly if lengthy hearings were involved. During the course of 2005-2006, there was discussion and correspondence between the CMC and the Committee on these issues, and also correspondence between the Minister and the Committee.

As a result of the amendments, CMC public hearings can now be conducted by the Chairperson or, if the Chairperson considers it necessary for the efficient operation of the Commission, by the Assistant Commissioner, Misconduct or the Assistant Commissioner, Crime. The determination as to who conducts a public hearing is made by the Chairperson. The amendment makes it clear that more than one public hearing can be held at the same time.

6.3. Spousal privilege

As mentioned earlier in this chapter, the CMC can compel witnesses to appear at a hearing to give evidence.

The CMA provides that it is an offence for a person to refuse to answer the questions of the presiding officer at a hearing for a crime investigation.²¹³ A witness may not refuse to answer on a ground of privilege other than legal professional privilege. Section 194 permits a witness to otherwise claim a reasonable excuse for not complying with the requirement to answer a question. 'Reasonable excuse' is not defined in the Act.

In late 2004, in the case of *Callanan v. Bush*²¹⁴, the Queensland Court of Appeal ruled in an appeal about a woman's entitlement to claim 'spousal privilege' when appearing as a witness before a CMC crime hearing into her husband's alleged involvement in illegal drug activities. She had declined to answer questions on the basis of spousal privilege – that is, she asserted that she could not be compelled to give evidence against her husband. The CMC presiding officer at the hearing directed her to answer, on the

²¹¹ CMA section 178(1).

²¹² CMC submission, page 9.

²¹³ CMA section 190.

²¹⁴ *Callanan v. Bush* [2004] QCA 478.

basis that a claim of spousal privilege did not amount to a ‘reasonable excuse’. When she still refused to answer, the Commission brought contempt proceedings against her.

The trial judge held that spousal privilege did not apply to the CMC’s crime hearings. Mrs Bush appealed. The Court of Appeal held that she was entitled to claim ‘spousal privilege’ as a ‘reasonable excuse’ for not answering questions relating to her husband’s alleged unlawful activities. The court agreed that spousal privilege was not abrogated by section 190 of the CMA as although it could be argued that section 190(2)(b) was intended to abrogate all privileges (except legal professional privilege), the effect of the section was ambiguous, in view of the relevant definition of ‘privilege’.²¹⁵

This position can be contrasted with that which applies in the general criminal law. As a result of amendments in 2003, spousal privilege is no longer available in Queensland criminal trials. The CMC in its submission to the Three Year Review states²¹⁶:

The availability of a claim of spousal privilege to witnesses before CMC hearings will clearly prejudice the investigation of major crime and misconduct. It also seems contrary to current government policy, as recognised by the 2003 amendments to the Evidence Act 1977, which removed the availability of spousal privilege during criminal trials. It would be incongruous that a privilege that cannot now be claimed even during criminal trials can be used to thwart an investigative process.

The CMC went on to argue:

The availability of spousal privilege in CMC hearings clearly has the potential to hinder investigations being undertaken, and could also be used by targets of investigations to pressure their spouses into not providing information about them.

It seems clear that the intention of section 190 of the Act was to abrogate all privileges except legal professional privilege as a reasonable excuse for witnesses before CMC crime hearings, but the restrictive definition of ‘privilege’ for such hearings has nullified this intent.

The Commission states that it had made a submission on the issue to the Premier (as the then Minister) in 2005 and that in July 2005 the Premier had “indicated that he did not support [the] submission, although no detailed reasons were given”.²¹⁷

The Commission seeks the support of the Committee for appropriate amendments to the CMA. In the Committee’s view, the full effects of the Court of Appeal decision are unclear. The Committee is however of the view that it appears to be an incongruous situation for spousal privilege to be available in investigative hearings conducted by the CMC but not available in criminal trials.

Recommendation 18

The Committee supports any amendment to the *Crime and Misconduct Act 2001* that might be necessary to clarify that spousal privilege does not apply in CMC hearings.

²¹⁵ CMA Schedule 2.

²¹⁶ CMC submission, page 16.

²¹⁷ CMC submission, page 17.

6.4. Telephone interception powers

One coercive power not available to the CMC is that of telephone interception (commonly known as phone tapping or “TI”). This power is not given to any Queensland law enforcement agency – Queensland being the only Australian state not to be granted this power.

Telecommunications interception in Australia is governed principally by the *Telecommunications (Interception) Act 1979* (Cth). That Act permits state law enforcement authorities that are ‘eligible authorities’ to apply for a warrant to conduct telephone interception. In order for state law enforcement authorities such as the QPS and CMC to be declared as ‘eligible authorities’, the state must pass complementary legislation, complying with the requirements in section 35 of the Commonwealth Act, relating to record keeping and destruction, reporting and inspection by an independent state authority.

Queensland is the only Australian jurisdiction without telephone interception powers. The CMC in its submission reiterates its previous calls for the introduction of telecommunications interception legislation in Queensland and funding for the CMC to establish its own secure and effective interception facility.²¹⁸

In every recent Three Year Review the Commission has made a submission for it to be given such a power. In its submission to the current review, the CMC sets out the history of the consideration of this issue by our various predecessor Committees.²¹⁹

Most recently, the 5th PCMC in its Three Year Review recommended that²²⁰:

- the Queensland Government introduce legislation to enable the CMC and QPS to intercept telecommunications;
- any telecommunications scheme should include a role for an Inspector, such as the Public Interest Monitor, in the application process for a telecommunications interception warrant; and
- the CMC be able to operate its own telecommunications interception facility and receive adequate funding to allow it to do so.

In its submission to this review, the CMC states²²¹:

The CMC notes the support from previous committees in this regard, and seeks the committee’s continued support in recommending that TI legislation be introduced in Queensland, and, if such legislation is passed, that funding be made available for the CMC to establish its own secure and effective interception facility.

In its response to the 5th PCMC recommendations, the Government wrote²²²:

On 12 May 2004, during debate on the Terrorism (Community Safety) Amendment Bill 2004, the Premier stated that:

- *he has asked the Minister for Police and Corrective Services to bring to Cabinet a submission on telecommunications interception powers; and*
- *Queensland has written to the Commonwealth asking whether the Commonwealth would consider amending the Commonwealth telecommunications interception legislation to enable states, in a constitutional sense, to introduce additional*

²¹⁸ CMC submission, pages 17-19.

²¹⁹ CMC submission, pages 18 and 19.

²²⁰ 5th PCMC Three Year Review, page 65.

²²¹ CMC submission, page 20.

²²² Response to 5th Three Year Review, page 15.

safeguards, such as Queensland providing for its Public Interest Monitor to be present during the warrant application process.

Cabinet has considered the matter and will continue to do so, especially in light of the Commonwealth-State constitutional dimensions.

On 21 April 2006, the Premier informed the Legislative Assembly²²³:

In this high-tech decade, telecommunications interception has a role to play in combating crime and enforcing the law. The Queensland government's position, however, is that it must also be balanced with safeguards that protect fundamental individual rights and ensure public confidence. That is why under existing Queensland law, the Public Interest Monitor appears on applications for surveillance device warrants and covert search warrants.

During the development of the counter-terrorism legislation in October last year, I spoke directly to the Prime Minister about the need for Commonwealth control order laws to include this same accountability mechanism. The Prime Minister sensibly accepted the Queensland government position that the Public Interest Monitor would improve accountability without compromising operational effectiveness, and the control order legislation reflects this.

Although the Prime Minister has done the right thing on control order laws, he has not followed through in another area which has far broader application. In February this year, I wrote to the Prime Minister in relation to amendments to the federal Telecommunications Interception Act, and I again put Queensland's case for the Public Interest Monitor.

While the final amendments included a number of important improvements, regrettably they were passed last month without the Public Interest Monitor. As I understand the Commonwealth is considering more amendments to this act, I have written to the Prime Minister this week to stress the need for this added front-end accountability mechanism in the legislation. I now table this letter for the information of the House.

I call on the Commonwealth to amend its Telecommunications (Interception and Access) Act 1979 to enable the Public Interest Monitor to be present at application hearings for interception warrants in Queensland.

As can be seen, one of the recommendations by the 5th PCMC was that any telecommunications scheme should include a role for an inspector in the application process for a telecommunications interception warrant. That Committee had some concerns about the completeness of the accountability regime provided for by the *Telecommunications (Interception) Act 1979*, insofar as that regime focuses on what can be summarised as 'back end' accountability – record keeping, inspection, and reporting. The Committee was of the view that there should be 'front end' accountability as well, with representation at the stage of applying for a telecommunications interception warrant by an independent person with an inspector-style role, such as the Public Interest Monitor. In its report, the 5th PCMC specifically recognised that there might be constitutional difficulties in this regard, in the absence of any amendment to the Commonwealth legislation. The Committee said²²⁴:

The Committee believes that it is desirable for the inspector or oversight agency to be involved at the early stage of making the application for the telecommunications warrant. A scheme which in general terms, requires that the inspector be served with the application and permits the inspector to appear and make submissions at the hearing of an application for a

²²³ Queensland Parliamentary debates, Hansard, 21 April 2006, page 1339.

²²⁴ 5th PCMC Three Year Review, page 65.

telecommunications warrant, should be incorporated into any State telecommunications legislation. The Committee is however cognisant of the possible constitutional limitations in establishing such a scheme. It therefore recommends that any telecommunications scheme, if possible, provide for involvement by the entity given the inspector role at a stage prior to an application for an interception warrant being made.

Whilst it recited this aspect of the history of the issue, the CMC in its submission did not further refer to the issue of ‘front end’ accountability. During the present Committee’s hearings, the following exchange occurred²²⁵:

Chair: ... bearing in mind what has been said about the PIM and its role, I am wondering why there appears to be no advocacy in your submission for accountability mechanisms with telephone interception. There seems to be nothing in the submission that advocates the adoption of either the PIM or some alternative accountability mechanism to address the concerns that were raised by this committee at the last three-year review about the inadequacy of accountability with telephone interception.

Mr Needham: As I said before—perhaps we omitted putting it in here—the CMC has always been accepting of the idea of the accountability of the PIM both pre-situation and any form of accountability after, which is what is envisaged in the federal legislation. We are quite happy to accept that. It is then a matter for government—federal and state—as to whether that is going to be able to be done. It is a matter that I have had some discussion about in attempting to see whether we can get some form of compromise. I would prefer not to go into all of those details publicly at this stage. I think it would be disadvantageous to be publicly ventilating at this stage.

There were few submissions to the current review which examined the telecommunications interception power. Its introduction was urged in a submission by Australian Parents for Drug Free Youth. The Queensland Police Service submission included a statement that²²⁶:

Whilst the Service appreciates that this is a policy consideration for government that may be outside the scope of this review, the Service strongly supports the introduction of telecommunication interception powers for both the CMC and the Queensland Police Service.

In his submission, barrister Mr Stephen Coates expressed his concern that the current legislative safeguards are not strong enough. He stated²²⁷:

Whilst the Public Interest Monitor system is not foolproof, it is a strong safeguard to ensure that authorities are lawfully carrying out their investigations.

We note that the previous Committee in its report quoted the following comments, made to its review by Mr Terry O’Gorman, in his role as president of the Australian Council for Civil Liberties, regarding the possible role of the Public Interest Monitor²²⁸:

... it will allow the Public Interest Monitor ... to put a public interest argument up before the judge as to whether in fact a telephone interception warrant is justified. But more importantly, it allows the Public Interest Monitor, once a warrant is issued, to in fact examine

²²⁵ PCMC hearings, 6 June 2006, page 22.

²²⁶ Queensland Police Service submission, page 4.

²²⁷ Mr Stephen Coates submission, page 6.

²²⁸ Quoted by the 5th PCMC in Three Year Review, page 63. [There was no submission from either the Australian Council for Civil Liberties or the Queensland Council for Civil Liberties to the current review.]

the product of the warrant over the period of 30 or 60 days that it is in existence.

In its written submission to the present review, the CMC expressed the view that the use by it of data-surveillance devices on computers (other than stand-alone computers) might not be permissible without a warrant under the telecommunications interception scheme. The CMC advised that, as a result, the use of such devices in the investigation of criminal paedophilia has been substantially limited.²²⁹

Like the 5th PCMC and earlier Committees, the present Committee is satisfied that telecommunications interception is a potent and effective tool in both misconduct and crime investigations. The 5th PCMC concluded²³⁰:

The Committee considers that the present position with respect to access to telephone interception powers by the CMC and the QPS in Queensland is not adequate. It is of the opinion that to maintain the present position in Queensland would be to deny the CMC and QPS access to what has proved in other jurisdictions to be an extremely useful investigation tool.

That Committee agreed with the views of the 4th PCJC in Report No. 50 that telecommunications interception powers should be granted to the CMC and the QPS. The present Committee also agrees. Further, the present Committee shares the previous Committee's concerns regarding the issue of 'front end' accountability, and accordingly adopts and repeats the recommendations of that Committee regarding telecommunications interception.

Recommendation 19

The Committee recommends that the Queensland Government introduce legislation to enable the CMC and QPS to intercept telecommunications.

Recommendation 20

The Committee recommends that any telecommunications scheme must include a role for an Inspector, such as the Public Interest Monitor, in the application process for a telecommunications interception warrant.

Recommendation 21

The Committee recommends that the CMC be able to operate its own telecommunications interception facility and that it receive adequate funding to allow it to do so.

6.5. Recent Legislative Amendments to the Crime and Misconduct Commission's powers – cross-border legislation

The provisions of the *Cross-Border Law Enforcement Legislation Amendment Act 2005* took effect on 30 June 2006. The Act provides a scheme which will enable the CMC (and the QPS) to pursue serious crime investigations across state borders, without being required to seek further approval from courts or authorities in other states. The CMC submission to this Committee notes some of the significant changes to the CMA as being²³¹:

- The CMC's power to use surveillance devices for crime investigations will now, like its controlled operations power, be contained in the *Police Powers and Responsibilities Act*. Mutual recognition

²²⁹ CMC submission, page 20.

²³⁰ 5th PCMC Three Year Review, page 65.

²³¹ CMC submission, page 12.

will be sought for these powers from other states and the Commonwealth, so that cross-border investigations will be able to be conducted in other jurisdictions based upon applications made, and authorities issued, in Queensland.

- A general authority to obtain and use assumed identities is available to all CMC officers (not just police officers), and is not limited to controlled operations (as was the previous assumed identity power).
- ‘Back-end’ accountability regimes have been introduced. In the case of the CMC, these largely involve the Parliamentary Commissioner auditing, and reporting on, the CMC’s use of powers.

6.6. Recent Legislative Amendments to the Crime Misconduct Commission’s powers – terrorism

The *Terrorism (Community Safety) Act 2004* amended a number of Queensland Acts aimed at strengthening the powers of Queensland law enforcement authorities to prevent and respond to terrorist acts. Whilst the CMC is not the lead Queensland agency in respect of fighting terrorism, in relation to the CMC, the Act provided for the following changes:

- ‘Terrorism’ (meaning criminal activity that involves a terrorist act) was included within the definition of major crime, and a detailed definition of the term ‘terrorist act’ was provided.
- The CMC’s power to obtain surveillance devices was broadened to allow warrants to be obtained for a ‘relevant place’ even where a named person could not be identified as a suspect.
- The ‘additional powers’ warrant provisions (which allow the CMC to enter premises where financial records are held and inspect the records and make copies; to seize passports, titles to property and securities and financial documents; and to require a person to provide information about property and financial transactions) were extended to apply to ‘a crime investigation relating to terrorism’ in addition to misconduct investigations.

7. THE INTELLIGENCE FUNCTION

7.1. Introduction

One of the Crime and Misconduct Commission's functions is to gather intelligence, which is widely regarded as being integral to the investigation of organised crime and misconduct. Intelligence is a critical component of contemporary law enforcement activities. Intelligence provides a timely and accurate understanding of criminal behaviours and enables investigators to identify which crimes pose the most serious threat to society.

The primary purpose of the CMC's intelligence function is to support its crime and misconduct functions. Where appropriate, the CMC disseminates intelligence data to other agencies and to the public.

The 5th PCMC in its Three Year Review of the CMC considered the CMC's intelligence function and made the following recommendations²³²:

- that the CMC continue to maintain its criminal and misconduct intelligence in a single unit;
- that the CMC continue to have a dedicated intelligence unit that is independent of all other agencies;
- that the CMC retain its ability to share relevant information with other law enforcement agencies; and
- that the CMC continue to maintain its own intelligence database independently of other agencies.

The government response supported the recommendations of the Committee.²³³ The government response noted that one of the main considerations in the decision to amalgamate the former Criminal Justice Commission and the former Queensland Crime Commission to form the CMC was to improve the efficiency and effectiveness of their respective intelligence capacities. The government also agreed that the CMC should continue to have an intelligence capacity independent of other agencies as being crucial for the impartial discharge of the CMC's functions. The government also agreed that the CMC should continue to share information with other law enforcement agencies whilst maintaining its own intelligence database.

No issues in relation to the CMC's intelligence function were raised in written or oral submissions to the current Committee's Three Year Review.

7.2. Background

Under the CMA, the CMC has the following intelligence functions²³⁴:

- to undertake intelligence activities to support the proper performance of its functions;
- to analyse the intelligence data collected to support its functions;
- to minimise unnecessary duplication of intelligence data; and
- to ensure that intelligence data collected and held to support its functions is appropriate for the proper performance of its functions.

²³² PCMC report No. 64, Three Year Review of the CMC, recommendations 32 to 35, at pages 69-70.

²³³ Government response, pages 15-16.

²³⁴ CMA Section 53.

7.3. Strategic Intelligence Unit

The Strategic Intelligence Unit (SIU) is an independent unit of the CMC, and is intended to provide a secure, centralised source from which CMC officers can obtain intelligence information necessary to perform their functions. Strategic assessments enable law enforcement to proactively identify emerging trends within criminal networks.

The SIU utilises the research, investigative and intelligence capacities of the CMC and provides it with a more complete understanding of the nature of crime problems in our society. Intelligence officers attached to the SIU assess the risk posed by certain criminal activities and identify targets for investigation.

The SIU is staffed by multidisciplinary personnel including intelligence officers, research officers, a financial investigator and a civilian investigator.

7.3.1. Strategic intelligence

An importance aspect of the CMC's work in the organised crime area is strategic intelligence. Strategic intelligence seeks to provide a strategic context within which to understand emerging threats and emerging trends in the criminal environment. It is primarily used by the CMC to monitor crime markets in Queensland to identify trends or changes in threat levels. Areas of concern can be further explored by designing projects to produce well-timed, accurate and useful intelligence for the use of the CMC and for sharing with other stakeholders.²³⁵

The SIU produces strategic intelligence assessments and reports for internal and external clients to support decision-making processes. It also identifies targets for investigation by the CMC's investigation teams and recommends methods for the proactive investigation of major crime and official misconduct.

7.3.2. Target development

Target development is a central part of the strategic intelligence process. The SIU develops targets that warrant full investigation under one of the major-crime references. The SIU forms a vital link between crime and misconduct areas and is in the position to identify any overlap in investigations such as when crime investigations uncover corruption or when misconduct investigations uncover organised crime.

Target development involves identifying indicators of potential significant criminal activity by one or more individuals, and the planned collection and analysis of data to determine its nature and extent. Target development generally involves liaison with the QPS, ACC and AFP and other interstate agencies.

7.3.3. Intelligence sharing

The CMC shares intelligence with other agencies and the public. To facilitate this sharing the CMC produces²³⁶:

- *Intelligence Digests* – classified documents appropriate for law-enforcement use exclusively, providing information about emerging trends in Queensland and the risks they pose; and
- *Crime Bulletins* – unclassified documents for public dissemination, intended to increase community awareness of organised crime issues, trends and forecasts.

²³⁵ CMC submission, page 39.

²³⁶ CMC submission, page 36.

7.3.4. *Tactical intelligence*

Tactical intelligence is concerned with producing intelligence about a target's capabilities, tactics and intentions. Tactical intelligence reports are collated and inserted in the CMC's own Intelligence Recording and Analysis System (IRAS). As with strategic intelligence, this information is then used by the CMC or disseminated to other agencies. As no other agencies have access to IRAS, they rely upon selective disseminations by the CMC.

7.4. **Oversight of the intelligence function by the Parliamentary Crime and Misconduct Commissioner**

The Parliamentary Commissioner has the function of conducting an annual review of the intelligence data held by the CMC, and also that held by the Queensland Police Service.²³⁷ This function is prescribed by the CMA but, unlike the Parliamentary Commissioner's other functions, is not dependent upon any requirement of or direction by the Committee. The review is to be carried out as soon as practicable after the end of each financial year, but in any event within four months from that time.

The Parliamentary Commissioner prepares a report on the outcome of the review of the intelligence holdings. A copy is to be provided to the Committee, as well as to the Crime and Misconduct Commission Chairperson and the Commissioner of the Queensland Police Service.

Section 320(2) of the CMA provides that the review has the following purposes:

- (a) *to consider whether intelligence data held by each agency is appropriately held by the agency having regard to the agency's functions; and*
- (b) *to consider whether there is unnecessary duplication of intelligence data held by the agencies; and*
- (c) *to consider whether the agencies are working cooperatively as partners to achieve optimal use of—*
 - (i) *available intelligence data; and*
 - (ii) *the resources used to collect, collate or record the data; and*
- (d) *to consider whether an agency is placing inappropriate restrictions on access to intelligence data by the other agency.*

During the currency of the present PCMC, the Parliamentary Commissioner has reported to the Committee on the results of the intelligence reviews for the financial years ended 30 June 2004 and 30 June 2005. Given the nature of the subject matter, it is not appropriate for the Committee to table any report by the Parliamentary Commissioner on an intelligence review. However, the Committee can report that, in each of the two reports made to the current Committee, the Parliamentary Commissioner concluded that:

- All items of data reviewed at the Commission were appropriately held by the Commission having regard to its functions.
- There was no evidence of unnecessary duplication of intelligence data held by the CMC and the Queensland Police Service. The Parliamentary Commissioner observed that as both agencies use the Australian Criminal Intelligence Database ('ACID') there are limited circumstances in which the possibility of the agencies duplicating intelligence holdings can arise. Further, there are mechanisms in place aimed at reducing this duplication.
- Since both the Commission and the Queensland Police Service store their criminal intelligence on ACID, it may be said that they are working cooperatively as partners to achieve optimal use of the

²³⁷ CMA section 320.

available data and of the resources used to record the data. The Parliamentary Commissioner was impressed at the high levels of cooperation between the agencies.

- Neither agency is placing inappropriate restrictions on access to intelligence data by the other agency.

The Parliamentary Commissioner made some minor recommendations for changes in procedures and the CMC has responded positively to those suggestions.

The following four sections provide more detail of the Parliamentary Commissioner's findings.

7.4.1. *Whether intelligence data is held appropriately*

The SIU has strict guidelines to ensure that only the highest quality intelligence data relevant to the CMC's functions are held in the database. To ensure quality and appropriateness of the data held, regular quality control checks of the intelligence databases are conducted to ensure that the stored data is relevant to the CMC's functions, is accurately recorded and there are no duplicate entries. Analysts are responsible for timely and accurate preparation of intelligence documents for entry into the CMC's database.

The Parliamentary Commissioner stated that all items of intelligence data reviewed at the CMC were appropriately held by the CMC having regard to its functions.

7.4.2. *Security of material*

Section 55 of the CMA provides for the sharing of intelligence information by and with the CMC. The section provides that the CMC must limit access to intelligence information in its database to those persons the CMC Chairperson considers have a legitimate need to access the information.²³⁸ Accordingly, the CMC's intelligence database can only be accessed by authorised staff deemed to have a legitimate need to access the information. In addition, the SIU is bound by the accountability measures that apply to the whole of the CMC.

7.4.3. *Unnecessary duplication of intelligence material*

There are very limited circumstances in which the possibility of the CMC and the QPS duplicating intelligence holdings can arise and there are mechanisms in place to reduce the possibility of duplication. The Parliamentary Commissioner has stated that there has been no evidence of unnecessary duplication of intelligence data held by the CMC itself or in conjunction with the QPS.

7.4.4. *Intelligence sharing with other agencies and the public*

In addition to the CMC using intelligence in support of its own work, it also shares relevant intelligence with other agencies and, where appropriate, the public. Although the resources for collecting and collating intelligence data are not shared, the criminal intelligence produced generally is.

The SIU works in close partnership with other organisations, such as the ACC, the AFP and the Australian Customs Service in respect of law enforcement. These partnerships are designed to eliminate duplication of effort between agencies and to ensure that resources are used in an effective manner. There is also a high level of cooperation between the CMC and the QPS which is fostered by a cooperative culture of both being part of the wider intelligence community, rather than adversaries. This makes the CMC a contributor to and a beneficiary of a wider intelligence network.

²³⁸ CMA section 55(3).

7.5. Conclusion

The Committee sees no need for any change to the current regime regarding the CMC's intelligence function. The annual reviews by the Parliamentary Commissioner have disclosed no deficiencies and have themselves proved to be an appropriate accountability mechanism.

8. RESEARCH AND PREVENTION

8.1. Introduction

There had been little independent research into criminal justice and policing matters carried out in Queensland prior to the Fitzgerald Report. Fitzgerald QC concluded that there was a need for research in criminal justice and policing. He recommended that the CJC be given a research function, and the CJC was duly given such a function when it was established. The CJC's research agenda was largely determined by the recommendations contained in the Fitzgerald Report.

The CJC established a Corruption Prevention Program in 1991, initially placed within the then Official Misconduct Division. Corruption Prevention became a separate division of the CJC in 1993. The Corruption Prevention Division and the Research Division merged to form the Research and Prevention Division in 1998.

The CMC's Research and Prevention function supports the CMC's two key outputs of fighting major crime and addressing public sector integrity. The Research and Prevention area performs research into crime, misconduct, policing, and other policy and legislative issues referred by the Minister; and provides significant misconduct prevention and capacity-building services.²³⁹

8.2. The Crime and Misconduct Commission's research and prevention roles

Under section 52 of the CMA, the CMC has the following research functions:

- (a) *to undertake research to support the proper performance of its functions;*
- (b) *to undertake research into the incidence and prevention of criminal activity;*
- (c) *to undertake research into any other matter relating to the administration of criminal justice or relating to misconduct referred to the commission by the Minister; and*
- (d) *to undertake research into any other matter relevant to any of its functions.*

Section 52(2) provides that the CMC may undertake research into:

- (a) *police service methods of operations;*
- (b) *police powers and the use of police powers;*
- (c) *law enforcement by police; and*
- (d) *the continuous improvement of the police service.*

Under section 33 of the CMA, the CMC also has a prevention role '*to raise standards of integrity and conduct in units of public administration*'. Similarly, section 34 of the Act provides that the CMC "*...has a lead role in building the capacity of units of public administration to prevent and deal with cases of misconduct effectively and appropriately.*"

8.3. Recent and current operations - policing

The CMC sees continuous improvement of the Queensland Police Service as an important area of its work.

In its submission to the PCMC, the CMC noted that, in the course of assessing complaints and conducting reviews and audits, emerging trends and possible issues in relation to conduct or behaviour of concern within the QPS can come to light. These can lead to targeted research-based projects.²⁴⁰

²³⁹ CMC submission, page 4.

²⁴⁰ CMC submission, page 97.

The CMC aims to work in collaboration with the QPS. In its submission to the PCMC, the QPS made the following observation in relation to the research role of the CMC²⁴¹:

The service continues to work in collaboration with the CMC on projects where appropriate. Latter-day projects undertaken by the CMC such as the “Predictors of Complaints against Police” and “Attrition from the Service (Project Barossa): Building the case for early warning systems” are relevant to the good governance of the Service and provide useful reference points for the formulation of internal management policies and procedures. In all, the Research Division is well regarded for its capacity to provide sound and well based advice and assistance to the Service.

Some examples of significant research projects into policing which have been conducted during the term of the current PCMC are described below.

Use of OC spray

Oleoresin capsicum (OC) spray is a relatively new option for the QPS. The spray is now commonly used by police when dealing with volatile situations and aggressive people. The CMC research into this area sought to both assess the risks of using OC spray and determine its overall effectiveness.

The CMC concluded in its report *OC spray: oleoresin capsicum spray use by Queensland police* (released in October 2005) that OC spray was an effective and relatively safe option for police. At the same time, the CMC made five recommendations to improve QPS policies and procedures in:

- recording and monitoring use of OC spray;
- overseeing the use of OC spray;
- reviewing OC spray training and tactics; and
- aftercare of persons involved.

The QPS is considering the CMC’s recommendations.

Police pursuits

The CMC told the Committee in its submission²⁴²:

Police pursuits present policy difficulties in balancing the needs of law enforcement against public safety. Research overseas and in Australia has confirmed that police pursuits are a high-risk activity with people being injured and killed from such pursuits. In recent years there has been a general movement towards increasing control of pursuits and tightening policy to limit pursuits to certain offences.

In 2003, the CMC released findings of a major study into pursuits by Queensland police. The CMC concluded that the QPS had taken constructive steps to address risks associated with police pursuits. However, the CMC made some suggestions to improve QPS policy and practices, including the adoption of a more restrictive pursuit policy that prohibited the commencement of a pursuit for traffic or driving offences.

The QPS has established a working party to consider the CMC’s recommendations.

²⁴¹ Queensland Police Service submission, page 5.

²⁴² CMC submission, page 99.

Police dog bite complaints

The area of bites by police dogs provides one example of targeted research by the CMC arising from the tracking of emerging trends in police complaints. In 2000 the CJC observed a marked increase in the number of complaints from people being bitten by police dogs. The CJC decided to review the policies and procedures of the QPS dog squad. This review included the collection of data (relating to the number of track and searches, number of apprehensions and number of bites) with a view to evaluation of the impact of suggested changes to those policies and procedures.

The CMC undertook a second review in 2005 to assess whether there had been any reduction in police dog bites and related complaints. The CMC will soon release a report entitled *QPS dog squad: review of bite incidents and management* which will present the findings on these issues, and make suggestions for further improvement.

Policing methods - problem-oriented policing

Problem-oriented policing is an approach to policing which has been advocated by the CMC and its predecessor for many years. It involves the systematic analysis by police of the underlying features of crime and community problems followed by the development and implementation responses to solve those underlying problems, rather than an approach based upon reaction to individual crimes after they have occurred, and usually in isolation.

In its submission to the PCMC, the CMC advised that in 2005 it released its third major report regarding problem-oriented policing.²⁴³ The report, *Problem-oriented policing in a detective environment: a Queensland case study*, presented the key findings of an evaluation of the application of the problem-oriented policing approach to an investigative environment.

The CMC states that it will continue to work in partnership with the QPS in an advisory capacity to support the efforts of the QPS to shift away from reactive policing to a more proactive approach in dealing with crime and community problems.

Policing methods - beat policing

Beat community policing involves having an individual police officer responsible for policing needs of the community in a defined geographical area. This approach was first trialled in Queensland in 1993. The QPS has undertaken three major evaluations of different models of beat policing, such as those located in neighbourhoods, shopping centres and existing police stations. A fourth evaluation which is currently underway involves the establishment of a police beat in a major hospital (the Princess Alexandra Hospital in Brisbane). This is a joint project of the QPS and the CMC, designed to assess the effectiveness of providing a permanent police presence in a major city hospital.

Policing domestic violence

In 2003 the CMC undertook a major study into the police response to domestic violence situations, resulting in the publication in April 2005 of a report titled *Policing domestic violence in Queensland; meeting the challenges*. The CMC found that the QPS needed to:

- conduct thorough investigations of domestic violence incidents, collect evidence and proceed with criminal charges where appropriate;
- consider the merits of protection orders issued by police;
- implement a case management approach to chronic repeat calls for service; and
- review the roles and functions of its Domestic Violence Coordinators.

²⁴³ CMC submission, page 100.

In its submission to the PCMC, the CMC noted that feedback received on the report from victims of domestic violence and victim support groups had been very positive.²⁴⁴ In April 2006, the Minister for Police and Corrective Services introduced a Bill to allow police to issue ‘notices to appear’ which is the first stage of a series of reforms to be rolled out over the course of the next year.

Other research and prevention projects in policing

Other recent CMC research and prevention projects in the policing area include:

- a review of police powers to deal with volatile substance misuse including a review of the Queensland Government’s new ‘places of safety’ response to the problem;
- determining media access to police radio communications;
- reviewing the possible legalisation of outcall or escort prostitution services in Queensland;
- reviewing the implementation of the recommendations made in the January 2004 report *Protecting children: an inquiry into abuse of children in foster care*; and
- a comparison of the regulations governing adult entertainment in the states and territories of Australia.

8.4. Recent and current projects - crime

The CMC undertakes a wide range of research to support organised crime and criminal paedophilia investigations. The CMC in its submission to this review advised that the following are key areas²⁴⁵:

- examining illicit drug markets and the nexus between drug use and crime;
- researching the handling of sexual offences by the criminal justice system; and
- uncovering the correlates of sexual abuse of children and the criminogenic consequences of such abuse.

In addition, the CMC is continuing to undertake crime prevention research and activities, such as examining best practice initiatives in the areas of drugs, paedophilia and fraud prevention. The CMC research in crime is aimed at supporting the CMC’s crime function by feeding reliable information into projects undertaken by the crime area.

The CMC is also looking for ways to improve the relevance of crime research to its operational activities. For example, while trends in drug markets need to be identified, the CMC is also undertaking more detailed research on particular aspects of the highest risk drug markets which it hopes will prove productive in terms of operational outcomes and giving better practical effect to the purposes of the CMA.

Project proposals are submitted to the Crime Intelligence and Research Review Committee (CIRRC), to ensure close collaboration between the CMC functional area of research and prevention and that of crime. The CIRRC determines which projects are undertaken, and ensures that they contribute to the fight against major crime.

The major research initiatives in support of the CMC’s crime and crime-prevention functions are outlined below.

²⁴⁴ CMC submission, page 101.

²⁴⁵ CMC submission, pages 40-41.

Illicit drug use - amphetamines

The CMC works in collaboration with Queensland Health on research projects into the nature and extent of amphetamine markets in Queensland. In 2002, the research resulted in detailed information on illicit drug use, price structures, market distribution patterns, the nexus between drugs and crime, and drug related victimisation. In 2006, there will be further research in this area, aimed at identifying changes in the intervening period regarding the characteristics, usage patterns, behaviours and socioeconomic environment of amphetamine users. (The report on the project was being written at the time of the CMC submission to the PCMC.)

In addition, a proposed longitudinal study will document the natural history of amphetamine use, covering areas such as:

- the patterns of amphetamine and other illicit drug use;
- factors that influence patterns of and changes in use; and
- how law enforcement and health interventions modify behaviour.

Illicit drug use - cocaine

Research by the CMC relating to cocaine use in Queensland is due for completion in 2006.²⁴⁶ The CMC advises that the project seeks to:

- determine how certain cocaine users avoid contact with law enforcement and health authorities;
- develop an understanding of distribution and supply networks;
- gain an understanding of the perceived risks and benefits associated with cocaine use; and
- understand the different socio-cultural contexts of cocaine use.

The project is being conducted in conjunction with an intelligence assessment by the SIU of the CMC.

Illicit drug use - monitoring

The CMC is also involved on an ongoing basis in a national drug research project, conducted by the Australian Institute of Criminology, on Drug Use Monitoring in Australia (DUMA). The project analyses data collected from detainees in police watch-houses, through interviews and urinalyses. Analysis of the data was undertaken in 2002 and again in 2005-2006.

The CMC has also worked with the Queensland Alcohol and Drug Research Education Centre on a project to measure the prevalence of alcohol and illicit drug use among individuals seeking medical assistance at the emergency department of Southport Hospital. The study was undertaken in 2002 and the results published in 2004. This project was repeated in 2005 to monitor changes over time in drug use patterns in that population.

In recent years the CMC has conducted an annual survey of Queensland households to determine baseline indicators of illicit drug use and attitudes. When combined with the data collected through the watch-house surveys and emergency department surveys mentioned above, this data allows for the provision of information regarding trends in illicit drug use to agencies involved in crime prevention, law enforcement and health services.

Crime prevention programs

The CMC is examining violence across the life-course and the nature and extent and consequences of sexual victimisation during childhood for offenders serving non-custodial sentences in Queensland. This

²⁴⁶ CMC submission, page 42.

project is aimed at assisting the Department of Corrective Services to design appropriate programs for offenders that might reduce re-offending and also expose some underlying causes of offending, as well as drug use and mental health issues among offenders.

The CMC is also engaged in a project which is examining a number of factors contributing to the incidence of child sexual abuse in Indigenous communities - such as poverty, community deterioration and disorder, familial breakdown and alcohol and substance abuse, as well as problems in the delivery of vital services such as law enforcement, health and welfare, and education.

The CMC continues to provide resources on its website for victims and survivors of sexual abuse. The site has five sections:

- paedophilia;
- relevant Queensland legislation;
- resources for victims of child abuse;
- service agencies for children and families; and
- reporting sexual abuse.

8.5. Recent and current projects - misconduct prevention

The CMC's misconduct function is²⁴⁷:

- to raise standards of integrity and conduct in the Queensland public sector; and
- to ensure that any complaint which involves or may involve misconduct is dealt with appropriately.

Hand-in-hand with these aims is the CMC's lead role in building capacity to prevent misconduct.²⁴⁸

The CMC's capacity building activities have a strong focus on prevention. The CMC works with agencies to prevent misconduct by²⁴⁹:

- producing resources such as advisory papers, guides, toolkits and training materials that can be used by government agencies to deal with different types and levels of misconduct within their organisation;
- collaborating as far as possible with similar organisations to produce suitable resources;
- delivering advice and assistance to meet the needs of government agencies through various outreach activities, including regional visits;
- coordinating the capacity-building activities within its own organisation and those of other agencies to facilitate capacity building in the public sector as a whole; and
- using the results of its audits and reviews to help agencies build their capacity to prevent and deal with misconduct.

Over the past two years, the CMC has collaborated on misconduct prevention projects with public sector agencies such as the QPS, the Department of Corrective Services and the Queensland Ambulance Service, as well as universities and local government consultative groups and forums. The CMC has

²⁴⁷ CMA section 33.

²⁴⁸ CMA section 34.

²⁴⁹ CMC Annual Report, 2004-05, page 32.

assisted agencies to develop corruption risk assessments, and integrate misconduct prevention strategies and ethics training packages.²⁵⁰

The CMC provides advice to agencies on dealing with specific complaints, as well as on general strategies for preventing and dealing with misconduct. Recent prevention advice has covered such topics as²⁵¹:

- purchasing and procurement policies and procedures;
- the development of misconduct prevention strategies;
- conflict of interest situations;
- fraud prevention; and
- development and revision of codes of conduct.

8.6. Misconduct prevention system reviews

The CMC's prevention staff work in conjunction with the misconduct area to produce risk management system reviews for government agencies that have been the subject of a CMC investigation into allegations of official misconduct. These reviews can identify any areas within organisations that are susceptible to misconduct risks. Reviews are usually conducted collaboratively with the relevant agency, which helps build the CMC's relationship with the agency. These reviews aim to:

- identify activities and management practices that pose a risk of misconduct;
- formulate strategies to minimise the risks of misconduct;
- build capacity to prevent and deal with misconduct; and
- build an ethical workplace culture.

The CMC informed the Committee of the following recent examples of system reviews²⁵²:

QBuild

Whilst undertaking an investigation into allegations of misconduct involving falsified accounting records, the CMC concurrently conducted a systems review of the internal fraud prevention controls within QBuild. This review highlighted a number of potential risk areas and the CMC made recommendations to address these risks.

Department of Justice and Attorney-General

CMC investigated allegations that there had been potential favouritism and an unauthorised release of information regarding an IT purchase within the Department of Justice and Attorney-General. CMC prevention staff carried out a review of the Department's purchasing and tendering policies and procedures to complement the CMC investigation. Professional advice was immediately provided on the probity requirements for IT procurement and best-practice purchasing procedures.

8.7. Misconduct research

The CMC conducts research into misconduct trends affecting the public sector. Current or recent research projects include the following:

²⁵⁰ CMC submission, page 75.

²⁵¹ CMC submission, page 75.

²⁵² CMC submission, page 76.

Profiling the Queensland Public Sector

In June 2004, the CMC published *Profiling the Queensland Public Sector*, (a companion volume to the ICAC's *Profiling the New South Wales Public Sector*).²⁵³ The report followed the CMC's *Responding to Misconduct* survey, which saw the participation of 234 Queensland public sector agencies. The CMC advised the Committee that the information contained in the report provided individual agencies with information about their own misconduct and corruption risks, as well as the risks faced, and the prevention strategies, used by similar organisations.

In addition, the results of the research were used to refine the targeting of CMC publications and advisory papers, for example:

- The *Fraud and corruption control guidelines* - which were developed partly in response to the research findings that fraud was the type of misconduct nominated as potentially the most damaging, but that only 26 percent of agencies had fraud control plans in place;
- *Cyber traps: an overview of crime, misconduct and security risks in the cyber environment* - a publication addressing the emerging risks associated with communication technology; and
- *Facing the facts: a CMC guide to dealing with allegations of official misconduct in public sector agencies* - a guide to assist public sector agencies respond to reports of misconduct arising within their own agency, which was an area identified by many agencies as an area of risk.

Survey results are also being used:

- to assess the capacity of particular agencies to prevent or to deal with misconduct.
- to assist CMC staff attending regional visits to determine what assistance, if any, they can provide to those particular agencies; and
- in conjunction with complaints trend analysis, to prepare briefing papers for meetings with senior management of public sector agencies.

The profiling surveys conducted by both the CMC and the Independent Commission Against Corruption have since been replicated by the Crime and Corruption Commission of Western Australia. The CMC and the Independent Commission Against Corruption propose to repeat the survey in their respective jurisdictions in 2006-2007.²⁵⁴

Public perceptions of the public service

Since 1991 the CMC has conducted six state-wide surveys to assess public perceptions of the QPS. Since 1999 the CMC has also included sections in the survey to assess public perception of public sector employees and local government.²⁵⁵

The latest survey was conducted in 2005, and the survey data is currently being assessed by the CMC to identify current attitudes and identify trends over time.

Whistling while they work

The CMC is currently involved in a substantial three year project researching best practice in whistleblower policy, practices and management. The project, *Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations*, involves the

²⁵³ CMC submission, page 77.

²⁵⁴ CMC submission, page 78.

²⁵⁵ Ibid, page 78.

participation of fourteen integrity-related organisations across Australia. The project is scheduled for completion by June 2008.²⁵⁶

8.8. Capacity building - local government

In recent times, the CMC has increasingly focused on local government in its efforts to improve the integrity of the public sector.²⁵⁷ The CMC has devoted considerable resources into strategies directed specifically to the local government sector, including:

- provision of Councillor Information Kits containing misconduct prevention advisory brochures on key local government issues;
- development of a module of *Facing the Facts* to deal specifically with issues affecting local government;
- specialised advisory and resource support, covering areas such as:
 - gifts and benefits;
 - whistleblowing and misconduct reporting systems;
 - purchasing and procurement policies and procedures;
 - conflicts of interest;
 - development and revision of Codes of Conduct;
 - misconduct prevention strategies;
 - fraud and corruption prevention and control;
 - ethical decision-making training;
 - disposal of assets; and
 - regulatory risks.
- close cooperation with the Department of Local Government, Sport and Recreation in the development of a model code of conduct for councillors and the provision of a training program to assist local governments meet relevant statutory requirements;
- formal and informal liaison activities, such as targeted presentations and training (in areas such as corporate governance, risk management, fraud and corruption control);
- regular public attitude surveys which assess the views of Queenslanders about Government employees working for town, city or shire councils (excluding state public service employees and police officers);
- other local government research, following the identification of misconduct trends and key areas of risk in the local government sector through analysis of CMC complaints; and
- a proposal for a specific project to address the issue of frivolous and vexatious complaints about local government and their impact, particularly on small communities.

8.8.1. Indigenous liaison

The CMC reports that a small, but significant, number of the complaints it receives relate to Indigenous people.²⁵⁸ These complaints fall into two main categories:

²⁵⁶ CMC submission, page 78.

²⁵⁷ CMC submission, page 79.

²⁵⁸ CMC Annual Report, 2004-05, page 36.

1. complaints arising from interactions between Indigenous people and police; and
2. complaints of financial mismanagement or fraud in Indigenous councils or agencies.

The CMC believes that as an independent body it is well placed to act as a link between the Indigenous communities and police and to work with Indigenous peoples' needs and concerns regarding criminal justice and good governance. In this regard, the CMC advise they have maintained a deliberate strategy of employing Indigenous liaison and complaints officers.

The CMC also advise that it is conducting a strategic review of its liaison with Indigenous communities to ensure a more effective forum for free exchange of information, ideas and concerns.

In its submission to the PCMC²⁵⁹, the CMC advises that capacity building for Indigenous councils, both to prevent and deal with misconduct, continues to be a focus for the CMC. In this regard, CMC Indigenous liaison and education officers have recently completed a program of training in good governance (including code of conduct training) for Aboriginal councils across Queensland and the Torres Strait Islands.

The CMC is coordinating quarterly meetings with key agencies, including the Queensland Ombudsman, Queensland Audit Office, Department of Aboriginal and Torres Strait Islander Policy, the DLGPSR, and the Departments of the Premier and Cabinet, involved in improving the governance of Aboriginal and Torres Strait Island communities. Meetings are focussed on sharing information on current projects, identifying opportunities for collaboration and coordinating the range of different training and capacity-building initiatives.

As noted previously, the CMC undertook a review of its engagement strategy with the Indigenous community. In its submission to the PCMC the CMC advised that as part of its review as part the CMC's Indigenous Consultative Committee was disbanded, with its work replaced by the following comprehensive range of strategies²⁶⁰:

- regional visits;
- community liaison by the CMC's Indigenous Liaison Officers;
- CMC representation at NAIDOC;
- CMC Liaison Officer meetings;
- across-Government Indigenous Governance Committee;
- attendance at the Indigenous Police Review and Reference Group;
- attendance at the Community Consultative Committee for Justice Entry Program;
- attendance at the Brisbane Indigenous Employment Coordinators Network meeting;
- informal contacts with the Cultural Advisory Unit at the QPS; and
- the maintenance of informal contacts with key members of the Indigenous community by the CMC's Indigenous Liaison Officers and Indigenous Complaints Officers.

8.9. Interaction between the Crime and Misconduct Commission and the Queensland Police Service

In its submission to the Committee's review, the QPS stated²⁶¹:

²⁵⁹ CMC submission, page 82.

²⁶⁰ CMC submission, page 83.

²⁶¹ Queensland Police Service submission, page 3.

The Service is cognisant of the CMC's complementary role in preventing and investigating major crime with the CMC and State Operations Command sharing a positive working relationship. A number of investigations have been enhanced through joint efforts and access to coercive hearings. The Ethical Standards Command's investigative and intelligence areas have also benefited from information and intelligence sharing.

Occasionally the issue of duplication of effort still arises, however, the inclusion of the CMC on the Operations Management Board is designed to address this issue.

In its submission, the QPS also advised:

The QPS attends the CMC's Departmental Liaison Officer forums and meets weekly with officers from the CMC. The Service endorses the role of the CMC in terms of capacity building. The benefits already achieved within the QPS in creating an atmosphere of accountability and transparency are testament to the assistance provided by the CMC in that regard.

The Committee believes that the independent monitoring and evaluation external to the QPS is essential. The CMC plays a vital role in providing independent research into issues affecting the QPS. There remains a need for ongoing and independent research to be undertaken in relation to capacity building and prevention of misconduct within the QPS. There is considerable value in collaborative research being undertaken by the CMC and the QPS in appropriate areas to maximise the use of available resources and efficiency.

8.10. Appropriate scope of the research function of the Crime and Misconduct Commission

Section 52 of the CMA grants the CMC the power to undertake research to support the proper performance of its functions. This includes research into the incidence and prevention of criminal activity.

Section 52(1)(c) provides that the CMC can undertake:

... research into any other matter relating to the administration of criminal justice or relating to misconduct referred to the commission by the Minister.

In its submission to the Committee's review, the QPS stated²⁶²:

At times the Queensland Police Service has been of the view that some CJC/CMC research publications and associated recommendations have not fully recognised either budgetary and resource considerations or the work done by the Queensland Police Service in a particular area.

This is overall not of great concern... the CMC Research Division continue[s] to take on projects that have significant practical relevance to the Service and that take into account the financial constraints under which the Service operates.

The Service continues to work in collaboration with the CMC on projects where appropriate. Latter-day projects undertaken by the CMC such as the "Predictors of Complaints against Police" and "Attrition from the Service (Project Barossa): Building the case for early warning systems" are relevant to good governance of the Service and provide useful reference points for the formulation of internal management policies and procedures. In all,

²⁶² Queensland Police Service submission, page 6.

the Research Division is well regarded for its capacity to provide sound and well based advice and assistance to the Service.

In relation to the overall performance of the CMC, the QPS submission went on to say:

Many Police Officers today in the Queensland Police Service have no memory of the Fitzgerald Inquiry. It is essential that the gains made are not eroded by slippage. The CMC has a vital role to play in that regard ... the CMC is an essential unit within the Queensland public sector environment.

8.10.1. Conclusion

The Committee considers that the research powers given to the CMC under the CMA are appropriate and the current scope of research opportunities available to the CMC is suitably extensive and relevant to the functions it performs.

The Committee notes that the CMC consistently produces impressive research that significantly aids a better understanding of law and justice issues in Queensland. It is crucial that the CMC be able to continue to produce the type of research that it does.

The Committee supports the present research and prevention roles of the CMC in servicing the needs both of the CMC and of the broader criminal justice system.

9. WITNESS PROTECTION

9.1. Introduction

The CMC offers Queensland's only witness protection service. Witness protection is an essential component of the Queensland criminal justice system and provides an environment that encourages people in danger to come forward and assist law enforcement agencies.

The Witness Protection program offers services to people who are in need of protection because they have assisted a law enforcement agency or because they are closely associated with a person who has provided such assistance. These people might be witnesses in a court proceeding or might have otherwise helped in some way. Witness protection services can include providing court security or close personal protection, and helping witnesses secure a safe location on a temporary or permanent basis.²⁶³

Queensland's Witness Protection program commenced in August 1987 during the Fitzgerald Commission of Inquiry when it became necessary to protect several important witnesses who were to give direct evidence of crime and corruption at the Inquiry. Before this, Queensland, like other Australian States, had no formal Witness Protection program and no witness protection legislation.

Since the Fitzgerald Inquiry, the Witness Protection function has been within the CJC and now the CMC. The Witness Protection Unit has protected 1255 people (303 since the formation of the CMC on 1 January 2002).²⁶⁴

9.2. The Witness Protection Act 2000

The *Witness Protection Act 2000* (Qld) (WPA) commenced on 9 March 2001. In summary, the Act:

- specifies criteria for the Chairperson of the CMC to consider before accepting a person into the program²⁶⁵;
- sets out the conditions pursuant to which protection is offered and maintained, including a requirement that a witness accepted into the program sign a protection agreement²⁶⁶;
- provides for interim protection to be offered while consideration of an application for full protection takes place²⁶⁷;
- sets out the circumstances in which variation, termination or suspension of a protection agreement may occur²⁶⁸;
- provides for the identity of a witness to be changed, by allowing for the creation of a new birth certificate²⁶⁹;
- provides a statutory basis for arrangements with witness protection authorities in other jurisdictions²⁷⁰;
- provides for witness anonymity in a proceeding where a protected witness or former protected witness who has been given a new identity is or may be required to give evidence²⁷¹;

²⁶³ CMC submission, page 104.

²⁶⁴ CMC, *Annual Report 2004-2005*, page 48.

²⁶⁵ WPA section 6.

²⁶⁶ WPA sections 7 and 8.

²⁶⁷ WPA section 9.

²⁶⁸ WPA sections 10 to 14.

²⁶⁹ WPA Part 3, Division 1.

²⁷⁰ WPA sections 40-43.

- creates various offences, including an offence for a person to disclose information about the program or a witness²⁷²; and
- makes provision for dealing with the rights and obligations of protected witnesses.²⁷³

Decisions made by the Chairperson under the WPA are exempt from the operation of the *Judicial Review Act 1991*.²⁷⁴

9.2.1. Recent legislative amendments

Since the last review, amendments to the WPA have been enacted to provide for an assumed identity for witness protection officers. There is now provision for the Chairperson (of the Witness Protection Advisory Committee) to authorise a witness protection officer to use a new identity for the proper administration of the program or to ensure the officer's safety while administering the program.²⁷⁵

The *Crime and Misconduct and other Legislation Amendment Act 2006*, passed by Parliament on 11 August 2006, contains a number of amendments to the WPA. Many of the amendments are in response to recommendations made in the 5th PCMC's Three Year Review of the CMC. The amendments strengthen the witness protection powers through the following new provisions:

- The CMC is now able to enter into short-term witness protection arrangements, with streamlined approvals processes. Such arrangements will be used where temporary protection of a person is needed at short notice for court and other public appearances.
- The CMC has power to suspend or end a protection agreement where the conduct of the protected witness is a threat to the integrity of the program.
- It is an offence for a person to, without authority, knowingly disclose or record information about a relevant person if the information compromises the security of that person or the integrity of the program.
- When the CMC requires documents or items to assist a protected person or the integrity of the Witness Protection program, it will be able to partially conceal the reason why the information is required when serving notices for the production of the document or items. Typically this will be used when requiring information from, for example, a bank to help determine a person's location and to maintain the protected person's safety.
- A person on interim or short term protection arrangements has the same rights and obligations as a person in the Witness Protection program.

9.2.2. National Witness Protection Program

The Federal Government's *Witness Protection Act 1994* implemented the National Witness Protection Program and a scheme of complementary witness protection legislation. State legislation complementary to the Federal scheme is required before Federal Government agencies can provide important Commonwealth identity documents, such as passports and tax file numbers to State protected witnesses. Complementary legislation is also required to make arrangements with witness protection agencies based in other States and Territories.²⁷⁶

²⁷¹ WPA Part 3, Division 2.

²⁷² WPA sections 36-38.

²⁷³ WPA sections 29-31.

²⁷⁴ *Judicial Review Act 1991*, Schedule 2.

²⁷⁵ WPA section 20A.

²⁷⁶ WPA sections 40 and 41.

Queensland's witness protection legislation has been declared as complementary by all States and Territories, other than the Australian Capital Territory and the Northern Territory. Where there has not been complementary legislation, the CMC has continued to cooperate with appropriate interstate authorities and develop reciprocal arrangements with them.

The CMC has been declared as an approved authority to carry out the witness protection functions under the national scheme by all States and Territories other than the Australian Capital Territory, the Northern Territory, Victoria and Western Australia. Further amendments are being sought to the *Witness Protection Act* to have Victoria's Office of Police Integrity and Western Australia's Crime and Corruption Commission also named as approved authorities under the Act.²⁷⁷

9.2.3. Giving evidence under a new identity

According to the CMC, an issue has arisen where a witness who has been assessed as requiring a new identity arguably commits an offence of perjury if they give evidence to a court in their former name and not in their re-identified name.²⁷⁸

The CMC believes that this situation can be resolved through application to the court and making a claim of public interest immunity. The CMC Research and Prevention unit is currently conducting research to determine the ways in which Witness Protection Units in other jurisdictions handle this issue; however it is anticipated that an amendment to the WPA will be sought in the future.

9.3. Structure of the Witness Protection Unit

The Witness Protection Advisory Committee assists the CMC Chairperson and the Director, Witness Protection and Operations Support. The Director of the WPU, who is an Assistant Commissioner of the QPS, chairs the Witness Protection Advisory Committee. The primary objectives of the Committee are to make assessments and provide strategic advice and recommendations to the Chairperson and/or the WPU.

The functions of the Witness Protection Advisory Committee include²⁷⁹:

- making assessments, evaluations, recommendations and directions in respect of:
 1. applications for interim protection;
 2. applications for protection;
 3. applications for new identity;
 4. withdrawals from witness protection; and
 5. Other matters of significance relating to witness protection.
- advising and making recommendations to the CMC Chairperson on issues relating to witness protection;
- providing guidance and direction to the WPU; and
- authorising financial or other arrangements in particular instances where a protectee withdraws from witness protection.

WPU positions are primarily filled by QPS officers. The day-to-day operations of the WPU are supervised by the Officer-in-Charge, who is a Detective Inspector of the QPS.

²⁷⁷ CMC submission, page 106.

²⁷⁸ CMC submission, page 106.

²⁷⁹ CMC submission, page 105.

9.4. Admission to the Witness Protection program

Prior to admission to the Witness Protection program, a threat assessment is conducted to determine whether the person fulfils certain eligibility criteria, that is, whether the Chairperson considers that the person needs protection from danger that arises because²⁸⁰:

- either the person has helped a law-enforcement agency, such as the CMC or the QPS, in the performance of its duties, or the person has a relationship or association with such a person; and
- it is appropriate to include the person in the program.

It is not only CMC witnesses that are given access to the CMC's Witness Protection program. Witnesses assisting other law enforcement agencies, including interstate agencies, are referred to the WPU. The majority of protected witnesses are referred to the CMC by the QPS.

It may take up to eight weeks for a person to be formally admitted to the program, but interim protection is usually offered within two days of an application being received, or immediately if necessary.²⁸¹

9.5. Activities of the Witness Protection Unit since the last Three Year Review

The following table summarises statistics sourced from the Annual Reports of the CMC relating to the years 2002-2003, 2003-2004 and 2004-2005.²⁸²

Activities	2002-2003	2003-2004	2004-2005
Referrals	190	143	156
Offers of witness protection accepted	94	52	70
Provided support and protection	141 persons in 68 operations	121 persons in 55 operations	115 persons in 61 operations
Concluded protection arrangements	74 persons in 37 operations		
Threat assessments conducted	126	78	76
Court security provided	61 persons	44 persons	41 persons

The CMC states that since its establishment, the WPU has continued to maintain a 100 per cent success rate in protecting witnesses. The Committee considers this to be the most important, though not the only, measure of the effectiveness of the unit.

9.6. WPU officer training – Witness Protection course

The CMC's Witness Protection course is now registered as an Advanced Diploma in Witness Protection through the Department of Education and Training. This is the first nationally accredited police course awarded such standing.²⁸³ In March 2004 the Australasian Heads of Witness Protection Conference

²⁸⁰ WPA section 6.

²⁸¹ CMC Annual Report, 2004-05, page 49.

²⁸² CJC Annual Report, 2002-03, pages 51-52; CMC Annual Report, 2004-05, page 50.

²⁸³ CMC Annual Report, 2004-05, page 51.

resolved that the CMC continue to be the lead agency in witness protection training and that, subject to approval, a national course be conducted in Queensland in 2004.

The inaugural four-week National Witness Protection course was held in November 2004 with participants from the United States, Northern Ireland and New Zealand completing the Advanced Diploma in Public Safety (Police – Witness Protection). CMC training is also in demand from other Australian police agencies, with 37 police officers from throughout the nation completing the course.

In 2005, the diploma was awarded to 14 WPU officers in recognition of the particular skills required in the performance of their duties.²⁸⁴

All staff of the WPU are progressing towards the diploma, the awarding of which will confirm that members of the unit are trained to the nationally recognised best-practice standards.²⁸⁵

9.7. Marketing the Witness Protection Unit

In its Annual Report for 2004-2005, the CMC states that its officers have conducted proactive marketing and information sessions with investigators, managers and training staff in different police regions about the witness protection program. The CMC believes that this process has created greater understanding of the benefits of the program and the role of the CMC in providing witness protection.

The CMC also continues to develop relationships in the national context, through liaison with other witness protection agencies in state and federal jurisdictions. The CMC states in its Annual Report 2004-2005 that it will continue to deliver education and awareness and marketing sessions to client agencies throughout Queensland to promote the existence of the WPU and the services it provides.²⁸⁶

9.8. Location and staffing of the Witness Protection Unit

9.8.1. Whether the WPU should remain located within the CMC

The Fitzgerald Report envisaged that witness protection would be undertaken by a body separate from the rest of the police service, staffed at least in part by police officers. The model prescribed that those responsible for witness protection should not be answerable to any police office, and that police officers responsible for witness protection should be answerable only to their superiors in the witness protection unit.²⁸⁷ The Queensland Witness Protection program is located within the CMC and is external to the QPS. Federally, the Commissioner of the Australian Federal Police administers the program. In the other states the Witness Protection program is located within the police service.

The Committee received no submissions concerning the location of the WPU. It can be seen that one of the major clients of the WPU is the QPS. Police Commissioner Bob Atkinson informed the Committee²⁸⁸:

The [Queensland Police] Service's experience with the witness protection area of the CMC has been and continues to be extremely positive.

The Committee is of the opinion that it is appropriately located within the CMC.

²⁸⁴ CMC submission, page 107.

²⁸⁵ CMC Annual Report, 2004-05, page 51.

²⁸⁶ CMC Annual Report, 2004-05, page 53.

²⁸⁷ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner GE Fitzgerald QC), 1989, page 319.

²⁸⁸ Queensland Police Service submission, page 5.

9.8.2. Staffing of the Witness Protection Unit

The WPU is staffed primarily by police officers. This is consistent with the model favoured by Commissioner Fitzgerald, who noted that the skills and training essential for witness protection officers in order to deal with the physical and psychological demands of witness protection were those usually held by police officers.

The 4th PCJC noted that staffing of the unit by police had caused concern, in that one of the main arguments for maintaining a Witness Protection program separate from the police force is to separate the protection and investigation functions.²⁸⁹ That Committee noted however that in practice, police staffing of the unit appeared to have presented few, if any, problems and that it was virtually impossible to suggest an alternative source of personnel with the necessary skills.

The Committee continues to consider that it is appropriate that police officers staff the WPU as they have the necessary skills and training required for effective witness protection. The Committee further considers that, as long as appropriate officers are selected for appointment to the WPU, potential problems from not separating the investigation and witness protection functions should not arise.

9.9. Accountability of the Witness Protection Unit

One issue the Committee has been constantly mindful of in its statutory role is how it should monitor the discharge of the functions of the WPU, given the highly protected nature of the unit's operations.

Statistics, which are regularly provided to the Committee by the CMC, are a valuable tool. The Committee also believes that the effectiveness of the WPU can be gauged by monitoring complaints that are made about it, either from those whose applications for protection have been denied or those who have experienced problems while on the program.

The Committee also notes the ability of the Parliamentary Commissioner to examine operationally sensitive areas such as witness protection where accountability is necessary for the Committee to fully discharge its role but can be difficult to facilitate in practice because of the sensitive nature of the material.

The WPU, as part of the CMC, is accountable to the Committee. The Committee considers that the restrictions placed on its ability to access operational information relating to witness protection does not unduly hinder its oversight role, particularly given that it can refer concerns to the Parliamentary Commissioner for investigation. As noted, the *Judicial Review Act 1991* specifically excludes recourse to judicial review of decisions relating to witness protection.²⁹⁰ The reason for this is the importance of maintaining the integrity of the Witness Protection program.

The Committee believes that the appropriate means of review is the PCMC, with the assistance if necessary of the Parliamentary Commissioner.

9.10. Memorandum of understanding with the Registrar-General of Births, Deaths and Marriages

As stated in the CMC's Annual Report 2002-2003, there is a memorandum of understanding between the CMC and the Registrar-General of Births, Deaths and Marriages to facilitate new identities for protected witnesses.

²⁸⁹ 4th PCJC, Three Yearly Review of the CJC, report 55, page 158.

²⁹⁰ *Judicial Review Act 1991* section 18(2)(b).

9.11. Research to examine procedures for new identities

In July 2005 a joint project of the CMC's Witness Protection Unit and its Research and Prevention area was initiated, to review how other law enforcement jurisdictions manage the issuing of new identities for protected witnesses.²⁹¹

The project is focussing on three key areas:

- how law enforcement agencies conduct the process of giving someone a new identity (from initial contact to finalisation of a new identity);
- how law enforcement agencies ensure that the re-identified witness meets their responsibilities (e.g. outstanding debts, family responsibilities, criminal histories); and
- how law enforcement agencies discharge their duty of care to the community, particularly in regard to re-identifying a witness who has a criminal background or who may be at risk of committing an offence.

A report with recommendations will be furnished upon completion of the project.

²⁹¹ CMC submission, page 107.

10. WHISTLEBLOWER SUPPORT

10.1. Introduction

Internal reporting of suspected misconduct and maladministration is essential to the integrity of the Queensland Public Sector. During the Fitzgerald Inquiry it was recognised that there was a need for adequate protections to be established to encourage honest public officials to come forward (without fear of retribution) to disclose information about maladministration and misconduct. To this end, Fitzgerald QC urged legislation be introduced prohibiting any person from penalising any other person for making public statements about misconduct, inefficiency and other problems within public instrumentalities.²⁹²

The *Whistleblowers Protection Act 1994* was subsequently enacted to promote the public interest by protecting persons who disclose:

- unlawful, negligent or improper conduct affecting the public sector;
- danger to public health or safety; and
- danger to the environment.²⁹³

The *Whistleblowers Protection Act 1994* is administered by the Office of the Public Service Commissioner (OPSC) formerly known as the Office of Public Sector Merit and Equity (OPSME). The OPSC is responsible for providing advice and guidance to public sector agencies and officers, and to private citizens about their rights and obligations under the *Whistleblowers Protection Act 1994*. The CMC, along with a number of other agencies such as the Ombudsman's office, also provides advice and assistance to whistleblowers and may receive public interest disclosures (PIDs) about official misconduct.

This chapter examines the CMC's role in respect of whistleblower protection and the adequacy of the current whistleblower protection scheme in Queensland.

10.2. The *Whistleblowers Protection Act 1994*

The *Whistleblowers Protection Act 1994* gives protection to people who make a 'public interest disclosure'. A public interest disclosure by a public officer may be about conduct that is:

- official misconduct;
- maladministration that substantially and adversely affects someone's interests;
- negligent or improper management involving a substantial waste of public funds; or
- a substantial and specific danger to public health or safety or the environment.²⁹⁴

Further, anyone, irrespective of whether or not they are a public officer, may make a public interest disclosure about:

- a substantial and specific danger to the health or safety of a person with a disability;²⁹⁵
- an offence or contravention of certain conditions imposed under legislation, that is or would be a substantial and specific danger to the environment;²⁹⁶ and
- a reprisal taken against anybody for making a public interest disclosure.²⁹⁷

²⁹² Fitzgerald Report, page 134.

²⁹³ Section 3 of the *Whistleblowers Protection Act 1994*.

²⁹⁴ Sections 15, 16, 17 and 18 of the *Whistleblowers Protection Act 1994*.

²⁹⁵ Section 19(1)(a) of the *Whistleblowers Protection Act 1994*.

²⁹⁶ Sections 19(1)(b) and 19(1)(c) of the *Whistleblowers Protection Act 1994*.

Part 4 of the *Whistleblowers Protection Act 1994* provides that disclosures must be made to ‘appropriate entities’. A public sector entity is an ‘appropriate entity’ to receive a public interest disclosure if:

- the disclosure is about the conduct of the entity or its officers;
- the entity may investigate the matter; or
- the disclosure is appropriately referred by another public sector entity.²⁹⁸

The CMC is an appropriate entity to receive public interest disclosures about official misconduct.

The *Whistleblowers Protection Act 1994* provides that a person is not liable civilly, criminally or under an administrative process for making a public interest disclosure.²⁹⁹ Furthermore, it prohibits reprisals (i.e. detrimental action) against a person because they have made, or may make, a public interest disclosure.³⁰⁰

Public sector entities are required to establish reasonable procedures to protect their officers from reprisals that may be taken against them by the entity or officers of the entity.³⁰¹ A person who is suffering, or may suffer a reprisal, may apply to the Industrial Commission or Supreme Court for an injunction.³⁰² In circumstances where an alleged or suspected reprisal amounts to official misconduct by the holder of an appointment in a unit of public administration, or involves a QPS officer, the CMC may investigate the alleged or suspected reprisal and where necessary, apply for an injunction on the public officer’s behalf.³⁰³

As can be seen from the foregoing provisions, the *Whistleblowers Protection Act 1994* does not establish a centralised system by which one agency or authority is responsible for protecting whistleblowers in Queensland. Essentially each public sector entity has responsibility for receiving public interest disclosures about the conduct of its officers, managing the disclosure process and taking steps to protect its officers from reprisals.

10.3. The Crime and Misconduct Commission’s role

The CMC is one of a number of agencies that provides advice and support to whistleblowers. The CMC’s Senior Complaints Officer performs the role of:

- advising people who are considering disclosing suspected official misconduct within the Queensland public sector and misconduct within the QPS;
- explaining the forms of protection offered to whistleblowers by the CMA and the *Whistleblowers Protection Act 1994*; and
- explaining the CMC’s complaints process.

In the event that a person who provides information to the CMC raises the issue of being a whistleblower with the CMC, the matter is assessed to determine whether the person is a whistleblower to which the protections in the *Whistleblowers Protection Act 1994* may apply.

In addition to the provisions in the *Whistleblowers Protection Act 1994*, including the CMC’s power to investigate alleged or suspected reprisals and apply for injunctions on behalf of public sector officers, the

²⁹⁷ Section 20 of the *Whistleblowers Protection Act 1994*.

²⁹⁸ Section 27(1) of the *Whistleblowers Protection Act 1994*.

²⁹⁹ Section 39 of the *Whistleblowers Protection Act 1994*.

³⁰⁰ Section 41 of the *Whistleblowers Protection Act 1994*.

³⁰¹ Section 44 of the *Whistleblowers Protection Act 1994*.

³⁰² Sections 47 and 48 of the *Whistleblowers Protection Act 1994*.

³⁰³ Sections 47, 48 and 57 of the *Whistleblowers Protection Act 1994*.

CMA contains a number of provisions relevant to the protection of ‘whistleblowers’. Section 212 of the CMA makes it an offence to victimise a person because they or someone else gave evidence to, or helped, the CMC in the performance of its functions. Further the CMC is empowered to:

- provide witness protection where a person’s safety is at risk or they may be subject to intimidation or harassment because of assisting the CMC;³⁰⁴ and
- apply to the Supreme Court for an injunction to restrain conduct or proposed conduct that would constitute victimisation.³⁰⁵

The following tables record public interest disclosures received by the CMC in 2003-04 and 2004-05.³⁰⁶

Analysis of public interest disclosures received by the CMC 2003-04

Section of Whistleblowers Protection Act	Verified by CMC	Not verified by CMC	Referred to other agency	Under consideration by CMC	Total referred and not verified	Total referred and verified	Totals
15: Public officer complaining of official misconduct		54	184*	33	84	32	387
16: Public officer complaining of maladministration		3	1*		2		6
17: Public officer complaining of improper management				11	1		12
18: Public officer complaining re health/environment matter							Nil
19: Any person complaining re public health or safety matter							Nil
20: Any person complaining re reprisal		3	19*		2		24
TOTALS		60	204*	44	89	32	429

Note: There were 132 complaints received, comprising 429 allegations. This table details the status of the allegations.
* The outcomes of the allegations in this category may not be known at this stage.

Analysis of public interest disclosures received by the CMC 2004-05

Section of Whistleblowers Protection Act	Verified by CMC	Not verified by CMC	Referred to other agency	Under consideration by CMC	Total referred and not verified	Total referred and verified	Totals
15: Public officer complaining of official misconduct		44	134*	31	57	15	281
16: Public officer complaining of maladministration			5*	5			10
17: Public officer complaining of improper management		1	2*				3
18: Public officer complaining re health/environment matter							
19: Any person complaining re public health or safety matter					2		2
20: Any person complaining re reprisal		8	19*	37	5	3	72
TOTALS		53	160*	73	64	18	368

Note: There were 93 complaints received, comprising 368 allegations. This table details the status of the allegations.
*The outcomes of the allegations in this category may not be known at this stage.

³⁰⁴ Section 338 of the CMA.

³⁰⁵ Section 344 of the CMA.

³⁰⁶ CMC Annual Report, 2003-04, page 78 and CMC Annual Report, 2004-05, page 76.

10.3.1. Capacity building and research

In 2005 the CMC released a Building Capacity paper entitled *Speaking Up: Creating positive reporting climates in the Queensland public sector*³⁰⁷ which discussed the key factors within organisations which shape the attitudes to misconduct reporting and identified six key ingredients that can improve the reporting climate in public sector organisations.

This paper gives an introduction to the schemes covering public interest disclosures in Queensland. It is based on six key factors for managers to consider in determining the health of their organisation's reporting climate. These six factors are:

1. obligation to report ('It's my job to report my concerns')
2. clear understanding of internal witness roles ('I can report without getting tagged as a troublemaker')
3. good internal investigation systems ('I can trust the agency to investigate this quickly, fairly and accurately.')
4. internal witness support strategies ('My managers will take steps to see I don't suffer unnecessarily.')
5. responsiveness to reprisals ('If anyone undertook a reprisal, they'd be in trouble.')
6. recognition ('The agency will thank me in the end.')

Building on this research, the CMC is now a participant in a three-year project involving a team of national researchers from five universities (lead by Griffith University's Dr A. J. Brown) to investigate public interest disclosures (whistleblowing) in the public sector.

The initial catalyst for the project was a discussion paper published by Griffith University's Key Centre for Law, Integrity, Ethics and Governance in 2004 *Building positive reporting climates in the Queensland public sector: five current problems*. This led to discussions between the centre and the CMC, which resulted in the decision to develop an in-depth research project into best practice in whistleblower policy, practices and management in the public sector.

The project later expanded to include 16 integrity-related organisations throughout Australia and was successful in obtaining Australian Research Council supplementary funding for a substantial three-year research project with the working title '*Whistling while they work: enhancing the theory and practice of internal witness management in public sector organisations*'.

Research includes extensive surveys into the experience of public sector whistleblowers in the participating jurisdictions, the ways in which managers handle internal disclosures, the institutional supports used by public agencies to manage whistleblowing-related conflicts and opportunities for law reform.

The survey was showcased at the CMC's Liaison Officers meeting in September 2005.

The CMC e-newsletter dated March 2006, '*Whistling while they work: an update*' advised that interim results of the very first survey of public sector agencies across Australia on the topic of whistleblowing were being analysed by Griffith University's Key Centre for Law, Integrity, Ethics and Governance.

10.4. Adequacy of the Queensland whistleblower protection system

The 4th PCJC in its Three Year Review noted that while the whistleblower protection scheme imposes legislative obligations on public sector agencies to deal effectively with public interest disclosures and to

³⁰⁷ CMC Building Capacity Series, Number 6, December 2004 (AJ Brown, Douglas Magendanz and Coral Leary).

protect whistleblowers from reprisals, a lack of commitment to the fundamental object of the *Whistleblowers Protection Act 1994*, within an organisation would render the legislation ineffective.³⁰⁸

The 4th PCJC concluded that there was a gap in the oversight and coordination of whistleblower support across the public sector with no single body charged with responsibility for supervising whistleblower support programs in public sector agencies.³⁰⁹ The 4th PCJC recommended that the Government give consideration to a full review of whistleblower protection in Queensland and the *Whistleblowers Protection Act 1994* including a review of:

- the roles of the CJC and the OPSME;
- the need for an oversight body and an inter-agency committee;
- training and support of public sector managers and other public sector employees;
- research needs in the area of whistleblower protection; and
- reporting to Parliament on whistleblower protection.³¹⁰

The 5th PCJC noted that such a review had not been undertaken at the time of their Three Year Review and agreed that whistleblower protection in Queensland remained in need of examination and review by the Government. The Committee considered that the broader concerns such as oversight and coordination of whistleblower support across the public sector remained an issue and recommended the following³¹¹:

The Committee recommends that the Government give consideration to a full review of whistleblower protection in Queensland and the Whistleblowers Protection Act 1994 in accordance with the recommendations of the 4th PCJC in Report No. 55.

10.4.1. CMC – Supplementary Submission (Review of Whistleblowers Protection Act)

The CMC notes in its supplementary submission to the Three Year Review that, since December 2004, it had been represented on a reference committee formed to consider certain aspects of the *Whistleblowers Protection Act 1994*. This committee comprised officers from the CMC, OPSME, Office of the Ombudsman and Department of the Premier and Cabinet and was formed in response to recommendation 43 of Report No. 64, *Three Year Review of the Crime and Misconduct Commission*.

The CMC advised in its supplementary submission that³¹²:

The government's response to the recommendation stated that it would conduct a whole-of-government review of the experience of public sector agencies in relation to the operation of the Act, and make any necessary amendments in light of the review.

A draft report was prepared in 2005, but finalisation of the report was delayed because it was considered likely that relevant whistleblower issues might be canvassed during the Bundaberg Hospital commission of Inquiry and the Queensland Health Systems Review. The working group was re-formed in March 2006 and it prepared a report that took into account issues raised in the two external inquiries in relation to whistleblowing. It is expected that the report will be provided to Cabinet for consideration shortly.

³⁰⁸ 4th PCJC, Three Year Review, pages 141-142.

³⁰⁹ Ibid, pages 150 and 142.

³¹⁰ Ibid, page 151.

³¹¹ Recommendation 43, 5th PCMC, Three Year Review, page 100.

³¹² CMC supplementary submission, page 5.

10.4.2. Ombudsman's Submission

Mr David Bevan, Queensland Ombudsman, in his submission to the current Three Year Review also noted that the Public Service Commissioner has established a committee to review the *Witness Protection Act 1994*. This has been done in response to recommendation 43 of the previous committee's *Report No. 64, Three Year Review of the Crime and Misconduct Commission*.

Mr Bevan states³¹³:

... In my submissions to the three inquiries arising from problems at the Bundaberg Hospital, I have argued that the current decentralised whistleblowing model, whereby the recognition, investigation and resolution of a public interest disclosure (PID) can be handled totally within the agency whose officers are the subject of the PID, needs to be modified.

In summary, my recommendations to these inquiries were that:

- 1. PIDs received by an agency, other than those involving official misconduct, should be referred to the Ombudsman in the first instance (under similar arrangements to those whereby PIDs involving official misconduct are referred to the CMC); and*
- 2. The Ombudsman would either investigate the disclosure or refer it back to the agency to conduct the investigation, which the Ombudsman would be empowered to monitor, take over or review (as the CMC is empowered to do with PIDs involving official misconduct).*

Mr Bevan further highlighted that the Honourable Geoff Davies in his report on the Queensland Public Hospitals Commission of Inquiry in November 2005, noted that:

“At present there is no single body charged with overseeing public interest disclosures within the Queensland Public Sector (save where that public interest disclosure involves official misconduct). In my opinion this is a serious shortcoming. As the facts revealed in this Inquiry showed, it was futile to expect Queensland Health to manage public interest disclosures about itself with no external oversight.”

Commissioner Davies adopted Mr Bevan's recommendations for improving whistleblowing in Queensland. In particular, Commissioner Davies recommended that:

- The Queensland Ombudsman be given an oversight role with respect to all public interest disclosures save those involving official misconduct and that all PIDs be referred to the Ombudsman who may then either investigate the disclosure itself, or refer it back to the relevant department for investigation, subject to monitoring by the Ombudsman.*
- The categories of persons who may make a PID protected by the WP Act be expanded in cases involving danger to public health and safety, and negligent or improper management of public funds, to include any person or body.*

Mr Bevan further noted that, although not dealt with in his submission, Commissioner Davies also recommended that:

- Whistleblowers should be able to escalate their complaint in the event that there is no satisfactory action taken by the relevant department within 30 days. If the matter is not resolved in that time to the satisfaction of the Ombudsman, the whistleblower should be able to make a PID to a Member of Parliament.*

³¹³ Ombudman submission, pages 2-4.

- *If disclosure to a Member of Parliament does not result in resolution, to the satisfaction of the Ombudsman, within a further 30 days, the whistleblower should be entitled to make a further PID to the media.*

It was also noted by Mr Bevan that in December 2005 the Government announced that it would amend the *Whistleblowers Protection Act 1994* to allow protected disclosures to be made to Members of Parliament.

Mr Bevan proposes a scheme which involves:

- the CMC and the Ombudsman sharing responsibility for ensuring that agencies are appropriately administering their responsibilities under the *Whistleblowers Protection Act 1994* so that the purposes of the Act are not defeated by misinterpretations, inconsistent approaches, inadequate investigations or lack of commitment; and
- the CMC, Ombudsman, and the OPSC working together to develop guidelines to assist agencies to properly handle and record details of PIDs.

10.5. Conclusion

Like its predecessor, the Committee believes that there are a number of issues that need to be examined concerning inadequacies of whistleblower protection in Queensland and the *Whistleblowers Protection Act 1994*.

The Committee supports and respectfully adopts the recommendations made by Mr Bevan and by Commissioner Davies, in his report on the Queensland Public Hospitals Commission of Inquiry, which state that:

1. PIDs received by an agency, other than those involving official misconduct, should be referred to the Ombudsman in the first instance and the Ombudsman would either investigate the disclosure or refer it back to the agency to conduct the investigation (which the Ombudsman would be empowered to monitor, take over or review).
2. The categories of persons who may make a PID protected by the *Whistleblowers Protection Act* be expanded in cases involving danger to public health and safety, and negligent or improper management of public funds, to include any person or body.
3. Whistleblowers should be able to escalate their complaint in the event that there is no satisfactory action taken by the relevant department within 30 days. If the matter is not resolved in that time to the satisfaction of the Ombudsman, the whistleblower should be able to make a PID to a Member of Parliament.
4. If disclosure to a Member of Parliament does not result in resolution, to the satisfaction of the Ombudsman, within a further 30 days, the whistleblower should be entitled to make a further PID to the media.

The Committee further agrees with Commissioner Davies that there is a role for the CMC and Ombudsman, as well as the OPSC in working together to develop guidelines to assist agencies to properly handle and record details of PIDs.

The Committee notes that in response to the recommendation of the last three year review the Government initiated a whole-of Government review of the experience of public sector agencies in relation to the operation of the Act (including relevant whistleblower issues discussed during the Bundaberg Hospital Commission of Inquiry and the Queensland Health Systems Review). No outcomes of that report are yet available.

Recommendation 22

The Committee recommends that Government public interest disclosures received by an agency, other than those involving official misconduct, should be referred to the Ombudsman in the first instance with the Ombudsman either investigating the disclosure or referring it back to the agency to conduct the investigation. The Ombudsman would retain the power to monitor, take over or review the investigation.

Recommendation 23

The Committee recommends that the categories of persons who may make a public interest disclosure protected by the *Whistleblowers Protection Act* be expanded in cases involving danger to public health and safety, and negligent or improper management of public funds, to include any person or body.

Recommendation 24

The Committee recommends that:

- (1) Whistleblowers should be able to escalate their complaint in the event that there is no satisfactory action taken by the relevant department within 30 days. If the matter is not resolved in that time to the satisfaction of the Ombudsman, the whistleblower should be able to make a public interest disclosure to a Member of Parliament; and
- (2) If disclosure to a Member of Parliament does not result in resolution, to the satisfaction of the Ombudsman, within a further 30 days, the whistleblower should be entitled to make a further public interest disclosure to the media.

Recommendation 25

The Committee recommends that the Ombudsman takes the lead role (supported by the CMC) for ensuring that agencies are appropriately administering their responsibilities under the *Whistleblowers Protection Act 1994*.

Recommendation 26

The Committee recommends that the CMC (in conjunction with the Ombudsman and the Office of the Public Service Commissioner) work together to develop guidelines to assist agencies to properly handle and record details of public interest disclosures.

11. CORPORATE SUPPORT AND GOVERNANCE

11.1. Introduction

The CMC as a whole is supported by the Corporate Services function, which encompasses internal and external accountability systems, corporate governance, and financial, administrative, human resource, information management and communication services.

11.2. Corporate Governance

The CMC in its Strategic Plan³¹⁴ states that its corporate governance infrastructure is based on principles of ‘openness, integrity and accountability’. This infrastructure comprises:

- internal accountability structures;
- external accountability and reporting structures;
- legislative compliance structures;
- financial and performance management structures; and
- resource-management practices and structures.

11.3. Internal Accountability

11.3.1. The Commission

The most important internal accountability mechanism is the Commission, comprising the Chairperson and the four part-time Commissioners. The Commission sets CMC corporate policy and strategic direction which in turn is implemented by a number of internal committees.

The Commission meets fortnightly to consider all issues affecting the CMC as a whole. The Assistant Commissioner, Crime, and the Assistant Commissioner, Misconduct, also attend meetings, although they have no voting rights. Meetings primarily revolve around issues relating to the strategic direction of the CMC, however can also cover matters affecting all areas of the organisation such as, financial, staffing and managerial issues, specific crime and misconduct operations, research and intelligence projects, and capacity development and misconduct prevention activities. In its submission to the Three Year Review, the CMC advised that a typical agenda would include:

- examination of the work of the various functional areas from a strategic point of view;
- decisions about whether a draft report should be issued or revised;
- consideration of whether a matter should be referred for prosecution or disciplinary action; and
- discussion of any managerial issues.

The Commission will also hold special meetings if necessary, in person or by telephone, when urgent matters arise.

The CMA requires the Chairperson to be a legal practitioner who has served as, or is qualified for appointment as, a judge of the Supreme Court of any State, the High Court or the Federal Court.³¹⁵ In addition one of the Commissioners must be a practising lawyer with a demonstrated interest in civil

³¹⁴ CMC Strategic Plan, 2006-10, page 22.

³¹⁵ CMA Section 224.

liberties, and one or more of the Commissioners must have qualifications or expertise in public sector management and review, criminology, sociology or research related to crime or crime prevention.³¹⁶

The Commissioners are appointed by the Governor-in-Council for a period of not more than five years.³¹⁷ Nomination for appointment as a Commissioner must have the bipartisan support of the PCMC.³¹⁸

The current Commissioners of the CMC are: Mr Robert Needham (Chairperson), the Honourable Douglas Drummond QC, Ms Julie Cork and Dr David Gow. A vacancy created in December 2005 when Commissioner Suzette Coates was appointed Stipendiary Magistrate was recently filled by the appointment of Ms Ann Gummow.³¹⁹

11.3.2. Internal Committees

As noted in Chapter 2 of this report, the CMC has a comprehensive committee structure to meet corporate governance principles of effective management.

The most significant committee is the Strategic Management Group (SMG) which comprises the Assistant Commissioners and Directors and is chaired by the CEO. The SMG meets fortnightly and also meets regularly with the Commission.

Other committees fall into one of two categories, a Commission committee, which is chaired by a member of the Commission, or an SMG committee, which may be chaired by a member of the CMC staff.

Charters have been developed for each committee which define the roles and responsibilities of the respective committees and their members. At the end of each financial year the performance of each committee is evaluated.

The Commission committees are:

- **Audit Committee.** Provides independent advice to the Commission on determining potential risks to the CMC and where the main audit functions should be directed.
- **Finance Committee.** Assists the Commission by providing high-level advice and expertise with managing the budget process, and ensuring that there are appropriate and effective financial management practices.
- **Information Steering Committee.** Provides advice concerning the development of the CMC's strategic plan for its information systems and information infrastructure.
- **Legislation Committee.** Monitors state and federal changes to legislation and activities that are likely to affect the work of the CMC.

The SMG committees are:

- **Commission Consultative Committee.** Provides an effective forum where employees and senior management can exchange ideas, concerns and points of view.
- **Equal Employment Opportunity Consultative Committee.** Provides advice to management in relation to discrimination and EEO matters, and provides a forum where staff can raise matters of interest and concern.

³¹⁶ CMA Section 225.

³¹⁷ CMA Sections 229 – 231.

³¹⁸ CMA Section 228.

³¹⁹ The appointment of Ms Gummow was approved in August 2006.

- **Risk Management Committee.** Provides advice about robust and effective risk management strategies to ensure that the CMC maintains appropriate fraud minimisation strategies.
- **Workplace Health and Safety Committee.** Monitors the CMC's performance in providing a safe and healthy environment for its employees.

In addition there are a number of operational committees which deal specifically with operational matters. These are:

- Misconduct Operations Review Committee;
- Misconduct Assessment Committee;
- Crime Operational Review Committee;
- Witness Protection Advisory Committee; and
- Crime Intelligence Review Committee.

11.3.3. Internal Audit

The CMC has a part-time internal auditor who is administratively responsible to the Executive Director and reports directly to the Chairperson through the Audit Committee. This function is an integral part of the CMC's corporate governance framework.

Internal audit operates under a formal charter approved by the Commission and its activities are monitored by the Audit Committee. The role of internal audit is to conduct independent audits with a view to helping management achieve sound managerial control. The internal auditor is independent of the Audit Committee but has a standing invitation to attend Audit Committee meetings. The internal auditor liaises regularly with the external auditor (Queensland Audit Office) to ensure there is adequate audit coverage across the CMC.

The role of the internal auditor includes undertaking regular audits within the CMC, offering independent confidential advice on action to improve the efficiency and effectiveness of the CMC, contributing to the integrity of the annual financial statements, checking actions taken by line management on recommendations reported and accepted by the Chairperson, and providing advice to management on governance, management and accounting matters.³²⁰

11.4. External Accountability and Reporting

The CMC is independent of the Government, however fully accountable to the people of Queensland through an all-party Parliamentary Committee known as the Parliamentary Crime and Misconduct Committee (PCMC). The PCMC (assisted by the Parliamentary Crime and Misconduct Commissioner), oversees the CMC's activities and investigates complaints against the CMC.

In addition to the PCMC and Parliamentary Commissioner, the CMC is accountable to the Supreme Court and the Public Interest Monitor for the exercise of some of its powers.

The Minister responsible for the CMC is the Attorney-General and Minister for Justice and Women, the Honourable Linda Lavarch MP. The CMC reports to the Minister on its efficiency, effectiveness, economy and timeliness as required.³²¹

External accountability and the role of the PCMC are discussed in more detail in Chapter 12.

³²⁰ CMC submission, pages 120-121.

³²¹ CMA, Section 260.

11.5. Legislative Compliance

Until 1 January 2005, independent legal advice (on varied topics including administrative and criminal law, contracts, personal injuries litigation and statutory interpretation) was provided to the Commission and operational areas of the CMC by the Office of General Counsel.

Whilst the Committee recommended the continued retention of the Office of General Counsel as an independent unit within the CMC that was answerable directly to the Commissioners, they also recommended that the Office of General Counsel be reviewed by the CMC or the Premier, with a view to increasing its capacity to provide 'independent, balanced and objective advice'.³²²

This review was subsequently undertaken by then part-time Commissioner Ray Rinaudo. Following the outcome of that review the Commission resolved that³²³:

- General Counsel continue to report directly to the Chairperson and Commission;
- a Legal Services Unit be established;
- the Official Solicitor, Legal Officer and Freedom of Information Coordinator (and Privacy Officer) be transferred from the Office of General Counsel to the Legal Services Unit, with the Official Solicitor as Manager of that Unit; and
- General Counsel, the Official Solicitor and the Executive Director expedite the implementation of quality assurance systems and the development of appropriate policies and procedures.

These resolutions took effect from 1 January 2005.

The role of **General Counsel** now involves:

- providing independent legal advice to the Chairperson, Commissioners and senior officers in the administrative and operational areas of the Commission;
- representing the Commission before courts and tribunals and presiding at in-house investigative hearings;
- representing the Commission on various inter-governmental and interdepartmental committees and working groups; and
- liaising with state government departments about amendments required to the *Crime and Misconduct Act* and other legislation to ensure the continued effective operation of the CMC.

The role of the **Legal Services Unit** includes:

- representing the Commission in litigation before any court or tribunal;
- engaging and instructing external counsel or solicitors to represent the Commission before any court or tribunal;
- providing independent advice to the Commission;
- administration of access to information via the Freedom of Information legislation;
- administration of matters concerning the privacy regime;
- maintaining a legal advice database; and
- overseeing the continuing education of Commission lawyers.

³²² Three Year Review of CMC, Report No. 64, March 2004, page 103.

³²³ CMC submission, page 122.

In its supplementary submission to the three year review the CMC advised that in relation to the implementation of quality assurance systems (LAW9000) and the development of appropriate policies and procedures, the following activities have been completed or are in progress³²⁴:

- completion of the Legal Advice and Precedents (LAPS) database;
- preparation of legal precedents;
- preparation of FOI precedents;
- development of a workflow management database that permits monitoring of all work tasked to the Legal Services Unit and provides information about response times for advice; and
- finalisation of policies (which are regularly reviewed) in relation to the general activities of the Legal Services Unit, conducting litigation for the CMC, engaging external counsel and solicitors, and FOI and Privacy.

The CMC also advised that the Official Solicitor recently attended a two-day workshop conducted by the College of Law in New South Wales which provided invaluable information regarding monitoring and auditing processes necessary for LAW9000 compliance.

The CMC noted in its supplementary submission that these and other measures have contributed to the continued effective operation of the Commission's legal services.

Conclusion

The Committee is satisfied following the review of the Office of General Counsel and subsequent implementation of the recommendations made in that review, that independent balanced and objective advice can be provided through in-house counsel.

Freedom of Information

The CMC is subject to the FOI Act and therefore members of the public may apply for access to CMC documents under that Act. Recently the *Freedom of Information and Other Legislation Amendment Act 2005* introduced a new provision, section 42(3A), which exempts information obtained, used or prepared for an investigation by the CMC or another agency where the investigation is in performance of the CMC's crime and misconduct functions. It applies also to such information obtained, used or prepared by its predecessors, the CMC and the QCC, in the performance of the equivalent functions.

The exemption does not apply if the person seeks information about themselves and the investigation has been finalised.

In its submission to the PCMC, the CMC states that the new exemption is necessary to ensure that the CMC can protect from disclosure the information that it receives from public sector employees who voluntarily assist it in the course of an investigation.³²⁵

Privacy legislation

Under Information Standard 42, agencies have been required to review the way they handle personal information to ensure they comply with the requirements of eleven Information Privacy Principles (IPPs). Most of the CMC's core activities are excluded from the privacy scheme however in accordance with the requirements of Information Standard 42, the CMC has a nominated Privacy Contact Officer, has developed a Privacy Plan to give effect to the IPPs and has published that plan on its website.

³²⁴ CMC supplementary submission, page 25.

³²⁵ CMC submission, page 13

11.5.1. *Charter of Service*

The CMC has developed a Charter of Service that sets out the standards the CMC undertakes to meet when dealing with complaints about misconduct in the Queensland public sector, and the recourse available if this service is not received. In its submission to the PCMC the CMC advised that in April 2006 the charter was updated to accommodate the evolving role of the CMC and agencies in the management of complaints.

11.6. **Financial management and performance management**

The CMC operates in an accrual output-based financial management framework, where all senior managers are responsible and accountable for the achievement of corporate goals and objectives within approved budget allocations. The Finance Committee assists the Commission with managing the budget process and ensures that the CMC's financial management practices are appropriate and effective.³²⁶

The CMC reports through:

- the annual Ministerial Portfolio Statement (MPS);
- financial statements for inclusion in the annual report;
- an internal budget reporting regime; and
- six-monthly reports under section 260 of the CMA.

The Commission reports on its operational performance through narrative reports and statistical information. Narrative accounts of the success of investigations and projects are provided through the annual report, other publications and the website. Statistical information about CMC activities can be found in the annual report. Operational performance targets are reported to the Minister and Queensland Treasury through the CMC's annual MPS (part of the State Budget Papers). These include a range of measures relating to aspects of quantity, quality, timeliness and cost. Performance reports are also regularly provided to the Queensland Treasury.

11.7. **Resource Management Practices**

11.7.1. *Human Resources*

The CMC, in its *2004-05 Annual Report*, states that it is dedicated to providing the best possible working environment for its staff on the basis that a happier workforce is also a more stable and productive one.³²⁷

The CMC offers working conditions similar to those of the Queensland public service (which includes an enterprise bargaining agreement and adherence to government requirements on equal employment opportunity and workplace health and safety). In addition it provides an employee support program, a training service, staff achievement awards, regular internal communication facilities, and a mechanism for staff to have their concerns heard by senior management.

The CMC states in its submission to the Three Year Review³²⁸ that it is implementing a *Work, Family and Life Balance Program*. The Program will incorporate flexible working hours, flexible leave provisions, flexible employment arrangements and the maintenance of a workplace culture that supports employees balancing their work with their family and other responsibilities.

³²⁶ CMC Annual Report, 2004-05, pages 63-64, see also CMC submission, page 121.

³²⁷ CMC Annual Report, 2004-05, page 64, see also CMC submission, page 123.

³²⁸ CMC submission, page 124.

11.7.2. Organisational Restructures

During the review period there were two significant organisational restructures as reported by the CMC in its submission to the PCMC³²⁹:

1. Office of General Counsel, as discussed under paragraph 11.5 above; and
2. Intelligence and Information. On 1 January 2005, following an external review, the Information Technology and Records Management functions were moved into Corporate Services and Intelligence was made an independent function.

11.7.3. Workforce Management Plan

The *Workforce Management Plan 2005–2009*, as endorsed by the Commission, sets out the framework for a range of strategies focused on attracting and retaining experienced staff, succession planning, and enhancing management competency throughout the organisation. Components of the plan include:

- **Succession Planning.** A draft capabilities framework has been developed for the 12 positions identified as the most critical for succession planning purposes. This framework will assist in the effective recruitment of these positions when required, and in the provision of appropriate development activities for existing staff.
- **Staff Training.** During 2006, a Leadership and Management Development Program has been designed and is being delivered to forty-four officers, including the Chairperson and senior managers. The program runs from March to October 2006 and requires attendance at four two-day workshops, participation in individual and group projects, and individual coaching.
- **Management Essentials Program.** The CMC offers a Management Essentials Program aimed at staff from the AO5/PO3 levels to AO8/PO6 levels and involves completion of a number of competency-based workshops. Participants who successfully complete the program receive a Diploma of Government (Management). The 12-month program commenced in May 2006.
- **Further Study Opportunities.** The CMC Certified Agreement 2003 provides an opportunity for AO2, AO3 and AO4 levels to study towards an accredited qualification; the Certificate IV (AO2), Diploma (AO3), or Advanced Diploma (AO4) level, at no cost to the employee.
- To assist staff in undertaking study commitments in addition to the demands of work and family commitments, the CMC has enabled staff to undertake this study in a series of competency-based workshops during normal working hours on the CMC premises. The first program began in May 2006 with successful participants attaining a Certificate IV in Government within 12 months.
- **Graduate Program.** The CMC is working towards embarking on a graduate program to recruit graduates from fields such as law, commerce, social science, intelligence and information technology.
- **Internship Program.** The CMC has entered into an arrangement with the Queensland University of Technology to assist final-year law students with one of their final units of study. The arrangement requires the student to work at the CMC for one day per week for 12 weeks.
- **EEO program.** The CMC anticipates that the Equal Employment Opportunity (EEO) program, which includes measures to eliminate sexual harassment and workplace harassment will have a positive impact on retention rates of the target group members (particularly women as they comprise over 50% of the CMC workforce). In addition, the *Work, Family, and Life Balance Program* will increase return rates of women from parental leave and generally increase retention rates of employees with family responsibilities.

³²⁹ CMC submission, page 124.

12. EXTERNAL ACCOUNTABILITY OF THE CRIME AND MISCONDUCT COMMISSION

12.1. Parliamentary Crime and Misconduct Committee

12.1.1. Introduction

The CMC is subject to a number of external oversight mechanisms, the chief of which is the Parliamentary Crime and Misconduct Committee (PCMC). In his report, Fitzgerald recommended the creation of the Criminal Justice Commission as a body which was independent but at the same time accountable. Fitzgerald proposed that the primary oversight mechanism be a bipartisan Committee of the parliament. In accordance with this scheme, the *Criminal Justice Act 1989* provided for the creation of the Parliamentary Criminal Justice Committee (PCJC) to oversee the Criminal Justice Commission.³³⁰

Since the enactment of the *Crime and Misconduct Act 2001*, the role of the PCJC has been continued by the PCMC.³³¹ That role can shortly be described as to monitor and review the performance by the CMC of its functions, and thus act as the means by which the CMC is accountable to the Queensland Parliament and in turn to the people.

The Committee is appointed by the Legislative Assembly. It consists of seven members, drawn from all sides of politics represented in the Legislative Assembly. Four members are nominated by the Leader of the House and the other three by the Leader of the Opposition.³³² The chair is to be nominated by the Leader of the House and thus in practice will be a government member.³³³ In practice the deputy chair has come from the members nominated by the Leader of the Opposition.

12.1.2. The role and functions of the Committee

The CMA sets out the functions of the Committee in more detail as follows:³³⁴

- (a) *to monitor and review the performance of the commission's functions;*
- (b) *to report to the Legislative Assembly, commenting as it considers appropriate, on either of the following matters the committee considers should be brought to the Assembly's attention -*
 - (i) *matters relevant to the commission;*
 - (ii) *matters relevant to the performance of the commission's functions or the exercise of the commission's powers;*
- (c) *to examine the commission's annual report and its other reports and report to the Legislative Assembly on any matter appearing in or arising out of the reports;*
- (d) *to report on any matter relevant to the commission's functions that is referred to it by the Legislative Assembly;*
- (e) *to participate in the selection of commissioners and the removal from office of a commissioner as provided under this Act;*
- (f) *to review the activities of the commission at a time near to the end of 3 years from the appointment of the committee's members and to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission; and*

³³⁰ The origins and history of the PCJC are set out in more detail at pages 211 and 213 of the 4th PCJC's report on its Three Year Review of the CJC.

³³¹ The PCMC is established by section 291 of the CMA.

³³² CMA section 300(1).

³³³ CMA section 300(2).

³³⁴ CMA section 292.

(g) *to issue guidelines and give directions to the commission as provided under this Act.*

12.1.3. Monitoring and reviewing the performance of the functions of the CMC

Over the years, successive committees have developed various practical mechanisms to assist in the effective monitoring of the CMC. These include:

- considering complaints against the CMC;
- reviewing CMC guidelines, policies and procedures and making suggestions for improvement if appropriate;
- reviewing reports published by the CMC;
- calling for and considering responses from the CMC on matters which have come to the Committee's attention, through the media or by other means; and
- considering various issues concerning the CMC as they arise.

In addition, the Committee holds regular meetings with the Chairperson and other Commissioners and senior officers of the CMC. In advance of each of these meetings, the Commission provides the Committee with a comprehensive detailed report on the Commission's activities in the period since the previous meeting. At the meetings, the Commission briefs the Committee on its recent activities, and responds to questions from the Committee regarding issues arising in the reporting period.

12.1.4. Reporting to the Parliament

The Committee reports to the Parliament on the operations and activities of the CMC. The Committee can at its discretion comment or report on any matter relevant to the functions of the CMC or arising from any reports published by the CMC. In addition, it has the responsibility to report on any matter referred to it by the Parliament.³³⁵ Some of the reports tabled by the Committee include reports to the Committee by the Parliamentary Crime and Misconduct Commissioner on his consideration of matters referred to him by the Committee.

Also, near to the expiry of its three year term, the Committee reviews and reports on the activities of the Commission during such term (the Three Year Review).³³⁶

12.1.5. Participating in the appointment of the Chairperson and part-time Commissioners of the Crime and Misconduct Commission

The CMC is governed by a Commission consisting of a full-time Chairperson and four part-time Commissioners. The four part-time Commissioners are to represent the community on the Commission. The Committee plays a role in the selection of the Commissioners in the following manner:

- before nominating any person for appointment as Chairperson or part-time Commissioner of the CMC, the Minister (currently the Attorney-General) must consult with the Committee; and
- a person shall not be nominated by the Minister for appointment as a CMC Commissioner (including the Chairperson) unless that nomination has the bipartisan support of the Committee.³³⁷

[The bipartisan support of the Committee means either unanimous support, or the support of a majority of members other than a majority consisting wholly of members of the parties in government.³³⁸]

³³⁵ See CMA section 292(b) (c) and (d).

³³⁶ CMA section 292(f).

³³⁷ CMA section 228.

³³⁸ See the definition in the dictionary in schedule 2 to the CMA.

12.1.6. Complaints against the Crime and Misconduct Commission and its officers

The Committee takes and considers complaints against the CMC and its officers. In this regard, the present Committee is continuing a practice of its predecessor Committees. As well as providing an avenue for persons to pursue complaints against the Commission, the complaints process often provides the Committee with a further ‘window’ into the workings of the Commission.

The introduction of the CMA saw legislative enhancement to assist this complaints handling role. It requires the CMC Chairperson to notify the Committee of conduct on the part of a ‘Commission officer’ in specified circumstances. Section 329 provides:

- (1) *The chairperson must notify the parliamentary committee, in the way, and within the time, required by the committee, of all conduct of a commission officer that the chairperson suspects involves, or may involve, improper conduct.*
- (2) *In this section—*
 - “commission officer” includes former commission officer.*
 - “improper conduct”, of a commission officer, means—*
 - (a) *disgraceful or improper conduct in an official capacity; or*
 - (b) *disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission; or*
 - (c) *conduct that would, if the officer were an officer in a unit of public administration, be official misconduct.*

Section 295(2) of the CMA sets out the options available to the Committee where it decides to take action following a notification under section 329 (or where it otherwise has a concern or receives a complaint). Those options include:

- (a) *ask the commission to give a report on the matter to the committee;*
- (b) *ask the commission to investigate and give a report on the matter to the committee;*
- (c) *ask the police service or another law enforcement agency to investigate and give a report on the matter to the committee;*
- (d) *ask the parliamentary commissioner to investigate and give a report on the matter to the committee;*
- (e) *refer the matter to the director of public prosecutions;*
- (f) *take other action the committee considers appropriate.*

As enacted, the CMA made it clear that ‘Commission officer’ included a former officer of the CMC, for present purposes. The 5th PCMC, in reporting on its Three Year Review of the CMC, expressed doubt that the term would extend to former officers of the former CJC. That Committee recommended legislative amendment to put the matter beyond doubt.³³⁹ That recommendation was accepted by government.³⁴⁰ [In practice, as time since the replacement of the CJC with the CMC passes, such complaints are less likely to arise, but the possibility remains.]

12.1.7. Other functions of the Committee

Under the *Misconduct Tribunals Act 1997*, the Committee plays a role in the appointment of members to the panel of the Misconduct Tribunal. Under that Act, the Minister (currently the Attorney-General) may

³³⁹ See page 107 of PCMC report No. 64, March 2004, *Three Year Review of the Crime and Misconduct Commission*.

³⁴⁰ Government response to the Parliamentary Crime and Misconduct Committee report No. 64 – Three Year Review of the Crime and Misconduct Commission, page 20.

not nominate a person for such appointment to the panel unless that nomination is supported by a bi-partisan majority of the Committee.³⁴¹

The senior member of the panel of members of the Misconduct Tribunal is required to provide an annual report, not only to the relevant Minister, but also to the Committee.³⁴² The practice has been for the Minister to table the report in the Legislative Assembly. There was previously no statutory requirement for the report to be tabled. Following a recommendation of the 5th PCMC in its Three Year Review³⁴³, (a recommendation was adopted by government),³⁴⁴ the *Misconduct Tribunals Act* has recently been amended to include a specific requirement to this effect.³⁴⁵

12.1.8. Powers of the Committee

The CMA confers broad powers upon the Committee to enable it to fulfil its statutory responsibilities. The Act provides that the Committee has the power³⁴⁶:

- (a) *necessary to enable the committee to properly perform its functions, including power to appoint persons having special knowledge or skill to help the committee perform its functions; and*
- (b) *conferred on it by resolution of the Legislative Assembly with a view to the proper performance by the committee of its functions.*

The CMA also gives the Committee certain specific powers, and other powers are conferred by part 3 of the *Parliament of Queensland Act 2001*. These include the power to:

- call for persons, document and other things;
- administer oaths to witnesses; and
- examine witnesses on oath.

The Committee has the power (with bipartisan support) to direct the CMC to investigate specified matters involving misconduct and report back to the Committee.³⁴⁷ The Committee can also (again with bipartisan support, and after consultation with the CMC) issue guidelines to the CMC about its conduct and activities.³⁴⁸

12.1.9. Parliamentary oversight - analysis and comment

Like its predecessors, the Committee is of the view that a Parliamentary Committee is the appropriate primary mechanism for oversight of the CMC. Similar schemes exist in other Australian jurisdictions, and the principle seems well accepted. Bodies such as the CMC which fight crime or which prevent or deal with public sector misconduct must be independent, but at the same time need to be answerable. An oversight Parliamentary Committee can, by monitoring the actions of such a body and reporting to the Parliament where appropriate, inform the public regarding the body's activities and in particular regarding any issues that arise in respect of the conduct or performance of the body.

³⁴¹ Section 7(1)(c) of the *Misconduct Tribunals Act 1997*. Under Section 7(3) the term 'bi-partisan majority' has the same meaning as under the CMA – see page 105.

³⁴² See section 39 of the *Misconduct Tribunals Act 1997*.

³⁴³ See page 107 of PCMC report no 64, March 2004, *Three Year Review of the Crime and Misconduct Commission*.

³⁴⁴ Government response to the Parliamentary Crime and Misconduct Committee report No. 64 – Three Year Review of the Crime and Misconduct Commission, page 20.

³⁴⁵ See section 39 of the *Misconduct Tribunals Act 1997*.

³⁴⁶ CMA section 293(2).

³⁴⁷ CMA section 294.

³⁴⁸ CMA section 296.

Like any Parliamentary Committee, the PCMC can only carry out its functions with adequate resources and powers. The Committee does not see the need for any change to its present functions or powers.

12.2. Office of the Parliamentary Crime and Misconduct Commissioner

12.2.1. Introduction

Whilst a Parliamentary Committee is the desirable primary oversight mechanism, experience both in Queensland and in other Australian jurisdictions has shown that a Parliamentary Committee cannot of itself ensure accountability. In summary, deficiencies were found to exist in three key areas:

- the issue of appropriate access to confidential material held by the agency, particularly of an operational nature;
- the ability to effectively audit the exercise by the agency of its coercive powers; and
- the adequacy of options available to a Committee when considering complaints against the agency.

In Queensland, these difficulties are largely resolved by the existence of the Office of the Parliamentary Crime and Misconduct Commissioner. That position (initially known as the Parliamentary Criminal Justice Commissioner) was created by the *Criminal Justice legislation Act 1997*, adopting recommendations made by the 3rd Parliamentary Criminal Justice Committee.³⁴⁹

Section 303 of the CMA now provides for the appointment of the Parliamentary Crime and Misconduct Commissioner. In short, the role of the Parliamentary Commissioner is to assist the Committee in its oversight of the CMC.

The Parliamentary Commissioner is appointed as an officer of the Parliamentary Service, and can only be appointed with the bi-partisan support of the Committee.³⁵⁰ It is a part-time appointment³⁵¹ (currently at the equivalent of an average of two days per week). An appointment must be for a minimum of two years, and a person cannot hold office as the Parliamentary Commissioner for a period or periods exceeding five years in total.³⁵² To be qualified for appointment as the Parliamentary Commissioner, a person must have served as or be qualified for appointment as a judge of the Supreme Court of Queensland or another state, or of the High Court or Federal Court.³⁵³ The Parliamentary Commissioner is assisted by an experienced legal officer.

12.2.2. Functions of the Parliamentary Crime and Misconduct Commissioner

The Parliamentary Commissioner undertakes a number of functions on the Committee's behalf. These include, as required by the Committee, to:³⁵⁴

- (a) *audit records kept by the commission and operational files and accompanying documentary material held by the commission, including current sensitive operations, including for the purpose of deciding the following—*
 - (i) *whether the commission has exercised power in an appropriate way;*
 - (ii) *whether matters under investigation are appropriate for investigation by the entity investigating or are more appropriately the responsibility of another entity;*

³⁴⁹ PCJC report No. 38 *A report on the accountability of the CJC to the PCJC*, page 119.

³⁵⁰ CMA section 307(1) and section 306(3).

³⁵¹ CMA section 310(1).

³⁵² CMA section 309.

³⁵³ CMA section 304.

³⁵⁴ CMA section 314(2).

- (iii) *whether registers are up to date and complete and all required documentation is on the file and correctly noted on the registers;*
- (iv) *whether required authorisations for the exercise of power have been obtained;*
- (v) *whether any policy or procedural guidelines set by the commission have been strictly complied with; and*
- (b) *investigate, including by accessing operational files of the commission to which the parliamentary committee is denied.*

Any request to the Parliamentary Commissioner to carry out these functions must be made with the bipartisan support of the Parliamentary Committee.³⁵⁵ Any report by the Parliamentary Commissioner prepared at the request of the Parliamentary Committee is subject to Parliamentary privilege.³⁵⁶

The Parliamentary Commissioner also securely holds the records of what is commonly known as the Connolly/Ryan Inquiry³⁵⁷, and grants access to those records to any person whom the Parliamentary Commissioner is satisfied has a 'legitimate need of access' to those records.³⁵⁸

12.2.3. Annual intelligence review

The Parliamentary Commissioner has the function of conducting an annual review of the intelligence data held by the CMC, and also that held by the Queensland Police Service.³⁵⁹ This function is prescribed by the CMA but, unlike the Parliamentary Commissioner's other functions, is not dependent upon any requirement of or direction by the Committee. The review is to be carried out as soon as practicable after the end of each financial year, but in any event within four months from that time. Details of the results of the two reviews reported upon during the term of this Committee are contained in Chapter 7 of this report.

12.2.4. Powers of the Parliamentary Commissioner

The CMA gives the Parliamentary Commissioner extensive powers:³⁶⁰

- (1) *The parliamentary commissioner has power to do all things necessary or convenient for the performance of the parliamentary commissioner's functions.*
- (2) *For the performance of the parliamentary commissioner's functions, the parliamentary commissioner may, by giving written notice to the chairperson, require a commission officer to do 1 or more of the following—*
 - (a) *produce to the parliamentary commissioner, or allow the parliamentary commissioner access to, all records, files and other documents in the commission's possession;*
 - (b) *give the parliamentary commissioner all reasonable help in connection with the parliamentary commissioner performing his or her functions.*
- (3) *Also, for the performance of the parliamentary commissioner's functions, the parliamentary commissioner may, by giving written notice to a public official, require the public official to do 1 or more of the following—*
 - (a) *produce to the parliamentary commissioner, or allow the parliamentary commissioner access to, all records, files and other documents in the possession of the unit of public administration in which the public official holds an appointment; give the parliamentary commissioner all reasonable*

³⁵⁵ CMA section 314(3) and see also section 295(3). The dictionary in schedule 2 to the CMA defines 'bipartisan support' as either unanimous support, or the support of a majority of members other than a majority consisting wholly of members of the parties in government.

³⁵⁶ CMA section 323.

³⁵⁷ Commission of Inquiry constituted by order in council dated 7 October 1996.

³⁵⁸ CMA section 374.

³⁵⁹ CMA section 320.

³⁶⁰ CMA section 317.

help in connection with the parliamentary commissioner performing his or her functions.

Under the CMA, the Parliamentary Commissioner may also conduct hearings in certain circumstances.³⁶¹

- (1) *This section applies if—*
 - (a) *the parliamentary commissioner has used all reasonable means to obtain information about a matter without success; and*
 - (b) *the parliamentary committee authorises the parliamentary commissioner to hold a hearing to obtain the information.*
- (2) *The parliamentary committee may give the authorisation only if it receives the bipartisan support of the parliamentary committee.*
- (3) *The parliamentary commissioner may hold a hearing to obtain the information.*
- (4) *The parliamentary commissioner may, by notice, require any named commission officer or person who holds or held an appointment in a unit of public administration (the “person”) to appear at the hearing to be examined on oath or to produce a document or thing.*

In summary, the Parliamentary Commissioner can conduct a hearing to obtain information if the following pre-conditions are met:

- all reasonable steps have been taken by the Parliamentary Commissioner to obtain the information, without success; and
- a bipartisan majority of the Parliamentary Committee authorises the Parliamentary Commissioner to hold a hearing.

Once a hearing has been authorised by the Committee, there is a further limitation. The Parliamentary Commissioner can only compel evidence from a Commission officer or from a person who holds or has held an appointment in a unit of public administration.³⁶² [For this purpose, ‘Commission officer’ includes a former officer of the CMC, and a former officer of the Criminal Justice Commission.³⁶³]

12.2.5. Extent of power to call for witnesses

In its report on its Three Year Review, the 5th PCMC noted that historically, under the *Criminal Justice Act 1989* and before the introduction of the CMA, the then Parliamentary Criminal Justice Commissioner had, for the purposes of an investigation, all the powers of a royal commission.³⁶⁴ This included the power to hold a hearing whenever deemed appropriate, without any pre-conditions. Further, the Parliamentary Criminal Justice Commissioner could compel any person to attend as a witness at such a hearing. The 5th PCMC observed³⁶⁵:

The pre-conditions imposed on the holding of a hearing by the Parliamentary Commissioner present no great difficulty. However, the Committee has a concern that the limitation regarding compellable witnesses can prove unsatisfactory. It would for example mean that the Parliamentary Commissioner would not be able to require a person whose complaint against the CMC has led to an investigation by the Parliamentary Commissioner to give evidence (where that person is not a Commission officer or the holder or previously the holder of an appointment in a unit of public administration). On the other hand, a commission officer, for example an officer who is the subject of the complaint, would be compellable. In

³⁶¹ CMA section 318.

³⁶² ‘unit of public administration’ is defined in section 20 of the CMA.

³⁶³ CMA section 318(11).

³⁶⁴ *Criminal Justice Act 1989* section 118W.

³⁶⁵ PCMC report No. 64, *Three Year Review of the Crime and Misconduct Commission*, page 112.

any event, it seems clear that a situation might arise where a person who is not otherwise compellable might have evidence crucial to an investigation, but not be willing to volunteer that evidence.

The restrictions could potentially result in unfairness, and in some circumstances unduly limit the ability of the Parliamentary Commissioner to fully investigate a matter. It is appropriate that the restriction be removed.

The 5th PCMC therefore recommended that there be no restriction on the persons that can be required by the Parliamentary Crime and Misconduct Commissioner to give evidence at a hearing. The government did not accept this recommendation, stating³⁶⁶:

Under the CMA, the role of the Parliamentary Commissioner is about ensuring the accountability of the CMC to the Committee. Accordingly, the power to compel any witness is not necessary. The Government is not convinced that this boundary concerning compellable witnesses—which mirrors the ambit of the CMA as a whole—is unsatisfactory. The Government acknowledges that, under the broadly worded s118W of the previous Criminal Justice Act 1989, the former Parliamentary Criminal Justice Commissioner had, for what was then termed ‘investigations’, all the powers of a royal commission and, accordingly, could compel any witness. However, the policy underpinning the new Act, with its specifically-worded conferrals of power, does not support plenary royal commission style powers.

Compared to s318(4), the power of the Parliamentary Commissioner to require the production of, or access to, documents generally (that is, the power available to the Commissioner before the preconditions of a hearing are met – s317) is likewise limited to documents of the CMC or a ‘unit of public administration’. Section 321 (Confidentiality obligations not to apply) is similarly restricted to information held by the CMC or a ‘unit of public administration’, and to past and present CMC officers and ‘unit of public administration’ officers.

The present Committee agrees that the power to compel any witness is not necessary but, like its immediate predecessor, believes an amendment along the lines of that recommended by the last Committee is desirable to assist the Committee and the Parliamentary Commissioner in ensuring the accountability of the CMC. The current Committee does not regard the recommendation of the previous Committee as going against the policy of the CMA to not support plenary royal commission style powers. The power would still be subject to the restrictions currently imposed by section 318(1) of the CMA. The Committee is concerned that it is possible for a person (not being within a unit of public administration) to make a complaint regarding the CMC or a Commission officer, yet not be compellable to give evidence in support. This could result in an injustice to the Commission or a Commission officer and in an inability by the Parliamentary Commissioner to ascertain the truth of an allegation. Such an outcome would undermine the ability of the Parliamentary Commissioner to assist the Committee in ensuring the accountability of the CMC.

Recommendation 27

The Committee repeats the recommendation of its predecessor Committee that there be no restriction on the persons that can be required to give evidence at a hearing by the Parliamentary Crime and Misconduct Commissioner.

³⁶⁶ Government response to the Parliamentary Crime and Misconduct Committee report No. 64 – Three Year Review of the Crime and Misconduct Commission, page 20.

12.2.6. The need for the office of Parliamentary Crime and Misconduct Commissioner

The role of the Parliamentary Commissioner now seems well established. This Committee, like its predecessors, has found the assistance of the Parliamentary Commissioner invaluable and supports that role. The CMC has also consistently supported the role. The issue of the continuation of the office of Parliamentary Commissioner was not raised in any submissions to this review.

This Committee agrees with the conclusion of the 5th PCMC that the position of Parliamentary Commissioner has rectified the deficiencies in the oversight regime identified by the 3rd PCJC and referred to above regarding³⁶⁷:

- appropriate access to confidential operational information;
- the ability to effectively audit exercises of coercive powers; and
- the adequacy of options available to the Committee to ensure the effective investigation of complaints regarding the Commission.

The Committee endorses the following observation of the 5th PCMC³⁶⁸:

The Committee has found the Parliamentary Commissioner to be of invaluable assistance, carrying out the more 'hands-on' aspects of ensuring the accountability of the CMC. The Committee does not have the resources, powers, or time necessary to effectively and fully investigate the more complex complaints or concerns which arise regarding the actions of the CMC.

The Parliamentary Commissioner also provides a useful 'firewall' between the CMC and the Committee when it comes to sensitive operational documents of the CMC. This allows such material to be examined, where this is necessary to ensure accountability, without the confidentiality of that material being able to be compromised.³⁶⁹

At an operational level, the relationship between the CMC and the Parliamentary Commissioner has worked well. Both Mr MacSporran and his predecessor have reported receiving the full cooperation of the CMC when conducting audits or when investigating complaints referred by the PCMC. The Commission has reacted positively to concerns raised, adopting recommendations or making other changes to policies and procedures to rectify problems.

The office has become an accepted part of the accountability landscape, as evidenced by the increased role for the Parliamentary Commissioner provided for in the *Cross-Border Law Enforcement Legislation Amendment Act 2005* (which is discussed further below).

12.3. Audits by the Parliamentary Commissioner

One of the benefits of the existence of the office of Parliamentary Commissioner is the ability to conduct an external audit of the use by the CMC of its coercive powers.

Under section 314(2)(a) of the *Crime and Misconduct Act 2001* the Parliamentary Crime and Misconduct Commissioner can conduct, at the request of the Committee, an audit of the records of the CMC.

³⁶⁷ See page 108 above

³⁶⁸ PCMC report No. 64, *Three Year Review of the Crime and Misconduct Commission*, page 113.

³⁶⁹ Under section 316 of the CMA, the Parliamentary Commissioner cannot be required by the Parliamentary Committee to disclose to it information which the CMC can lawfully withhold from the Committee. See also section 66 of the CMA.

On 13 November 2003 the previous Committee requested Mr Robert Needham, the then Parliamentary Commissioner, to conduct an audit of the records kept by the CMC for the 2003-2004 year. By letter dated 9 March 2005, the current Committee requested Mr Needham's successor as Parliamentary Commissioner, Mr Alan MacSporran SC, to conduct a similar audit for the 2004-2005 financial year. Mr MacSporran has also been given an audit reference for the 2005-2006 financial year.

Each reference has been in the terms contemplated by the CMA.³⁷⁰ In other words, the Committee asked the Parliamentary Commissioner to audit the Commission's records to decide:

- whether the Commission has exercised [its statutory] power in an appropriate way;
- whether matters under investigation are appropriate for investigation by the entity investigating or are more appropriately the responsibility of another entity;
- whether registers are up to date and complete and all required documentation is on the file and correctly noted on the registers;
- whether required authorisations for the exercise of power have been obtained; and
- whether any policy or procedural guidelines set by the Commission have been strictly complied with.

Mr Needham reported on his audit for the 2003-2004 year in October 2004. Mr Macsporrnan reported on his audit for the 2004-2005 year in October 2005. [At the time of writing, the report on the audit for the 2004-2005 year was yet to be finalised.]

For reasons of confidentiality, and to protect the integrity of the operations of the Commission, it is not appropriate that the Committee table the actual audit reports provided by the Parliamentary Commissioner. However, the Committee has tabled a report in the Parliament advising in broad terms on the outcomes of the audits.³⁷¹ Whilst more information can be obtained from that report, some brief details of the outcomes of the two audits follow.

Audit report for the 2003-2004 financial year

Mr Needham was satisfied that all of the CMC's crime investigations fell within references by the Crime Reference Committee and accordingly were appropriate for investigation by the CMC. In relation to the Commission's misconduct function, he concluded that the decisions in the matters in which it was determined that the investigation should be conducted by the Commission itself were appropriate, as were the decisions in the matters in which it was determined that the matter be referred back to an agency.

The Parliamentary Commissioner noted that the CMC's monitoring of referred matters had improved since the previous (2003) audit and that reviews were generally of a high standard.

Importantly, he reported that CMC officers generally demonstrate a good degree of discernment in deciding whether to utilise the CMC's various powers, and that the more intrusive powers were used sparingly during the audit period.

Audit report for the 2004-2005 financial year

Again, this report was in generally positive terms. The Parliamentary Commissioner, whilst finding some procedural deficiencies and making recommendations for improvement of Commission processes, identified no wilful non-compliance or intentional misleading.

³⁷⁰ CMA section 314(2)(a).

³⁷¹ PCMC report No. 69, *A report on audits by the Parliamentary Crime and Misconduct Commissioner of the records of the Crime and Misconduct Commission for 2003/2004 and 2004/2005*.

Mr Macsporrان was satisfied that all the CMC's crime investigations fell within references by the Crime Reference Committee and accordingly were appropriate for investigation by the CMC. He also found that determinations to use coercive powers were justified and those powers had generally been appropriately exercised. In relation to the Commission's misconduct function, the Parliamentary Commissioner concluded that the decisions in the matters in which it was determined that the investigation should be conducted by the Commission itself were appropriate. Further, decisions that matters be referred back to the Queensland Police Service or other unit of public administration, were appropriate.

The report identified various instances of failure to strictly comply with legislative requirements. The Commission responded positively, taking steps to amend policies and rectify procedures accordingly. These instances largely related to the issuing of surveillance and covert search warrants, and several instances of non compliance indicated a lack of attention to detail. With the exception of these deficiencies, the audit has revealed that the Commission is generally performing well in the areas the subject of the terms of reference.

The Parliamentary Commissioner reported cooperation from Commission officers in the audit process.

Following receipt of an audit report, the Committee has provided a copy to the Commission for its response and has discussed the report with the Commissioners at a joint meeting.

12.4. *Cross-Border Law Enforcement Legislation Amendment Act 2005*

With the passage of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, a number of the checks previously conducted pursuant to an audit reference will be the subject of inspection and report by the Parliamentary Commissioner, as part of the legislative scheme.

The relevant changes made by the Act took effect from 30 June 2006. As at the time of writing of this report, no reporting under the Act had been made. It is too early to pass any judgment on the practical application of those changes. This is a matter that would be appropriate for monitoring by future committees.

Recommendation 28

The Committee recommends that its successor Committee monitor the operation of the inspection and reporting regime created by the Cross-Border Law Enforcement Legislation Amendment Act 2005.

12.5. The Parliamentary Commissioner – an own motion power?

Under the CMA, the bulk of the functions of the Parliamentary Commissioner can be performed only upon the request of the Parliamentary Committee.³⁷² It had been submitted to previous reviews that the Parliamentary Commissioner should also have an 'own motion' power, so that the Parliamentary Commissioner could receive complaints direct from the public, or act on his or her own volition if circumstances raised concerns regarding the CMC. There were no submissions to this effect made to the current review. The other Australian jurisdictions with offices similar to that of the Parliamentary Commissioner do provide for an own motion power. Neither the 4th PCJC nor the 5th PCMC were unpersuaded that there was a need for such a power.

Based on its practical experience, the current Committee sees no need for change in this regard. In practice, where the Parliamentary Commissioner has received a complaint direct from the public, it has been passed on to the Committee for initial attention. The Committee can, if appropriate, resolve to refer the matter to the Parliamentary Commissioner for investigation or review. If the Parliamentary

³⁷² CMA section 314(2).

Commissioner had any concerns regarding any specific issue, the Parliamentary Commissioner could advise the Committee with a recommendation that the matter be formally referred back to the Parliamentary Commissioner to deal with.

The current approach sits well with the policy of the accountability scheme under the CMA, which is that the Parliamentary Commissioner is the agent of the Parliamentary Committee.³⁷³ The Parliamentary Commissioner reports to the Parliamentary Committee which can, where appropriate, report to the Parliament.

An own motion power might increase ‘forum-shopping’ by complainants and possible duplication of oversight effort. The Parliamentary Committee is the primary accountability mechanism, and can call for assistance from the Parliamentary Commissioner. This reflects the intent that the CMC be accountable to the Parliament through a Parliamentary Committee.

12.6. The Public Interest Monitor

The Public Interest Monitor also has a role in oversight of the CMC. The Public Interest Monitor:

- appears at applications to court by the CMC (and by the Queensland Police Service) for surveillance warrants and covert search warrants; and
- monitors compliance by the CMC (and by the Queensland Police Service) with legislative requirements regarding such warrants and with the terms of the warrants themselves.

The Public Interest Monitor, has been described as having a ‘front end’ accountability role. The Public Interest Monitor is involved at the application stage, not to represent the person who will be the target of any warrant (and who has no knowledge of the application), but rather to represent the public interest. The Public Interest Monitor makes submissions to the court as to the merit of the application for the warrant, and as to any terms and conditions that ought to be placed on any warrant that might issue.

Where appropriate, the Public Interest Monitor can report to the PCMC any non-compliance by the Commission with the terms of a warrant or any relevant legislative provision.

Under the *Cross-Border Law Enforcement Legislation Amendment Act 2005* there is also an expanded role for the Public Interest Monitor.

The Committee supports the current functions of the Public Interest Monitor.

12.7. Review by the Minister

The CMA contained a requirement that the responsible Minister must review the CMA and the Commission’s operational and financial performance commencing no sooner than two years after the commencement of the provision.³⁷⁴

The Premier as the then responsible Minister produced a report on this review in September 2004 containing 16 recommendations for the attention of the Commission. The CMC advised the Premier of the actions it had taken on the various recommendations. The CMC has advised the Committee that only one of those recommendations could not be implemented.³⁷⁵

³⁷³ CMA section 10 provides that the Parliamentary Commissioner is to help the Committee in the performance of its functions. See also the Minister’s second reading speech upon introduction of the *Crime and Misconduct Act*, Queensland Hansard, 16 October 2001, page 2822.

³⁷⁴ CMA section 347.

³⁷⁵ CMC submission, page 127.

The CMA also provides for performance reporting by the CMC to the Minister in the following terms³⁷⁶:

- (1) *The Minister has a responsibility to ensure that the commission operates to best practice standards.*
- (2) *To help the Minister discharge that responsibility, the commission must report to the Minister, when and in the way required by the Minister, on the efficiency, effectiveness, economy and timeliness of the commission and its systems and processes, including operational processes.*
- (3) *The report must be accompanied by any financial or other reports the Minister requires to enable the Minister to assess the efficiency, effectiveness, economy or timeliness of the commission, including, in particular, the timeliness with which the commission deals with complaints.*

The CMC reports under this section on a six-monthly basis.³⁷⁷

³⁷⁶ CMA section 260.

³⁷⁷ CMC's submission, page 127.

APPENDIX ONE***Three Year Review Reports by predecessor Committees*****The first PCJC of the 46th Parliament**

- Report No. 9, tabled in July 1991, titled Review of the Committee's operations and the operations of the Criminal Justice Commission Part A, Submissions, Volume 1 – Public submissions, Volume 2 - CJC Submissions and Minutes of Evidence taken on 6 and 13 June 1991.
- Report No. 13, tabled in December 1991, titled *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission.*
- Report No. 18, tabled in November 1992, titled *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission. Part C - A report pursuant to section 4.8(1)(f) of the Criminal Justice Act 1989-1992.*

The second PCJC of the 47th Parliament

- Report No. 26, tabled in February 1995, titled A report of a review on the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989.

The third PCJC of the 48th Parliament

- Report No. 38, tabled in May 1997, titled *Report on the accountability of the CJC to the PCJC*; and
- Report No. 45, tabled in June 1998, titled *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989.*

The fourth PCJC of the 49th Parliament

- Report No. 55, tabled in March 2001, titled *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989.*

The fifth PCMC of the 50th Parliament

- Report No. 64, tabled on 15 March 2004, titled *Three Year Review of the Crime and Misconduct Commission.*

APPENDIX TWO*Submissions Tabled*

1.	Australian Parents for Drug Free Youth , Mr Herschel M Baker, President, <i>Submission to the PCMC Three Year Review of the CMC</i> , 17 March 2006, Brisbane [tabled without appendices].
2.	Mr Bob McCarthy, Director-General, Department of Natural Resources , <i>Submission to the PCMC Three Year Review of the CMC</i> , 28 March 2006, Brisbane.
3.	Mr Warren Pitt MP, Minister for Communities, Disability Services and Seniors , <i>Submission to the PCMC Three Year Review of the CMC</i> , 29 March 2006, Brisbane.
4.	Mr Frank Rockett, Director-General, Department of Corrective Services , <i>Submission to the PCMC Three Year Review of the CMC</i> , 7 April 2006, Brisbane.
5.	Rosslyn Monro, Director, Youth Advocacy Centre Inc , <i>Submission to the PCMC Three Year Review of the CMC</i> , 19 April 2006, Brisbane.
6.	Dr Warren Hoey, Director-General, Department of Aboriginal and Torres Strait Islander Policy , <i>Submission to the PCMC Three Year Review of the CMC</i> , 2 May 2006, Brisbane.
7.	Mr Bruce Wilson, Director-General, Queensland Transport , <i>Submission to the PCMC Three Year Review of the CMC</i> , 3 May 2006, Brisbane.
8.	Hon A Bligh, Deputy Premier, Treasurer and Minister for State Development, Trade and Innovation , <i>Submission to the PCMC Three Year Review of the CMC</i> , 8 May 2006, Brisbane.
9.	Ms Uschi Schreiber, Director-General, Queensland Health , <i>Submission to the PCMC Three Year Review of the CMC</i> , 7 May 2006, Brisbane.
10.	Ms Helen Ringrose, Director-General, Department of Tourism, Fair Trading and Wine Industry Development , <i>Submission to the PCMC Three Year Review of the CMC</i> , 8 May 2006, Brisbane.
11.	Mr Peter Henneken, Director-General, Department of Industrial Relations , <i>Submission to the PCMC Three Year Review of the CMC</i> , 5 May 2006, Brisbane.
12.	Garry Storch, Chief Executive Officer, Caloundra City Council , <i>Submission to the PCMC Three Year Review of the CMC</i> , 11 May 2006, Brisbane.
13.	Ms Natalie MacDonald, Director-General, Department of Housing , <i>Submission to the PCMC Three Year Review of the CMC</i> , 9 May 2006, Brisbane.
14.	Mr Greg Hallam PSM, Executive Director, Local Government Association Queensland Inc. , <i>Submission to the PCMC Three Year Review of the CMC</i> , 11 May 2006, Brisbane [tabled without appendices].
15.	Mr Stephen Coates, Barrister-At-Law, <i>Submission to the PCMC Three Year Review of the CMC</i> , 12 May 2006, Brisbane.
16.	Cr Barry Lansdown, Councillor, Cardwell Shire Council , <i>Submission to the PCMC Three Year Review of the CMC</i> , undated, Cardwell.
17.	Ms Margaret Hoekstra, Executive Director, Corporate and Executive Services Office for Women, Department of Local Government, Planning, Sport and Recreation , <i>Submission to the PCMC Three Year Review of the CMC</i> , 5 May 2006, Brisbane.
18.	Mr Rob Noble, Chief Executive Officer, Caboolture Shire Council , <i>Submission to the PCMC Three Year Review of the CMC</i> , 8 May 2006, Caboolture.
19.	Mr Jim Varghese, Director-General, Department of Primary Industries and Fisheries , <i>Submission to the PCMC Three Year Review of the CMC</i> , 12 May 2006, Brisbane.
20.	Mr David Bevan, Queensland Ombudsman , <i>Submission to the PCMC Three Year Review of the CMC</i> , 12 May 2006, Brisbane.

21.	Mr Glenn Poole, Auditor-General, Queensland Audit Office , <i>Submission to the PCMC Three Year Review of the CMC</i> , 15 May 2006, Brisbane.
22.	Mr Robert Needham, Chairperson, Crime and Misconduct Commission , <i>Submission to the PCMC Three Year Review of the CMC</i> , 16 May 2006, Brisbane.
23.	Mr Paul Lucas MP, Minister for Transport and Main Roads , <i>Submission to the PCMC Three Year Review of the CMC</i> , 15 May 2006, Brisbane.
24.	Mr Michael Kinnane, Director-General, Department of Local Government, Planning, Sport and Recreation , <i>Supplementary Submission to the PCMC Three Year Review of the CMC</i> , received 3 July 2006, Brisbane.
25.	Mr Robert Atkinson, Commissioner, Queensland Police Service , <i>Submission to the PCMC Three Year Review of the CMC</i> , 4 July 2006, Brisbane.
26.	Ms Fiona McKersie ESM, Department of Emergency Services , <i>Submission to the PCMC Three Year Review of the CMC</i> , 5 July 2006, Brisbane.
27.	Mr Alan MacSporran SC, Parliamentary Commissioner , Office of the Parliamentary Crime and Misconduct Commissioner, <i>Submission to the PCMC Three Year Review of the CMC</i> , 28 July 2006, Brisbane.
28.	Mr Robert Needham, Chairperson, Crime and Misconduct Commission , <i>Submission to the PCMC Three Year Review of the CMC</i> , 31 July 2006, Brisbane.

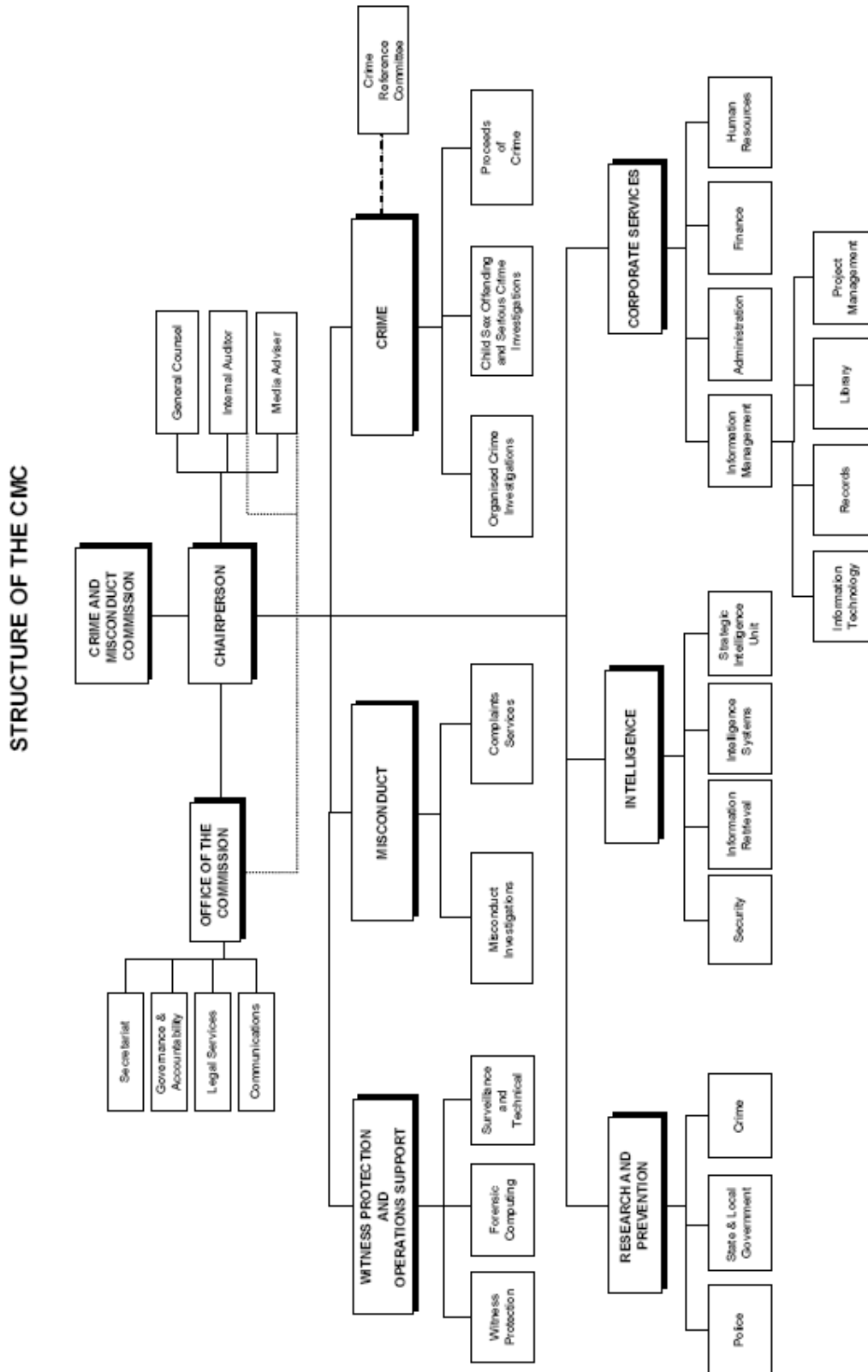
APPENDIX THREE*Witnesses at the Public Hearing*

Thursday 6 July 2006	
Crime and Misconduct Commission	Mr Robert Needham (Chairperson) Mr Stephen Lambrides – Assistant Commissioner, Misconduct Mr John Callanan – Assistant Commissioner, Crime
Mr Bill Pincus QC	
Queensland Police Service	Commissioner Bob Atkinson APM Mr Ian Stewart, Assistant Commissioner, Ethical Standards Command
Mr Stephen Coates, Barrister	

Friday 7 July 2006	
Local Government Association of Queensland	Cr Paul Bell, President Mr Greg Hallam, Executive Director Mr Tim Fynes-Clinton, Solicitor, King and Co.
Queensland Ombudsman	Mr David Bevan
Crime and Misconduct Commission	Mr Robert Needham (Chairperson) Dr David Gow, Commissioner Mr Doug Drummond, Commissioner Ms Julie Cork, Commissioner Mr Stephen Lambrides – Assistant Commissioner, Misconduct

APPENDIX FOUR

Structure of the CMC



February 2005

APPENDIX FIVE*6th Parliamentary Crime and Misconduct Committee Reports*

Report No.	Report Name	Date Tabled
65	Annual Report 2003/2004	9 November 2004
66	A report on a review by the Parliamentary Crime and Misconduct Commissioner of the actions of the Crime and Misconduct Commission in its investigation of the theft of money from a safe at the Maroochydhore Police Station	23 March 2005
67	A report on an examination by the Parliamentary Crime and Misconduct Commissioner of the Crime and Misconduct Commission's investigation into an offer made by the Premier of Queensland to the Palm Island Aboriginal Council	26 May 2005
68	Annual Report 2004/2005	8 November 2005
69	A report on audits by the Parliamentary Crime and Misconduct Commissioner of the records of the Crime and Misconduct Commission for 2003/2004 and 2004/2005	22 November 2005
70	A report on a complaint by the Honourable Gordon Nuttall MP	9 May 2006