

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

Report No. 79, April 2009

Three Yearly Review of the Crime and Misconduct Commission



Legislative Assembly of Queensland

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

Report No. 79

Membership of the PCMC

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CHAIRMAN'S FOREWORD

I am pleased to present to the Legislative Assembly the report of the 7th Parliamentary Crime and Misconduct Committee (PCMC or Committee) on its three yearly 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 September 2008, 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 32 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 19 and 20 November 2008.

This review is the third such three yearly review conducted since the *Crime and Misconduct Act 2001* commenced. That Act brought about 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 that provided written or oral submissions to the review. Their 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 the review and in the preparation of this report.

The Committee commends its report and recommendations to the Parliament.

Mr Paul Hoolihan MP

Chairman

NOTES

References to public hearings refer to the hearings held by the PCMC as part of its three yearly review process on 19 and 20 November 2008. Transcripts of those hearings are available on the internet at www.parliament.qld.gov.au/pcmc

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

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Ms Renée Easten, Acting Research Director (from 18 December 2008)

Ms Joanna Fear, Acting Principal Research Officer (from 27 January 2009)

Mrs Ali Jarro, Acting Principal Research Officer, part-time (from 18 December 2008)

Ms Jodie Martin, Executive Assistant (until 20 April 2007)

Ms Alice Hutchings, Executive Assistant, part-time (May/June 2007)

Ms Jenny North, Executive Assistant (from 25 June 2007)

ABBREVIATIONS AND TERMS USED IN THIS REPORT

ACC	Australian Crime Commission
AFP	Australian Federal Police
AIC	Australian Institute of Criminology
CJA	<i>Criminal Justice Act 1989 (Qld)</i>
CJC	Criminal Justice Commission
CMA	<i>Crime and Misconduct Act 2001 (Qld)</i>
CMC	Crime and Misconduct Commission
CPCA	<i>Criminal Proceeds Confiscation Act 2002 (Qld)</i>
CRC	Crime Reference Committee
DPP	Director of Public Prosecutions
ESC	Ethical Standards Command of the Queensland Police Service
EC	Executive Committee
Fitzgerald Inquiry	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.
ICAC	Independent Commission Against Corruption
IRAS	Intelligence Recording and Analysis System
LEA	Law enforcement agency
LGAQ	Local Government Association of Queensland
ODPP	Office of the Director of Public Prosecutions
OMCGs	Outlaw motorcycle gangs
OPSME	Office of Public Sector Merit and Equity
Parliamentary Commissioner	The Parliamentary Crime and Misconduct Commissioner
PCJC	Parliamentary Criminal Justice Committee
PCMC or Committee	Parliamentary Crime and Misconduct Committee
PIM	Public Interest Monitor
POC	<i>Proceeds of Crime Act 1987 (Cth)</i>
PPRA	<i>Police Powers and Responsibilities Act 2000 (Qld)</i>
QCC	Queensland Crime Commission
QPS	Queensland Police Service
QPCOUE	Queensland Police Commissioned Officers' Union of Employees
SAPOL	South Australia Police Service
SC	Senior Counsel
SIU	Strategic Intelligence Unit
TI	Telecommunications Interception
UPA	Unit of public administration
WPA	<i>Witness Protection Act 2000 (Qld)</i>
WPU	Witness Protection Unit

RECOMMENDATIONS

RECOMMENDATION 1	8
The Committee recommends that the Government consider the implications of the decision in <i>Scott v Witness C</i> and take steps to clarify the validity of investigations undertaken by the Crime and Misconduct Commission under umbrella referrals.	
RECOMMENDATION 2	25
The Committee recommends that the Government consider allocating greater resources to the Crime and Misconduct Commission’s proceeds of crime function to meet increasing demand for civil confiscation actions.	
RECOMMENDATION 3	30
The Committee recommends that section 34(d) of the <i>Crime and Misconduct Act 2001</i> be strengthened to require greater consideration of the public interest in devolution decisions, particularly where the complaint relates to the culture of a unit of public administration or where the nature of the complaint is such that devolution is unlikely to remove public perceptions about a lack of impartiality.....	
RECOMMENDATION 4	35
The Committee recommends that the Crime and Misconduct Commission provides new complainants with an outline of the likely steps involved in the assessment and/or investigation of their complaints and information about the potential timeframe for finalisation of their matter.....	
RECOMMENDATION 5	35
The Committee recommends that the timeliness of misconduct assessments and investigations, both by the Crime and Misconduct Commission and by units of public administration, continues to be closely monitored by the Crime and Misconduct Commission and by the incoming Parliamentary Crime and Misconduct Committee.	
RECOMMENDATION 6	37
The Committee recommends that the Crime and Misconduct Commission develops guidelines for determining when a referral to the Office of the Director of Public Prosecutions is publicised. The guidelines should reflect that, when evaluating competing factors to determine the public interest, protecting the reputation of individuals who have not been charged with an offence is the paramount consideration.....	
RECOMMENDATION 7	38
The Committee recommends that the CMC develop guidelines to ensure that its letters to persons who have been under investigation and in respect of whom no further action is to be taken reflect the Commission’s recognition of that person’s entitlement to a presumption of innocence.	
RECOMMENDATION 8	41
The Committee recommends the relevant legislation be amended to give the Crime and Misconduct Commission jurisdiction to investigate serious allegations of misconduct against officers of Government Owned Corporations and to play a role in misconduct prevention and capacity building in Government Owned Corporations.....	
RECOMMENDATION 9	43
The Committee recommends future Parliamentary Committees monitor the operation of the arrangements for referral of matters by the Crime and Misconduct Commission to the Office of the Director of Public Prosecutions.....	
RECOMMENDATION 10	46
The Committee supports the introduction of a new offence of ‘misconduct in public office’ for cases of serious misconduct by public officials, but recommends that the legislation contain a statutory review provision for review after three years to ensure that the offence is only applied to cases of serious misconduct that warrant criminal sanction.....	
RECOMMENDATION 11	50
The Committee recommends that the <i>Crime and Misconduct Act 2001</i> be amended to authorise the Director of Complaints Services to refer certain matters to the appropriate unit of public administration, namely matters for which disciplinary action, other than for official misconduct, may be considered, and matters that require investigation but that are outside the Commission’s jurisdiction.	
RECOMMENDATION 12	54
The Committee recommends the Government consider the allocation of additional resources to the Crime and Misconduct Commission to support its hearings function.	

RECOMMENDATION 13	57
The Committee recommends that the <i>Crime and Misconduct Act 2001</i> be amended to clarify that a witness cannot refuse to answer a question at a Crime and Misconduct Commission hearing on the ground of spousal privilege and that consideration be given to the use that may be made of evidence given under spousal privilege.....	
RECOMMENDATION 14	58
The Committee recommends that the <i>Crime and Misconduct Act 2001</i> be amended to expressly nominate the grounds of privilege a witness may rely on to refuse to answer a question at a Crime and Misconduct Commission hearing and to clarify that these are the only privileges that may be claimed.	
RECOMMENDATION 15	60
The Committee recommends that section 197 of the <i>Crime and Misconduct Act 2001</i> be amended to allow evidence for which a person has claimed self-incrimination privilege to be admissible in a proceeding about the falsity or misleading nature of an answer given during a Crime and Misconduct Commission hearing, whether or not the answer was given under a claim of self-incrimination privilege.....	
RECOMMENDATION 16	60
The Committee recommends that the <i>Crime and Misconduct Act 2001</i> be amended to give Commission officers involved in misconduct or confiscation related investigations the power to seize evidence located in a public place or another place the officer has entered lawfully.	
RECOMMENDATION 17	62
The Committee recommends a review of chapter 3 and 4 powers in the <i>Crime and Misconduct Act 2001</i> in order to develop uniform provisions with generic application to Crime and Misconduct Commission functions where appropriate.	
RECOMMENDATION 18	65
The Committee recommends that the Government amend the <i>Police Powers and Responsibilities Act 2000</i> to require the Parliamentary Commissioner to provide to the Parliamentary Crime and Misconduct Committee a copy of the report on the results of each audit conducted under section 316 of that Act in relation to assumed identities.	
RECOMMENDATION 19	68
The Committee recommends that consideration be given to legislative amendments that would ensure that the reports by the Public Interest Monitor and Parliamentary Commissioner can contain details of incidents of non-compliance by the Crime and Misconduct Commission with telecommunications interception legislation to the degree necessary to facilitate effective oversight by successor committees.....	
RECOMMENDATION 20	69
The Committee recommends that the Crime and Misconduct Commission be funded to operate its own telecommunications interception facility, separate from any to be utilised by the Queensland Police Service.	
RECOMMENDATION 21	70
The Committee recommends that section 75(9) of the <i>Crime and Misconduct Act 2001</i> be repealed to allow the Crime and Misconduct Commission to issue notices to discover to a person who is subject to a disciplinary charge before a misconduct tribunal or any of the person's witnesses.	
RECOMMENDATION 22	77
The Committee recommends that the Crime and Misconduct Commission consider undertaking research into police powers of search and seizure.....	
RECOMMENDATION 23	77
The Committee recommends that the Crime and Misconduct Commission consider undertaking research into measures of police productivity.	
RECOMMENDATION 24	104
The Committee recommends that the Government review Queensland's current whistleblower protection regime in light of the findings of the <i>Whistling While They Work</i> project, including the key principles that were identified by the project as providing the basis for best practice whistleblowing legislation.	
RECOMMENDATION 25	106
The Committee recommends that successor committees monitor the relationship between the Commission and CMC Corporate Services in order to determine the continued appropriateness of secretariat services being provided to the Commission by CMC Corporate Services.	

RECOMMENDATION 26..... 112

The Committee recommends that section 292(f) of the *Crime and Misconduct Act 2001* be amended to require the Parliamentary Crime and Misconduct Committee to conduct a comprehensive review of the Act and the functions, powers and operations of the Crime and Misconduct Commission every five years, rather than at the end of each parliamentary term..... 112

RECOMMENDATION 27..... 115

The Committee recommends that section 146ZQ of the *Crime and Misconduct Act 2001* be amended to require the Chairperson of the Crime and Misconduct Commission to give the report about authorities for assumed identities to the Parliamentary Crime and Misconduct Committee and require the Parliamentary Crime and Misconduct Committee to table the report in the Legislative Assembly..... 115

RECOMMENDATION 28..... 116

The Committee recommends that the Government amend the *Crime and Misconduct Act 2001* to require the Parliamentary Commissioner to provide the Parliamentary Crime and Misconduct Committee with a copy of the report on the results of each audit conducted under section 146ZS of that Act in relation to assumed identities..... 116

RECOMMENDATION 29..... 117

The Committee recommends that the restriction on the persons that can be required to give evidence at a hearing by the Parliamentary Crime and Misconduct Commissioner be removed..... 117

1. INTRODUCTION

1.1 Background

The Parliamentary Crime and Misconduct Committee (PCMC or Committee) is a seven member multiparty committee of the Queensland Legislative Assembly established under the *Crime and Misconduct Act 2001* (CMA).¹

The principal function of the Committee is to monitor and review the performance of the Crime and Misconduct Commission (CMC) and report to Parliament.² It is through the Committee that the CMC is accountable to Parliament and the people of Queensland.

Conducting a comprehensive review of the activities of the CMC each parliamentary term is a key mechanism used by the Committee to fulfil its monitoring and review obligations. The CMA specifically provides that a function of the PCMC is:³

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.

This report presents the results of the three yearly review conducted by the Parliamentary Crime and Misconduct Committee of the 52nd Parliament.⁴ Details of the reviews undertaken by earlier Committees, including the Parliamentary Criminal Justice Committee (PCJC) are set out in appendix one.

1.2 The review process

The review process began in September 2008 when the Committee issued a media release and placed an advertisement in the *Courier Mail* announcing a major public review of the CMC and inviting written submissions from interested individuals and organisations throughout Queensland. The closing date for submissions was Friday 31 October 2008.

The Committee also wrote to the CMC, all ministers, directors-general, members of parliament and numerous other agencies, organisations and individuals inviting submissions to assist in the review.

Thirty two written submissions were received by the Committee, most of which were tabled in late 2008⁵ and early 2009. A list of tabled submissions is provided in appendix two and the text of each of these submissions is available on the Committee's website - www.parliament.qld.gov.au/pcmc

The Committee also received evidence through public hearings conducted on 19 and 20 November 2008. This enabled the Committee to hear directly from key organisations and interested individuals and provided an opportunity for Committee members to question witnesses about their submissions. A list of people who appeared at the public hearings is provided in appendix three. Transcripts of the hearings are available on the Committee's website - www.parliament.qld.gov.au/pcmc

This report follows the structure of previous review reports by examining the CMC's performance in the context of each of its broad functions and powers. The report also considers the effect of any legislative changes since the last review and the need for further legislative reform.

¹ *Crime and Misconduct Act 2001* (Qld), s. 291.

² *ibid.*, s. 292.

³ *ibid.*, s. 292(f).

⁴ The Committee was appointed on 11 October 2006.

⁵ Specifically on 19 and 20 November 2008 and 1 and 5 December 2008.

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

2.1 Establishment of the Crime and Misconduct Commission

The Crime and Misconduct Commission is an independent agency set up to fight major crime and enhance the integrity of the public sector in Queensland.⁶ It was established on 1 January 2002 by the merger of the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC).⁷

2.2 Functions of the CMC

The CMC has a broad range of functions conferred by the *Crime and Misconduct Act 2001*. These include:

- Prevention – helping prevent major crime and misconduct⁸
- Major crime – investigating major crime referred to it by the Crime Reference Committee⁹
- Misconduct – raising the standards of integrity and conduct in units of public administration and ensuring complaints about misconduct are dealt with in an appropriate way¹⁰
- Research – undertaking research to support its functions as well as research into the incidence and prevention of criminal activity, research into the administration of criminal justice or misconduct referred by the Minister, and research into any other matter relevant to its functions¹¹
- Intelligence – gathering and analysing intelligence to support the proper performance of its functions¹²
- Witness protection – operating a witness protection program¹³
- Civil confiscation – undertaking civil proceedings to recover the proceeds of crime regardless of whether the owner has been convicted of a criminal offence¹⁴
- A function conferred under another Act.¹⁵ For example, the *Police Powers and Responsibilities Act 2000* has required the CMC to review the operations of certain new police powers, including move-on powers,¹⁶ powers to deal with people affected by potentially harmful things,¹⁷ powers to deal with drivers evading police officers,¹⁸ and powers to deal with excessively noisy motorbikes.¹⁹

This report examines the way the CMC has performed each of these functions since the previous review in 2006.

⁶ *Crime and Misconduct Act 2001* (Qld), s. 4.

⁷ *ibid.*, s. 220.

⁸ *ibid.*, s. 23.

⁹ *ibid.*, s. 25.

¹⁰ *ibid.*, s. 33.

¹¹ *ibid.*, s. 52.

¹² *ibid.*, s. 53.

¹³ *ibid.*, s. 56(a) and *Witness Protection Act 2000* (Qld).

¹⁴ *ibid.*, s. 56(b) and *Criminal Proceeds Confiscation Act 2002* (Qld).

¹⁵ *ibid.*, s. 56(c).

¹⁶ *Police Powers and Responsibilities Act 2000* (Qld), s. 49.

¹⁷ *ibid.*, s. 607.

¹⁸ *ibid.*, s. 789.

¹⁹ *ibid.*, s. 808.

2.3 Structure of the CMC

2.3.1 Chairperson and part-time Commissioners

The CMC is headed by a five-member Commission consisting of a full-time Chairperson who is also chief executive officer,²⁰ and four part-time Commissioners who represent the community.²¹ The Commission has primary responsibility for achieving the purposes of the CMA²² and its decisions are implemented by the Executive Committee which is made up of the Chairperson and senior staff of the CMC.

Current members of the Commission are:

Chairperson: Mr Robert Needham (appointed 1 January 2005)

Commissioners: Dr David Gow (appointed October 2005)
Ms Ann Gummow (appointed August 2006)
Mrs Judith Bell (appointed May 2008)
Mr Philip Nase (appointed November 2008)

2.3.2 Appointment of Commissioners

Commissioners are appointed by the Governor in Council²³ and must not hold office for more than five years in total.²⁴

The appointment process requires the Minister²⁵ 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 who is selected from nominations made by the Bar Association of Queensland and the Queensland Law Society).²⁶

Before nominating a person for appointment the Minister must consult with the PCMC and may only appoint the proposed appointee with the bipartisan support of the Committee.²⁷ In the case of part-time Commissioners, the Minister must also consult with the Chairperson of the CMC, prior to any nomination for appointment.

Appointments made during the term of the Committee of the 52nd Parliament include:

- Mrs Judith Bell was appointed in May 2008 to replace Ms Julie Cork whose term ended in November 2007.
- Mr Philip Nase was appointed in November 2008 to replace Hon Douglas Drummond who resigned effective from April 2008.

Analysis and comment

The Committee is concerned about the time taken to appoint part-time Commissioners to replace outgoing Commissioners. There were two occasions in the last three years where a position of part-time Commissioner was vacant for at least six months. Although the quorum for a Commission meeting is any

²⁰ *Crime and Misconduct Act 2001* (Qld), s. 251.

²¹ *ibid.*, s. 223.

²² *ibid.*, s. 7.

²³ *ibid.*, ss. 229–230.

²⁴ *ibid.*, s. 231.

²⁵ The Attorney-General.

²⁶ *Crime and Misconduct Act 2001* (Qld), s. 227.

²⁷ *ibid.*, s. 228(3).

three Commissioners, a quorum of four is required if a report is to be presented to the Commission for adoption.²⁸ The effective functioning of the CMC therefore requires vacancies to be filled as expeditiously as possible.

2.3.3 *Qualifications of Commissioners*

The CMA sets out qualification requirements for Commissioners which ensures the Commission has a strong legal base while also reflecting a broad range of professional expertise and experience. The Chairperson must be a legal practitioner who has served as, or is qualified for appointment as, a judge of the Supreme Court of any State or the High Court or the Federal Court.²⁹ One of the part-time Commissioners must be an Australian lawyer with at least five years experience and with a demonstrated interest in civil liberties (referred to as the civil liberties Commissioner).³⁰ The remaining part-time Commissioners must have qualifications or expertise in public sector management and review, criminology, sociology, crime or crime prevention research, community service experience and/or experience relating to public sector officials and public sector administration.³¹ At least one of the part-time Commissioners must be a woman.³²

Changes were made to the qualification requirements for the civil liberties Commissioner in November 2008 following a recommendation of the 6th Committee in its previous three yearly review. The CMA originally required the civil liberties Commissioner to be ‘in actual practice as a lawyer’ and have a demonstrated interest in civil liberties.³³ According to the CMC this had led to difficulties replacing a Commissioner because few lawyers in active practice have the time to effectively carry out the role of part-time Commissioner. The 6th Committee responded by recommending that section 225 of the CMA 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.³⁴ The Government agreed with the recommendation³⁵ and the amendment was made by the *Justice and Other Legislation Amendment Act 2008*, effective from 25 November 2008.

2.3.4 *Senior officers*

The CMA requires that there be an ‘Assistant Commissioner, Crime’ and an ‘Assistant Commissioner, Misconduct’³⁶ who are responsible to the Chairperson for the proper performance of the Commission’s crime functions and misconduct functions respectively.³⁷ The qualification requirements for these positions are identical to those of the Chairperson, which means that an Assistant Commissioner must be a legal practitioner who has served as, or is qualified for appointment as, a judge of the Supreme Court of any State or the High Court or the Federal Court.³⁸ The Minister must advertise nationally for applications³⁹ and before nominating a person for appointment, the Minister consults with the Leader of the Opposition and the Chairperson of the CMC.⁴⁰ Assistant Commissioners are appointed by the Governor in Council⁴¹ for not longer than five years.⁴²

²⁸ *ibid.*, s. 264.

²⁹ *ibid.*, s. 224.

³⁰ *ibid.*, s. 230(2).

³¹ *ibid.*, s. 230(3).

³² *ibid.*, s. 230(4).

³³ *ibid.*, s. 225(a) prior to amendment by the *Justice and Other Legislation Amendment Act 2008*.

³⁴ 6th PCMC, Report No.71, *Three Year Review of the Crime and Misconduct Commission*, p. 7, Recommendation 1.

³⁵ Government Response to Recommendation 1 of Report No. 71, *Three Year Review of the Crime and Misconduct Commission*, p. 1. *Crime and Misconduct Act 2001* (Qld), s. 239.

³⁶ *ibid.*, ss. 252–253.

³⁷ *ibid.*, s. 240.

³⁸ *ibid.*, s. 240.

³⁹ *ibid.*, s. 242.

⁴⁰ *ibid.*, s. 243.

⁴¹ *ibid.*, s. 244.

⁴² *ibid.*, s. 247.

Both Assistant Commissioners and all senior officers⁴³ whose principal duties relate directly to the performance of the Commission's prevention, crime, misconduct, research or intelligence functions or the giving of legal advice to the Commission, have restrictions on the duration of their appointment. The terms of these restrictions were relaxed in 2006 following concerns that they were creating difficulties in recruiting and retaining suitable staff. Prior to 2006 a person could not hold office as an Assistant Commissioner or senior officer for more than 8 years in total.⁴⁴ Since 11 August 2006 this maximum period has increased to 10 years⁴⁵ with the possibility of extension to 15 years if the reappointment is necessary for the efficient operation of the Commission.⁴⁶ The PCMC must be given written notice of any extension beyond 10 years.⁴⁷

2.3.5 Current structure

The CMC focuses on three main areas of activity:

- Combating major crime;
- Reducing misconduct and improving public sector integrity; and
- Protecting witnesses.

The chief work areas within the organisation are structured to reflect this focus.

The **Crime area** works with the Queensland Police Service (QPS) and other law enforcement agencies to combat and prevent major crime, including organised crime, criminal paedophilia, serious crime and terrorism. The Proceeds of Crime Unit is located within this area.

The **Misconduct area** receives and assesses complaints about misconduct and monitors how agencies deal with them. In the most serious cases the CMC will independently investigate allegations. The Misconduct area also works with the Research and Prevention area to build the capacity of other government agencies and departments to prevent and deal with misconduct.

Witness Protection is responsible for protecting eligible people who are in danger as a result of assisting a law enforcement agency such as the QPS.

Operations Support contributes to all three of the CMC's major areas of activity by providing specialist operational and investigative services through the use of physical surveillance, technical surveillance and forensic computing resources.

The **Research and Prevention area** carries out research into crime, misconduct, policing and other policy and legislative areas, particularly those relating to criminal justice and public policy. The Research and Prevention area also works with the Misconduct area to provide misconduct prevention and capacity building services to other government agencies and departments.

The **Intelligence area** collects, collates and analyses information and intelligence relevant to the CMC's responsibilities. It facilitates the exchange of information between the crime and misconduct areas and provides tactical information and intelligence support for investigative teams.

Corporate services supports all areas of the CMC to achieve their organisational goals by providing

⁴³ *Crime and Misconduct Act 2001* (Qld), schedule 2, definition of 'senior officer' – a person who, in the Chairperson's opinion, is performing duties that would, if the person were a public service officer, be duties of a senior executive.

⁴⁴ *Crime and Misconduct Act 2001* (Qld), s. 247(3) prior to amendment by the *Crime and Misconduct and Other Legislation Amendment Act 2006* (Qld).

⁴⁵ *Crime and Misconduct Act 2001* (Qld), s. 247(3).

⁴⁶ *ibid.*, s. 247(3A).

⁴⁷ *ibid.*, s. 247A.

financial, human resources, information management, communication and corporate governance services and managing the CMC's internal and external accountability systems.

An organisational chart showing the basic structure and reporting responsibilities of the CMC is at appendix four.

Further details are also provided in chapter 11 which examines issues of corporate support and governance and the internal committees of the CMC.

2.4 Resources and staffing

To meet its corporate objectives the CMC employs a diverse range of staff, many of whom have highly specialised skills. They include lawyers, police, accountants, financial investigators, social researchers, Indigenous liaison officers, intelligence analysts, computing specialists, managers and administrators, complaints officers and support staff.

The staffing establishment for the CMC over the last 3 years is set out in the following table.

	As at 30 June 2006 ⁴⁸		As at 30 June 2007 ⁴⁹		As at 30 June 2008 ⁵⁰	
	Approved establishment	Actual staff	Approved establishment	Actual staff	Approved establishment	Actual staff
Executive	18	19.2	19	21.8	19	25.5
Crime	43	49.8	49	40.8	49	51.3
Misconduct	85	87	91	77.3	91	82.1
Witness Protection and Operations Support	55	47.8	56	43	56	52
Research and Prevention	27	24.4	30	18.3	30	23.2
Intelligence	22	20.4	21	18.2	22	18.2
Corporate Services	49	56.5	50	46.8	50	53
Total	299	305.1	316	266.2	317	305.3

The CMC's submission to the review noted that although the staff establishment was 315, at 30 September 2008 the full-time staff equivalent was 302.5, reflecting the challenges the Commission faces in attracting and retaining staff.⁵¹ The Committee also notes that actual staff numbers have been under the establishment for the past two years.

⁴⁸ Crime and Misconduct Commission, *Annual Report 2005-06*, p. 77.

⁴⁹ Crime and Misconduct Commission, *Annual Report 2006-07*, p. 64.

⁵⁰ Crime and Misconduct Commission, *Annual Report 2007-08*, p. 51.

⁵¹ Submission No.22, Crime and Misconduct Commission, p. 2.

3. COMBATING MAJOR CRIME

3.1 Jurisdiction – Major Crime

For several years, in addition to investigating misconduct, the former Criminal Justice Commission had responsibility for investigating organised crime in Queensland, mainly through partnership with the Queensland Police Service. This crime function was assumed by the newly created Queensland Crime Commission (QCC), established under the *Crime Commission Act 1997*, with a special emphasis on criminal paedophilia. The partnership continued when the CJC and the QCC merged to form the CMC. The CMC and the QPS work together to investigate major crime in Queensland.⁵²

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 (CRC).⁵³ Established under section 274 of the CMA, the CRC is comprised of law enforcement experts and community representatives.

Under the *Crime and Misconduct Act 2001*, ‘major crime’ encompasses:

- serious crimes — indictable offences punishable by not less than 14 years imprisonment (e.g. murder, arson); or
- criminal paedophilia — criminal activity involving sexual offences against children or child pornography; or
- organised crime⁵⁴ — criminal activity undertaken with the purpose of obtaining profit, gain, power or influence, and involving indictable offences punishable by not less than seven years jail, involving two or more people, and substantial planning and organisation or systematic and continuing activity; or
- terrorism — criminal activity that involves a terrorist act⁵⁵; or
- 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, criminal paedophilia, organised crime or terrorism.

References from the CRC enable the CMC to investigate crimes using unique investigative powers (such as the coercive hearings power) where conventional police methods have been ineffective, or where investigations cannot be appropriately or effectively carried out by the Queensland Police Service or other State-based agencies on their own.

The Crime Reference Committee may refer a matter to the CMC at the request of the Commissioner of Police or the Assistant Commissioner Crime. It may refer a matter on its own initiative, where it considers that⁵⁶:

- an investigation into the 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.

The Crime Reference Committee can refer a major crime to the CMC at the request of the Commissioner

⁵² Crime and Misconduct Commission, *Annual Report 2007-08*, p. 8.

⁵³ See ss. 25 and 26 of the *Crime and Misconduct Act 2001* (Qld). The Crime Reference Committee, established under s. 274 of the CMA, comprises law enforcement experts and community representatives.

⁵⁴ *Crime and Misconduct Act 2001* (Qld), schedule 2, definition of ‘organised crime’.

⁵⁵ *ibid.*, s. 22A, definition of ‘terrorist act’.

⁵⁶ *ibid.*, s. 28(1). 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.

of Police only if it is satisfied⁵⁷:

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

The Crime Reference Committee also has authority to:

- give the CMC directions imposing limitations on a crime investigation, including limitations on the exercise of the CMC's powers for an investigation⁵⁸;
- direct the CMC to end a particular crime investigation⁵⁹;
- amend the terms of a referral to the CMC⁶⁰; 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.⁶¹

3.2 Crime references

The CMC has broad umbrella referrals in the areas of organised crime, criminal paedophilia and counter-terrorism. Umbrella referrals have been used by the CMC to permit the investigation of individual cases of suspected criminal activity that fall within the terms of an umbrella referral, without the Commission obtaining a specific referral from the CRC to investigate that 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.

A recent decision of the Supreme Court of Queensland has serious implications for this longstanding practice of the CMC allowing crime investigations to be undertaken pursuant to broad umbrella referrals.

In *Scott v Witness C*⁶² a single judge of the Supreme Court found that a hearing undertaken by the CMC pursuant to a reference that referred only to classes of criminal acts without identifying any particular activity requiring investigation, was not part of an investigation the Commission was authorised to undertake. The respondent was therefore held not to be in contempt of the presiding officer when he refused to answer questions at the hearing. The judge made the point that the terms of the CMA⁶³ indicate 'that Parliament intended that there would, in the public interest, be some continuing oversight by the CRC of the Commission's functions.'⁶⁴

The Committee is concerned about the implications of this decision for the validity of past, present and future CMC major crime investigations.

Recommendation 1

The Committee recommends that the Government consider the implications of the decision in *Scott v Witness C* and take steps to clarify the validity of investigations undertaken by the Crime and Misconduct Commission under umbrella referrals.

⁵⁷ *ibid.*, s. 28(2).

⁵⁸ *ibid.*, s. 29(1).

⁵⁹ *ibid.*, s. 29(2).

⁶⁰ *ibid.*, s. 30.

⁶¹ *ibid.*, s. 31.

⁶² *Scott v Witness C* [2009] QSC 35.

⁶³ *Crime and Misconduct Act 2001* (Qld), ss. 28 and 277.

⁶⁴ *Scott v Witness C* [2009] QSC 35 at [35].

3.3 Performing the crime function

Section 26 of the CMA provides that the CMC's crime function includes:

- 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 is reliant upon assistance from other law enforcement agencies when conducting complex investigations. Accordingly, the CMA provides for the establishment of police task forces to assist the CMC to carry out its crime investigations.⁶⁵

3.4 Major Crime

As outlined in 3.1 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, with 'major crime' encompassing organised crime, paedophilia, terrorism and serious crime. Also included in the definition of 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 2007-08 notes that all 26 organised crime and criminal paedophilia tactical investigations completed during that reporting period resulted in arrests and charges for offences including trafficking in, producing and supplying dangerous drugs, as well as money laundering, paedophilia and weapons offences.⁶⁶

3.4.1 Organised crime

Organised crime is defined in the CMA⁶⁷ to mean two or more persons engaged in criminal activity that involves indictable offences punishable by at least 7 years imprisonment; and that uses considerable planning and organisation or systematic and continuing activity, done with a purpose of obtaining profit, gain, power or influence.

Organised crime matters are either 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 a more specific referral from the CRC. The current umbrella referrals for organised crime are "Freshnet", which relates to established criminal networks who have an understanding of law enforcement methods and/or access to law enforcement information; "Gatekeeper" which relates to money laundering; and "Hydra" which concerns criminal activity involving members of outlaw motorcycle gangs (OMCGs).⁶⁸

The CMC draws upon a broad range of internal expertise and resources in investigating and preventing organised crime in Queensland. It investigates organised crime in conjunction with police and other agencies by setting up multidisciplinary taskforces. Integral to this approach is the implementation of proactive investigative strategies.

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 past and current developments in organised crime and assessment of the risk levels they pose. The CMC's

⁶⁵ *Crime and Misconduct Act 2001* (Qld), s. 32(1).

⁶⁶ Crime and Misconduct Commission, *Annual Report 2007-2008*, p. 14.

⁶⁷ *Crime and Misconduct Act 2001* (Qld), schedule 2, definition of 'organised crime'.

⁶⁸ Submission No.22, Crime and Misconduct Commission, p. 35.

objective is to prevent further crime by identifying crime markets that pose the greatest risk to the Queensland community and by dismantling or disrupting organised crime networks. This is typically achieved by incarcerating key members and by confiscating their proceeds of crime to financially impede the networks.

3.4.1.1 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. It involves developing business case proposals for consideration of tactical target development.⁶⁹
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. The goal of this phase is to develop convincing cases for full tactical investigation.⁷⁰
3. **Tactical investigation** - as the CMC does not possess independent investigative capacity to carry out complex and protracted investigations on its own, its internal teams rely upon police taskforces set up pursuant to the CMA. The joint QPS-CMC Executive Team provides strategic direction for all joint investigations.⁷¹

3.4.1.2 Trends in Organised Crime in Queensland

A critical area of focus for the CMC's organised crime operations is combating the manufacture and distribution of amphetamines (especially methylamphetamine), based upon the Commission's assessment that these illicit drugs are the highest risk illegal commodity in Queensland.⁷² The amphetamine market can be compared with the cocaine market, which is noticeably less prevalent and has experienced minimal expansion over recent years.⁷³

The markedly increased use of amphetamines in Australia over the past 15 years and associated harm is of growing concern to the CMC. In response, it forms a major component of the national harm minimisation strategy by conducting intelligence assessments of illicit drug markets and identifying organised crime networks and activities. Organised Crime Investigation Teams then conduct tactical operations to dismantle and disrupt those networks trafficking in illicit drugs. Such strategies focus on demand reduction, supply reduction and environmental responses.

3.4.1.3 Combating Organised Crime Networks

Organised crime investigations are often conducted conjointly with federal and interstate law enforcement agencies such as the AFP, ACC and the Australian Customs Service. Research and intelligence information is also shared across law enforcement agencies by agencies contributing information to the national Intelligence Recording and Analysis System (IRAS).

A number of recent operations have been able to successfully target and disrupt organised criminal activity. Some case studies are provided below.

⁶⁹ *ibid.*, p. 36.

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10751&cid=5298&id=169>

⁷³ Crime and Misconduct Commission, *Crime Bulletin 8, The cocaine market in Queensland: A strategic assessment*, September 2007, pp. 1–2

Operation CYRENE

This operation, a joint operation with the South Australia Police Service (SAPOL), targeted an organised crime group involved in the large-scale production of cannabis in South Australia which was being distributed to Queensland. SAPOL and the CMC developed associated operational plans and determined that when both agencies had obtained enough evidence to lead to prosecutions in each State, the operation would close with the “take-out” of the courier when he met with the Queensland principal target.

The arrest phase of this operation began in December 2007 with the tactical “take-out” of the courier as he attempted to deliver 29 lb of cannabis to various Gold Coast locations. Soon after the “take-out” of the courier, search warrants were executed at these premises, resulting in the location and seizure of considerable cash, quantities of cannabis and amphetamine, and a concealable firearm.

Two witnesses appeared in CMC coercive hearings, with consideration being given to commencing proceedings for an offence of perjury in respect of both. As at 31 October 2008, 12 offenders had been arrested with 22 charges laid and assets restrained to the value of \$1,887,494.86.⁷⁴

Operation SABRE

This operation successfully dismantled a suspected European ethnic-based drug syndicate. The CMC’s interest in this network was peaked following the execution of a search warrant in March 2005.

The subject of the warrant had been previously convicted and imprisoned in relation to drug-trafficking charges. The search was initiated after credible information was received suggesting that the individual was involved in the trafficking of heroin in the greater Brisbane region. It was also believed that the target was a ‘cook’ and had a partner who was associated with a business based in Melbourne and Brisbane.

Staff closed the covert phase of the operation in March 2007. A total of 13 offenders were arrested on 64 charges including 13 trafficking charges and 34 charges of supplying a dangerous drug.⁷⁵

Operation NAVAN

This operation began in September 2005 and targeted large-scale trafficking and supply of various illicit drugs – in particular amphetamines. The operation was carried out in partnership with the QPS, together with national and interstate law enforcement agencies. Covert methodologies were utilised and confidential information was accessed.

The investigation led to the identification of the persons at the higher levels of the syndicate and the gathering of evidence against them in relation to ongoing involvement in trafficking amphetamine, cocaine and ecstasy. The operation closed with the arrests of a total of 31 people who were charged with a range of offences under the *Drugs Misuse Act 1986*, of which 208 offences were for the supply of a dangerous drug.⁷⁶

Operation ECHO PRAWN

This was an organised crime investigation focussing on the receipt of stolen jewellery by members of a family that operated several pawnbroking, second-hand and jewellery retailing businesses. In November 2006 the QPS sought the assistance of the CMC with respect to the conduct of coercive hearings. Hearings were conducted during March, June, July and August 2007 with eight witnesses called to give evidence. Police obtained evidence from four witnesses which implicated two of the principal targets in the receipt of over \$300,000 worth of stolen jewellery.

⁷⁴ Submission No.22, Crime and Misconduct Commission, pp. 36–37.

⁷⁵ *ibid.*, p. 39.

⁷⁶ *ibid.*

The investigation is now concluded. It resulted in the arrest of 3 offenders on 19 charges.⁷⁷

Operation FOXTROT CONDENSE

This was an investigation of criminal activity engaged in by members of a family and their associates including an alleged murder, an alleged abduction and attempted murder of another man, and other violence, drug trafficking and weapons offences.

Extensive hearings were held in this matter during 2007 and 2008, resulting in 2 arrests and 20 charges.⁷⁸

3.4.2 Paedophilia

3.4.2.1 Background

Like the former QCC⁷⁹, the CMC may investigate criminal paedophilia, defined in the CMA as⁸⁰:

- 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.*

The definition also encompasses anything that is preparatory to the commission of criminal paedophilia and anything undertaken to avoid detection of, or prosecution for, criminal paedophilia.⁸¹

In its submission to the Committee, the CMC concedes that the QPS has primary responsibility for investigating criminal paedophilia, especially intra-familial offending. However, criminal paedophilia continues to be an area of significant focus for the CMC.⁸² Pursuant to the CMA, the CMC is only able to investigate matters involving criminal paedophilia where 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 continues through its ATRAX and ARTEMIS umbrella references to work to proactively identify and investigate networked extra-familial child sex offenders, extra-familial child sex offenders with multiple victims, and offenders using the internet to aid in the commission of child sex offences.

3.4.2.2 References targeting criminal paedophilia

Since the CMA commenced in January 2002, the Crime Reference Committee has made the following references (including those two broad umbrella references outlined above) in respect of criminal paedophilia.⁸³

⁷⁷ *ibid.*, pp. 39–40.

⁷⁸ *ibid.*, p. 42.

⁷⁹ 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 s. 355(2) of the CMA)).

⁸⁰ *Crime and Misconduct Act 2001* (Qld), schedule 2, definition of ‘criminal paedophilia’.

⁸¹ *ibid.*, schedule 2, definition of ‘major crime’.

⁸² Submission No.22, Crime and Misconduct Commission, p. 44.

⁸³ Information sourced from CMC Annual Reports 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007 and 2007-2008.

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. <u>Completed</u>
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>

3.4.2.3 *Targeting internet paedophiles*

The CMC's paedophile investigations, including its internet-based investigations, are carried out by a single multidisciplinary team, the Cerberus Team, which at maximum capacity includes four police officers, an intelligence analyst, an assistant intelligence analyst and a lawyer.⁸⁴ The Cerberus Team (formerly known as Egret) has undertaken numerous covert internet investigations targeting persons for offences against section 218A of the *Criminal Code* which criminalises the use of the internet to target children for sexual purposes.

The first provision of its kind in Australia, section 218A of the *Criminal Code* commenced in May 2003. It deems 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, to be offences. Importantly, 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, or ten years where the child is, or is believed by the offender to be, under the age of 12.

The CMC's internet-based investigations have historically been significantly assisted by its use of the innovative computer software Chat-Trak (Internet Protocol Identification). This software is able to identify the exact geographic location of suspected paedophiles utilising the internet.

The CMC has advised the Committee that the ever-growing use of new technology and innovative encryption devices by offenders engaged in internet paedophilia presents a constant challenge. In an effort to contend with this, the CMC has responded by ongoing training of its staff and improvement of its technical capabilities.⁸⁵ The associated increased demands which have been placed on its support functions, including forensic computing, have significant resource implications.⁸⁶

3.4.2.4 *Key achievements in targeting internet paedophilia*

In 2007–08, as a result of internet-based investigations seven people were charged with a total of 24 offences, including using the internet to expose a child under 16 to indecent matter, using the internet to

⁸⁴ Submission No.22, Crime and Misconduct Commission, p. 45.

⁸⁵ *ibid.*, p. 68.

⁸⁶ *ibid.*, p. 145.

procure a child under 16 to engage in a sexual act, and the possession and online distribution of child exploitation material.⁸⁷

Case studies of some key operations follow.

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* (PPRA). 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 specify that covert operatives must not instigate any sexually related conversation and are to at all times assume a 'passive' role in their interactions with targets.

Since the commencement of Atrax operations, 18 investigations have been conducted resulting in 97 individuals being arrested on 795 charges. During the reporting period 26 individuals were arrested on 71 charges, including 32 for possession of child exploitation material and 7 for distribution of such material.⁸⁸

ARTEMIS Referral

The Artemis referral complements Operation Atrax by providing investigators with the ability to conduct non-internet investigations into criminal paedophilia.

During the reporting period, there were five operations and one probe conducted under this referral. Eight persons were charged with 224 offences including rape, indecent treatment of a child under 16, incest, administering a stupefying drug, possessing child exploitation material, sexual assault and breach of the *Child Protection (Offender Reporting) Act 2004*.⁸⁹

Operation AUTUMN

This focussed upon the activities of a target who had been the focus of police intelligence reports for the previous seven years. He was a known associate of convicted child sex offenders, one of whom was still in prison. This target was also the director of a large internet service provider in North Queensland. Information suggested that he spent much of his time at home downloading pornography. Further information received from the Brisbane City Juvenile Aid Bureau indicated the target was responsible for supplying child pornography to a person in Brisbane. A week of hearings took place in Townsville in August 2007. Five witnesses were called, including the target. The hearings provided valuable intelligence on the activities of these persons in the Townsville area and identified that there was no evidence to substantiate criminal charges against the target. Nonetheless, one of his associates was charged with two counts of possession of child exploitation material as a result of forensic analysis of his laptop.⁹⁰

Operation ARIZONA

This operation involved allegations that a 51 year old man had committed sexual offences against his female cousin in the 1970s and his two daughters when they were children in the 1990s. As a result of the passage of time since the alleged offences there was a lack of medical evidence available to support the complainants' versions of events. It was alleged that, as children, the man's sisters witnessed him

⁸⁷ Crime and Misconduct Commission, *Annual Report 2007-2008*, p. 18.

⁸⁸ Submission No.22, Crime and Misconduct Commission, p. 45.

⁸⁹ *ibid.*, p. 46.

⁹⁰ *ibid.*

sexually abusing his cousin in the 1970s and that they too were sexually abused by the man. One sister declared that if police were to call her as a witness she would not implicate her brother voluntarily. The other declined involvement.

Police sought the assistance of the CMC to progress the investigation through investigative hearings. The first sister gave evidence that supported her cousin's complaint. However a decision was made not to proceed with the other sister's examination due to concerns that to subject her to questioning may have been detrimental to her welfare. The 51 year old man was subsequently arrested and charged with 31 offences.⁹¹

Operation GOLF AGITATE

This operation focused upon the activities of offenders released on supervision orders under the *Dangerous Prisoners (Sexual Offenders) Act 2003* and the *Child Protection (Offender Reporting) Act 2004*. Meetings were held with State Crime Operations Command, Task Force Argos and Queensland Corrective Services to discuss issues associated with the investigation of paedophile networks which were suspected as possibly having been formed between offenders whilst in prison.

In partnership with Argos team members, systems were developed which helped investigators identify those persons who presented the biggest risk to the public of re-offending and/or developing paedophile networks.

In May 2008 a target was arrested for possession of child pornography and two breaches of orders made under the *Dangerous Prisoners (Sexual Offenders) Act 2003*. In September 2008 a target was arrested and charged with indecently dealing with a 13 year old female.

Analysis and comment

The lack of a standing statutory reference for the CMC in respect of criminal paedophilia was taken into consideration by the fifth three yearly review. The former QCC had utilised a standing reference, but this was rescinded when the *Crime Commission Act 1997* was repealed.⁹²

The Committee is of the view that the CMC is highly conscious of its crime prevention function in its conduct of paedophilia related investigations, and uses all endeavours to eradicate such activities falling within its purview. The Committee notes that a number of paedophilia references have been actively advanced by the CMC on an ongoing basis and the CMC's outcomes as regards paedophilia related investigations is very high. Accordingly, the Committee does not advocate any modification to the CMC's present practice in this regard. The Committee is concerned however, about the implications of the Supreme Court decision in *Scott v. Witness C*⁹³ for any investigations undertaken under an umbrella referral (including paedophilia investigations undertaken under Atrax or Artemis) and encourages future Committees to closely monitor judicial and legislative developments on this issue.

3.4.3 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 date, all referrals have been at the request of the Commissioner of Police.⁹⁴ Generally, such requests are made when police are unable to solve a case as a

⁹¹ *ibid.*

⁹² See s. 355(2) of the CMA and note the discussion at paragraph 3.6.2 (pp. 18–19) of the 5th PCMC Report No. 64, *Three Year Review of the Crime and Misconduct Commission*, March 2004.

⁹³ *Scott v. Witness C* [2009] QSC 35 – see further discussion at 3.2.

⁹⁴ Submission No.22, Crime and Misconduct Commission, p. 49.

result of various hindrances to their investigations, such as non-cooperative witnesses.

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, namely that the QPS has carried out an investigation that has not been effective, 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. In the period under review, 24 serious crime investigations were referred by the Crime Reference Committee.⁹⁵

The CMC's role in a serious crime investigation depends on the particular circumstances of the case. Such matters are almost always referred to the CMC for the primary purpose of gaining access to the CMC's hearings power and its coercive powers which enable it to secure information and evidence.

Analysis and comment

The Committee has no concerns regarding the parameters of the CMC's serious crime role and is of the view that its current investigative powers should be maintained.

3.4.4 Terrorism

In 2004 the Queensland Government amended the CMA to specifically include terrorism within the CMC's major crime jurisdiction, following the September 11 attacks in the United States in 2001 and the bombings in Bali in October 2002.

Prior to this, in December 2002, the Crime Reference Committee approved an umbrella organised crime reference to allow the CMC (at the request of the QPS) to use its coercive powers to assist a QPS investigation of terrorist threats and 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 public*".⁹⁶ It was not intended that the CMC would undertake any independent or self initiated investigation of terrorism related activity.⁹⁷

The Queensland Government had meanwhile commenced a legislative review to identify any legislative weakness that might hamper State law enforcement authorities in taking counter-terrorism action. 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.

3.4.4.1 Legislative Reforms

The *Terrorism (Community Safety) Amendment Act 2004* 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 the investigative hearings power) to be used against terrorism related major crime.⁹⁸

The *Terrorism (Community Safety) Amendment Act 2004* amended the CMA as follows:

- by including 'terrorism' within the CMA definition of 'major crime'. The definition includes doing something preparatory to the commission of terrorism and something undertaken to avoid detection

⁹⁵ *ibid.*, p. 50.

⁹⁶ Crime Misconduct Commission, *Annual Report 2004-05*, p. 14.

⁹⁷ 6th PCMC, Three Year Review of the Crime and Misconduct Commission, Submission No.26, Crime and Misconduct Commission, p. 34.

⁹⁸ *Terrorism (Community Safety) Amendment Bill 2004* (Qld), explanatory notes, p. 2.

of, or prosecution for, terrorism;

- by providing a broad definition of the term ‘terrorist act’ in a new section 22A;
- by expanding the CMC’s power to obtain surveillance devices to enable warrants to be obtained for a ‘relevant place’ even where a named person could not be identified as a suspect; and
- by enlarging the ‘additional powers’ warrant provisions to apply to a ‘crime investigation relating to terrorism’.

3.4.4.2 *Recommendations of previous Three Year Reviews*

The 5th PCMC sought statutory amendments to the CMA and the 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.⁹⁹ Recommendation 23 sought provisions that would require an application to be 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 (PIM) 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.¹⁰⁰

3.4.4.3 *The CMC’s role in terrorism investigations*

Subsequent to the 2004 amendments to the CMA as effected by the *Terrorism (Community Safety) Amendment Act 2004*, the CMC requested a fresh umbrella referral from the Crime Reference Committee, to equip it with the capacity to respond rapidly to any request for assistance from the QPS in relation to suspected terrorism-related criminal activity.

It remains the case that any CMC investigation of terrorism, acts preparatory to the commission of terrorism or acts undertaken to avoid detection of, or prosecution for, terrorism, will occur on receipt of a request from the QPS.¹⁰¹

The CMC Chairperson outlined the Commission’s role in his evidence to the Committee during the previous review¹⁰²:

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.

⁹⁹ 5th PCMC, Report No. 64, *Three Year Review of the Crime and Misconduct Commission*, Recommendation 22.

¹⁰⁰ Government response to Report No. 64, *Three Year Review of the Crime and Misconduct Commission*, pp. 11–12.

¹⁰¹ Submission No.22, Crime and Misconduct Commission, p. 52.

¹⁰² 6th PCMC, Transcript of Proceedings, *Three Year Review of the Crime and Misconduct Commission*, Thursday 6 July 2006, p. 12.

Analysis and comment

The Committee is of the view that the CMC's existing coercive powers, principally those which are not available to the QPS, are of critical importance in the prevention and investigation of terrorism offences and should be retained. As such, the Committee supports the CMC's current terrorism reference.

3.5 Law enforcement partnerships

Proactively developing working relationships with law enforcement and other agencies has been acknowledged as a focus of the CMC in its *Strategic Plan 2008–12*.¹⁰³

Through strategic partnerships and regular liaison with other agencies the CMC has been able to share intelligence and operational resources to address particular operational needs. It is through partnerships that each agency can deploy its expertise and staff resources to address specific operational requirements.

Since major crime typically involves cross-border criminal activities, to fight this effectively the CMC has formed robust partnerships with various State, Federal and International LEAs including other State police services, the Queensland Police Service, the Australian Crime Commission (ACC), the Australian Federal Police (AFP) and Europol. 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.¹⁰⁴

The CMC's closest partner is the QPS, with which it conducts joint operations, shares operational resources, and uses the CMC's coercive powers to progress investigations to disrupt the criminal activities of organised crime groups and paedophiles. The relationship is also vital to the success of the civil confiscation scheme administered by the CMC under the *Criminal Proceeds Confiscation Act 2002* (CPCA).¹⁰⁵

The QPS said of this alliance:¹⁰⁶

The relationship between State Crime Operations Command (SCOC) and the CMC Crime Division is open, professional and mutually beneficial. The Assistant Commissioner Crime and the Detective Chief Superintendents from both agencies meet monthly as the Joint Executive Team (JET) to discuss current and emerging issues impacting on both agencies. In addition, the Detective Chief Superintendent CMC is a permanent member of the Operations Management Board (OMB) where all SCOC covert operations are evaluated, approved and monitored.

SCOC and QPS regional police, regularly seek the use of CMC coercive powers including, principally, investigative hearings. This is usually done to overcome the stalling of historical major and/or organised crime investigations by individuals who choose not to co-operate with police inquiries and who are likely to possess important information.

These hearings have, in the main, proved to be extremely valuable in progressing these investigations and have resulted in a range of beneficial outcomes including significant criminal arrests, confirmation on oath of the evidence able to be given by prospective prosecution witnesses, charges of perjury for non-compliant individuals, and expediting the timely conclusion of protracted/historical coronial matters. Hearings are now being requested, and held, at much earlier stages of investigations as investigators better understand their tactical and strategic value.

...

The CMC and QPS continue to engage in joint operations in appropriate circumstances in the

¹⁰³ Crime and Misconduct Commission, *Strategic Plan 2008–12*, p. 8.

¹⁰⁴ 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.

¹⁰⁵ Submission No.22, Crime and Misconduct Commission, p. 54.

¹⁰⁶ Submission No.28, Queensland Police Service, pp. 4–5.

areas of organised crime and paedophilia. Joint operations such as Submission/Barrier have been highly successful and demonstrate the effectiveness of shared resourcing and access to CMC coercive powers.

3.6 Challenges for the future

The CMC's *Strategic Plan 2008-12*¹⁰⁷ identified the following as being relevant in its efforts to strengthen the law enforcement impact on major crime:

- conducting effective multidisciplinary investigations and investigative hearings into crime, including organised crime and paedophilia using all available resources;
- maintaining a close partnership with the QPS, and cooperative and collaborative arrangements with other agencies;
- undermining the financial basis of, and incentive for, crime, by identifying and targeting the proceeds of crime for confiscation;
- maintaining a high state of readiness to engage in terrorism-related investigations;
- developing and using state-of-the-art technology to enhance investigative methods;
- employing effective methods to identify and develop targets for investigation;
- gathering evidence for prosecution action; and
- developing human sources with appropriate support, including witness protection.

¹⁰⁷ Crime and Misconduct Commission, *Strategic Plan 2008-12*, p. 4.

4. PROCEEDS OF CRIME

4.1 Background

In 1983 the Australian Police Ministers' Council recommended that all Australian jurisdictions develop laws to combat the accumulation by criminals of the proceeds of their crimes.¹⁰⁸ Commonly referred to as 'confiscation laws', they seek restitution for society by taking back from criminals their ill-gotten gains, deter participation in organised crime by making it less profitable, and prevent the reinvestment of unlawfully derived proceeds into other criminal activities.

Confiscation laws achieve those three purposes via provisions that permit the issuing of restraining orders, forfeiture orders and pecuniary penalty orders. Restraining orders prevent the disposal of an asset before the legitimacy or otherwise of its accumulation is determined by a court. If a court determines that an asset is 'tainted' because it was purchased with the proceeds of a crime, forfeiture orders permit that asset to be forfeited to the State. Pecuniary penalty orders require criminals to repay a monetary sum equal to the benefit they likely derived from the offence.¹⁰⁹

The *Crimes (Confiscation) Act 1989* introduced into Queensland a conviction-based confiscation scheme in line with similar schemes that were introduced into all other Australian jurisdictions between 1985 and 1993. That Act allowed a restraining order to be sought to halt the dissipation of assets until a court ruled on the legitimacy or otherwise of their acquisition. Forfeiture orders and pecuniary penalty orders could then be obtained against a defendant only upon his or her 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.

The experience of all jurisdictions became that, in isolation, the conviction-based schemes failed to adequately satisfy the key purpose of confiscation laws, namely, to deprive criminals of the assets they derived from crime. The failure was generally attributed to difficulties in establishing a sufficient link between a convicted criminal and a particular asset. To address these difficulties the New South Wales Government significantly strengthened its proceeds of crime laws 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,¹¹⁰ many assets that were identified by Commonwealth agencies such as the Australian Federal Police were ultimately referred to State agencies like the New South Wales Crime Commission for confiscation.

It was soon apparent that the conviction-based schemes were far less effective than the advanced State models in aggressively pursuing the proceeds of crime.¹¹¹ In 1999 the Australian Law Reform Commission (ALRC) reviewed the Commonwealth legislation of the time¹¹² and concluded that the very modest returns achieved under the Commonwealth regime fell well short of its goal of depriving criminals of the proceeds of their crimes. The ALRC recommended the incorporation of a non-conviction-based regime into the *Proceeds of Crime Act 1987* to enable confiscation where tainted acquisition was proven to the (lesser) civil standard of proof.¹¹³

¹⁰⁸ "Recovering the proceeds of transnational crime through civil proceedings", AFP Commissioner Mick Keelty, *Platypus Magazine*, No.75 June 2002, pp. 20–25 at p.20.

¹⁰⁹ "Great Expectations-Australia's new Proceeds of Crime Bill", Tim Morris, *Platypus Magazine*, No.73 Dec 2001, pp. 31–36 at p. 33.

¹¹⁰ From 1979 the *Customs Act 1901* (Cth) 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 not often used.

¹¹¹ "Recovering the proceeds of transnational crime through civil proceedings", AFP Commissioner Mick Keelty, *Platypus Magazine*, No.75 June 2002, pp. 20–25 at pp. 22–23.

¹¹² *Proceeds of Crime Act 1987* (Cth), see now the *Proceeds of Crime Act 2002* (Cth).

¹¹³ See *Confiscation That Counts: A Review of the Proceeds of Crime Act 1987*, ALRC, Report No.87, June 1999. 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'.

In response to the shortcomings of the existing system as experienced by recovery agencies, and to the findings of the ALRC Report, Australian jurisdictions began to introduce non-conviction-based (commonly referred to as ‘civil’) confiscation laws to either replace or complement their earlier conviction-based confiscation schemes. These civil confiscation schemes did not depend on a conviction being obtained for asset recovery action to be instituted.

In 2004 the national trend towards civil forfeiture regimes was recognised by the Australian Institute of Criminology (AIC). The AIC noted a shift in emphasis from prosecuting individuals and disrupting organised crime activities towards tackling the profit motive for organised crime by targeting and recovering the proceeds of crime. It noted that national initiatives in that direction reflected earlier State-based civil forfeiture regimes.¹¹⁴ Similar legislative models, incorporating both a conviction-based and parallel civil confiscation scheme, have also been used for some time in the United States, the United Kingdom, Ireland and other countries.¹¹⁵

4.2 Queensland’s legislative framework

4.2.1 Non-conviction-based (civil) confiscation

In 2003 Queensland substantially reformed its laws governing the confiscation of assets derived from crime. The *Criminal Proceeds Confiscation Act 2002* repealed the *Crimes (Confiscation) Act 1989* and introduced (from 1 January 2003) a non-conviction-based (or ‘civil’) confiscation scheme modelled on the New South Wales *Criminal Assets Recovery Act 1990*.¹¹⁶ That civil scheme continues today.

Under the civil confiscation scheme property may be confiscated from a respondent even where there has been no criminal conviction, and without requiring the State to first link that property to a criminal offence. Similarly, forfeiture and pecuniary penalty orders can be made even if a person is not charged with, or convicted of, any criminal offence. All the State is required to show, to a civil standard of proof, is that the ‘prescribed respondent’ engaged in ‘serious crime related activity’ within six years of the date of the forfeiture application. Provided 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 (to the civil standard) that the property at issue has been lawfully acquired.

Although property found to be ‘derived’ from illegal activity¹¹⁷ is subject to forfeiture, the civil confiscation scheme is not available to confiscate property actually *used* in the commission of an offence. Recovery action in a civil confiscation proceeding is not limited to the profits from a particular offence (as applies under conviction-based schemes), but can apply to all criminal proceeds accumulated by a person engaged in the serious criminal activity in the prior six years.

The CMC administers the civil confiscation scheme in Queensland. The CMC initiates the civil confiscation action, either from its own investigations or from investigations conducted by the Queensland Police Service and other law enforcement agencies. Associated court proceedings are conducted on behalf of the CMC by the Office of the Director of Public Prosecutions (ODPP) and are heard in the Supreme Court.

Only the Supreme Court has power under the scheme 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. 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* (POC) criticised by the ALRC in its 1999 review of that Act. The ALRC

¹¹⁴ *The Worldwide Fight against Transnational Organised Crime: Australia*, Australian Institute of Criminology, Technical and Background Paper No.9, 2004 at p. 48.

¹¹⁵ “Recovering the proceeds of transnational crime through civil proceedings”, AFP Commissioner Mick Keelty, *Platypus Magazine*, No.75 June 2002, pp. 20–25 at p. 21.

¹¹⁶ See Explanatory Notes for the Criminal Proceeds Confiscation Bill 2002 (Qld) at p. 2.

¹¹⁷ For example a boat purchased with funds from a criminal enterprise, see *Criminal Proceeds Confiscation Act 2002* (Qld), s. 13.

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.¹¹⁸

4.2.2 Conviction-based confiscation

Operating alongside the civil based scheme in Queensland is a conviction-based scheme also provided for in the *Criminal Proceeds Confiscation Act 2002*. Administered by the Office of the Director of Public Prosecutions and similar to the conviction-based scheme first introduced in Queensland in 1989, this 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. A forfeiture order will only be issued if the property is ‘tainted’ (i.e. used in, or derived from, the commission of the offence). The forfeiture order requires the tainted property to be forfeited to the State, whereas a pecuniary penalty order, also provided for under the scheme, requires a defendant pay to the State an amount representing the benefits derived from commission of the offence. A notable feature of the 2002 regime over its predecessor is that it expanded the range of predicate offences attracting automatic forfeiture to cover all indictable offences punishable by five or more years in prison.

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, the proceeds of crime that can be subject to forfeiture, and the proceeds of crime that can be subject to a pecuniary penalty order.

4.3 Strategic framework

Broadly the CMC’s functions in civil confiscation involves the investigation of activities which found the basis of restraining orders, forfeiture orders and proceeds assessment orders under the CPCA. 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 (especially the organised crime area).

The steps involved in recovering the proceeds of crime are:

- identifying potential proceeds of crime;
- conducting financial investigations and asset tracing;
- restraint action;
- collating evidence;
- assorted interlocutory steps; and
- settlement (either by negotiation or litigation).

In order of their involvement, the key agencies involved in civil confiscation are:

- the QPS (and to a lesser extent other law enforcement agencies such as the CMC, ACC and AFP) whose primary role is the initial identification of matters and provision of investigative resources;

¹¹⁸ *Confiscation That Counts: A Review of the Proceeds of Crime Act 1987*, Australian Law Reform Commission Media Briefing Paper, ALRC 87 – 16 June 1999. As the *Proceeds of Crime 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.

- the CMC which prepares matters for restraint, provides financial investigative resources and conducts the investigation necessary to deal with interlocutory matters and in preparation for final relief;
- 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.¹¹⁹

The CMC's administration of the civil confiscation scheme has several inherent advantages, being that:

- 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 Crime and Misconduct Commissioner to ensure the appropriate use of powers and conduct of investigations.

4.4 Successful confiscation

The inaugural application of the civil confiscation laws occurred just two weeks after their inception. On 14 January 2003 the CMC exercised its new powers under the *Criminal Proceeds Confiscation Act 2002* to restrain property totalling \$4.3 million including real estate, boats, a luxury motor vehicle and bank accounts at the culmination of Operation Soho/Norwegian. That 18 month joint operation with the QPS, CMC, AFP and ACC, assisted by the Australian Customs Service, Australian Tax Office, Insolvency and Trustee Service Australia and the NSW Police Force, resulted in those arrested being charged with a number of serious drug offences as well as with possession of tainted property.¹²⁰

The latest CMC Annual Report [2007-08] notes that \$18.561 million in assets were restrained in the reporting period under 78 orders. Also in that period 27 matters were finalised that resulted in \$4.675 million being forfeited to the State through negotiated settlements. The report also notes that, since the commencement of the *Criminal Proceeds Confiscation Act 2002* on 1 January 2003, there has been a progressive annual increase in restrained and forfeited funds through activity by the CMC and partner agencies. The CMC's submission advises that as at 30 September 2008, the total amount restrained since civil confiscation began on 1 January 2003 was \$77.394 million with 102 settlements resulting in \$14.244 million being forfeited to the State.¹²¹ Twenty-one matters involving property valued at \$5.16 million were, as at 30 September 2008, under investigation preparatory to restraint.¹²²

4.5 Resources and staffing

The Proceeds of Crime Unit at the CMC administers its civil confiscation function. The CMC noted in its submission to the previous review that the Unit commenced operation in July 2003 but the increasing workload for the civil confiscation function required a growth in staffing from 5 officers at its inception to 10.6 (FTE) in 2006. The recruitment and training of additional staff in 2006 and 2007 enabled both the number and value of new matters dealt with to be increased.¹²³ As at 1 April 2009, 19 officers were

¹¹⁹ 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.

¹²⁰ *Major amphetamine syndicate closed down*, QPS, CMC, AFP and ACC (joint) media release, 14 January 2003.

¹²¹ Submission No.22, Crime and Misconduct Commission, p. 70.

¹²² *ibid.*

¹²³ For further detail see Submission No.22, Crime and Misconduct Commission, p. 71.

attached to the unit.¹²⁴

Since the 2006 three year review of the CMC, both the CMC and ODPP have increased staffing levels to meet the increasing demand for proceeds of crime recovery. The CMC noted in its 2007-08 annual report that additional specialised staff were recruited to assist it to meet the current and future demands of the Proceeds of Crime Unit.¹²⁵ The Public Trustee has also applied more resources to the administration of property restrained and forfeited under both confiscation schemes.¹²⁶

With the civil confiscation function dependant upon referrals from other law enforcement agencies, particularly the QPS, the future growth of proceeds of crime recovery is dependent on a future growth in referrals. This growth is expected to follow from an increasing consciousness of proceeds of crime recovery during the investigative processes of law enforcement agencies. Other factors expected to increase future referrals include an enhanced QPS capability to identify prospective proceeds of crime matters through the new QPrime crime recording system, and the potential for expansion of the range of criminal activity subject to proceeds recovery action.¹²⁷

Presently more than 90% of proceeds of crime matters subject to civil confiscation relate to drug related crimes. The emphasis on drug related crime does not reflect the Commonwealth experience where almost three-quarters of offences dealt with under the *Proceeds of Crime Act 2002* are fraud related. Fraud related crime represents a significant opportunity for proceeds of crime recovery in Queensland although at present very little recovery action is taken in respect of fraud matters due to resource constraints and the potential impact on recovery by the victim through restitution orders. As proceeds of crime recovered through confiscation action are paid into consolidated revenue, confiscation action may inhibit the ability of a victim of fraud to obtain compensation under a restitution order.¹²⁸

Experience both locally and in other jurisdictions has shown that applying increased resources to recovering the proceeds of crime does yield positive net results. The CMC submission states that “*due to the specialised training and skill set needed for officers working in this function there is a time lag between the recruitment of new staff and full productivity. Nevertheless, [available data]...indicate[s] the positive impact of increased staff resources on the performance of the function.*”¹²⁹

The CMC has requested that the Committee support its call for increased funding for its proceeds of crime recovery function.¹³⁰ The submission of the Queensland Police Commissioned Officers’ Union of Employees (QPCOUE) also recognises a need for greater resources to be dedicated to the Proceeds of Crime Unit.¹³¹

4.6 Legislative changes

The *Criminal Proceeds Confiscation and Other Acts Amendment Act 2009* was assented to on 23 February 2009 following a comprehensive review of the *Criminal Proceeds Confiscation Act 2002* pursuant to the legislative review requirement in section 266 of that Act. The review considered the Committee’s recommendations from its previous three year review¹³², adopting all but one (due to the fact that the issue had already been clarified by case law).

The legislative review concluded that the *Criminal Proceeds Confiscation Act 2002* was generally

¹²⁴ Figure supplied by the Human Resources Management section at the Crime and Misconduct Commission.

¹²⁵ Crime and Misconduct Commission, *Annual Report 2007-08*, p. 20.

¹²⁶ Submission No.22, Crime and Misconduct Commission, p. 70.

¹²⁷ *ibid.*, pp. 73–74.

¹²⁸ *ibid.*, p. 74.

¹²⁹ *ibid.*, p. 75.

¹³⁰ *ibid.*, p. 80.

¹³¹ Submission No.17, Queensland Police Commissioned Officers’ Union of Employees, p. 3.

¹³² 6th PCMC, Report No. 71, *Three Year Review of the Crime and Misconduct Commission*, pp. vii–ix.

operating effectively. Nonetheless, various amendments were identified in order to ensure the continued effectiveness of the Act in achieving its objects. Importantly the *Criminal Proceeds Confiscation and Other Acts Amendment Act 2009* when it comes in to force:

- overhauls the orders the Supreme Court may make in addition to a restraining order, by re-categorising them as either ‘administration orders’ or ‘investigation orders’, depending on their nature;
- enables ‘investigation orders’ to be made only on application of the State and without notice in appropriate circumstances;
- clarifies that nominated State agencies can disseminate information obtained during compulsory examinations to other agencies in specified circumstances;
- provides a penalty for a person’s non-compliance with an order which requires them to provide a property particulars statement to the State within a stated time;
- clarifies that the court may make orders compelling a person to do anything necessary or convenient to bring property within the jurisdiction; and
- provides that the making of a pecuniary penalty order under the conviction scheme does not prevent the court from making a later proceeds assessment order under the civil scheme in relation to the same serious criminal activity.

4.7 Challenges for the future

The CMC’s *Strategic Plan 2008-12* lists ‘undermining the financial basis of and incentive for crime by identifying and targeting the proceeds of crime for confiscation’ as a key strategy towards the goal of preventing and combating crime.¹³³

4.8 Committee comment

The Committee supports the work of the CMC with respect to civil confiscation and recognises that attacking the profitability of crime will serve as a deterrent to future criminal enterprises. The Committee believes that additional funding is necessary to meet the increasing demand for confiscation services and to enhance the Commission’s operational effectiveness. The Parliamentary Crime and Misconduct Commissioner in his submission was also supportive of the CMC’s request for additional resourcing.¹³⁴

Recommendation 2

The Committee recommends that the Government consider allocating greater resources to the Crime and Misconduct Commission’s proceeds of crime function to meet increasing demand for civil confiscation actions.

¹³³ Crime and Misconduct Commission, *Strategic Plan 2008-12*, p. 4.

¹³⁴ Submission No.32, Mr A.J. MacSparran SC, Parliamentary Crime and Misconduct Commissioner, p. 8.

5. THE MISCONDUCT FUNCTION

5.1 Introduction

The misconduct function of the CMC seeks both to reduce misconduct and improve public sector integrity. This chapter looks briefly at the history of the misconduct function and makes specific comment on the following particular issues:

- the devolution of responsibility for misconduct matters back to public sector agencies;
- capacity building and monitoring of complaint handling;
- timeliness;
- frivolous and vexatious complaints;
- communication and reputation issues;
- the CMC's jurisdiction over private entities exercising public functions;
- the respective roles of the CMC and the Office of the Director of Public Prosecutions;
- the offence of 'misconduct in public office';
- misconduct tribunals; and
- the CMC's power to give information to units of public administration.

5.2 The Crime and Misconduct Commission's misconduct function

The investigation and prevention of misconduct by police and public officers has been a key focus of the CMC, and its predecessor the CJC, since the latter began in 1990 following recommendations of the Fitzgerald Inquiry.

Whilst the investigation of suspected police or official misconduct was a focal activity of the CJC, towards the end of its existence an increased emphasis was placed on the prevention side of its misconduct role. In tandem with this, there was a shift towards devolving responsibility for investigating and preventing misconduct back to the relevant public sector agencies themselves. One of those agencies was the Queensland Police Service. As part of the 4th PCJC's 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.¹³⁵ That Committee also considered the effectiveness of a joint initiative of the Queensland Police Service and the CJC (Project Resolve) undertaken in 2000. Project Resolve trialled a new approach to handling complaints against police, combining some devolution of responsibility for handling such complaints back to the Queensland Police Service itself, with the development of a range of managerial responses to those complaints.

In reporting on its review in March 2001, the 4th PCJC recommended that, whilst the CJC should retain the overall responsibility for investigating complaints against police, its policy of devolving responsibility to the Queensland Police Service ought to continue.¹³⁶ In its response to the 4th Committee's report, the Government stated its support for that approach to complaints management¹³⁷ and the *Crime and Misconduct Act 2001* was soon introduced with provisions that reflected that support.¹³⁸

Central to the Act is the notion that responsibility for continuously improving the integrity of, and

¹³⁵ 4th PCJC, Report No. 55, *Three Year Review of the Criminal Justice Commission*, pp. 22-24.

¹³⁶ *ibid.* p. 37.

¹³⁷ Government response to 4th PCJC Report No. 55, *Three Yearly Review of the Criminal Justice Commission*, p. 2.

¹³⁸ The explanatory notes to the Crime and Misconduct Bill 2001 (Qld) (at p. 2) made it clear that one of the objectives of the bill was to legislatively recognise these changes in approach.

reducing the incidence of misconduct in, the Queensland public sector, is a joint responsibility of the CMC and public sector agencies. Accordingly, the CMC's misconduct function aims to raise integrity and standards of conduct in the public sector through its complaints management, investigations, capacity building and prevention roles, to ensure both that any complaint that involves or may involve misconduct is dealt with appropriately and that any systemic deficiencies that the complaint investigation highlights are addressed to prevent or limit the likelihood of its recurrence in the future.

In relation to complaints, the CMC has primary responsibility for dealing with complaints of official misconduct within public sector agencies, including the Queensland Police Service (QPS). Official misconduct is defined by section 15 of the Act as conduct that could, if proved, be a criminal offence, or a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment. The QPS retains primary responsibility for dealing with police misconduct however, while the CMC retains a monitoring role. Police misconduct is any conduct (other than official misconduct) that is disgraceful, improper or unbecoming a police officer, or demonstrates that person's unfitness to be or continue as an officer, or does not meet the standard of conduct that the community reasonably expects of a police officer. This definition would apply to behaviours such as failing to provide medical treatment to a detainee in a watchhouse. Unlike official misconduct, police misconduct can also apply to off-duty behaviour as well as conduct on the job. Assaulting another patron in a bar would be an example of off-duty police misconduct.

Dealing with complaints provides a means for inappropriate conduct to be addressed, for a complainant to feel a measure of 'justice', and provides a way in which to identify and address any systemic issues, control failures, policy and procedural deficiencies or workplace issues (such as poor standards or agency culture) and client service issues. The focus is on agencies learning from complaints to improve their integrity and reduce misconduct, and to thereby provide enhanced services to the community.

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

The CMA clearly sets out the CMC's functions regarding misconduct¹³⁹:

- (a) *to raise standards of integrity and conduct in units of public administration;*
- (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 Act outlines the number of ways in which the CMC performs its misconduct functions, including assessing complaints received from members of the public or notified by public sector agencies, monitoring how agencies prevent and deal with misconduct, and investigating misconduct itself.

The principles set out in section 34 of the Act, which the Parliament intends the Commission to apply when performing its misconduct functions, are:

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

The cooperation principle requires, to the greatest extent practicable, that the Commission and units of public administration work cooperatively to prevent, and deal with, misconduct.

The twin concepts of devolution and capacity building as trialled in Project Resolve in 2000¹⁴⁰ are given

¹³⁹ *Crime and Misconduct Act 2001* (Qld), s. 33.

¹⁴⁰ For details of Project Resolve see above at 5.2

statutory force by section 34. It stipulates that devolution involves the principle that (subject to the cooperation and public interest principles and the capacity of the unit of public administration) action to prevent and to deal with misconduct within a unit of public administration should generally happen within the unit. This devolution allows the agency to take responsibility for the actions complained of and also frees up the resources of the CMC to concentrate on those matters involving the more complex, systemic and contentious allegations of misconduct.¹⁴¹

In respect of capacity building, section 34 gives the Commission a lead role in building the capacity of units of public administration to prevent and deal with cases of misconduct effectively and appropriately. This is done through a variety of activities and projects including the production of publications and other written materials, the delivery of workshops and presentations, the provision of ad hoc advice and support, continuing liaison with agency management, outreach activities (such as visiting rural and regional areas), working with other oversight agencies, working with Indigenous communities, and conducting research.¹⁴²

The public interest principle specifies 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. The principle requires the Commission to have regard to various factors, namely:

- 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.

The Commission recognises that, despite best efforts, some misconduct will continue to occur within organisations. Accordingly, the CMC itself continues to investigate serious misconduct and matters where the public interest requires an independent investigation or the agency involved lacks the capacity to investigate.¹⁴³

5.4 Complaints, devolution and capacity building initiatives of the Crime and Misconduct Commission

5.4.1 Complaints

Complaints about possible misconduct are made to the CMC from a variety of sources, including members of the public and public sector agencies. The CMC's submission notes that: '*generally, over the last 7 years there has been a gradual upwards trend in complaints*'.¹⁴⁴ A significant proportion of complaints received are referred by public sector agencies. This is likely to be at least in part attributable to the low threshold for referral (there need only be a suspicion that a complaint may involve official misconduct for the agency to be obliged to report it to the CMC). A mere allegation, even without any evidence to support it, is enough to meet that threshold. Upon closer examination many complaints may not involve official misconduct, although the conduct complained of may require some response from the relevant agency. A detailed breakdown of the nature and origin of complaints for the last 3 years is provided in the CMC's submission.¹⁴⁵ The submission from the Department of Emergency Services noted that the scope of the official misconduct definition results in a high number of relatively minor matters being referred to the CMC and subsequently being referred back to the Department to manage. This, and the fact that matters require referral to the CMC on the basis of the mere suspicion of official misconduct

¹⁴¹ Submission No.22, Crime and Misconduct Commission, p. 90.

¹⁴² *ibid.*, pp. 90 and 101.

¹⁴³ Submission No.22, Crime and Misconduct Commission, p. 82

¹⁴⁴ *ibid.*, p. 84

¹⁴⁵ *ibid.*, p. 86.

alone, were considered by the Department to be [restrictively] resource intensive.¹⁴⁶

5.4.2 Devolution

The CMC and previous PCMC's have expressed support for a continuing focus on devolution and capacity building.¹⁴⁷

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 terms¹⁴⁸:

The Commission continues to hold the firm view that a strong culture of integrity requires public sector managers to accept responsibility for the culture and behaviour of their workplace and for reducing the risk of misconduct. With the responsibility comes the need for support, both internal and external, to build managers' capacity to make sound management decisions and their confidence in doing so. In this model, accountability and transparency are also essential to maintain public confidence.

In his submission to the current review, the Parliamentary Commissioner recognised that strategies are needed to ensure the principle of devolution operates effectively and to address problems associated with the public perception that a devolved investigation will not be carried out impartially. The Parliamentary Commissioner stated:¹⁴⁹

One such strategy to deal with the problem might involve more extensive monitoring of complaints referred back to UPAs. Rather than simply seeking mere outcome advice on the large proportion of devolved complaints, the CMC should request, (and most importantly) obtain and read, more detailed finalisation reports on these devolved complaints. These reports need not be overly lengthy (perhaps only a few pages) but complainants and the public could be satisfied that the devolved complaints were better monitored. Complainants are entitled, in my view, to have the report of an investigator checked by the CMC for the integrity, thoroughness and adequacy of its processes. It is a simple question of transparent accountability.

The CMC's submission notes that, generally, the appropriate manager is the one closest, as the circumstances of the complaint permit, in the chain of responsibility to the business unit or workplace in which the issue arises. It is that manager who is considered to be best placed to take action to address the conduct of staff and any workplace issues, including identifying and in many cases addressing, systemic issues, policy and procedural deficiencies, and poor standards of behaviour.¹⁵⁰

5.4.2.1 Analysis and comment

The Committee frequently receives feedback from members of the community expressing concern that their complaints about officers of a public sector agency have been devolved back to that agency for investigation, the argument often being raised that the process of devolution is akin to 'Caesar judging Caesar.'

The Committee recognises that these are validly held concerns and that devolution is an aspect of the Commission's misconduct function that has perhaps the greatest potential to erode public confidence in the independence and integrity of the Commission as an oversight agency. The Committee appreciates that complainants to the Commission will often have a very personal stake in the outcome of the

¹⁴⁶ Submission No.11, Department of Emergency Services, p. 1.

¹⁴⁷ See 5th PCMC, Report No. 64, *Three Year Review of the Crime and Misconduct Commission*, p. 26; CMC submission to the 6th PCMC, Three Year Review p. 84 and 6th PCMC, Report No. 71, *Three Year Review of the Crime and Misconduct Commission*, pp. 43-44

¹⁴⁸ Submission No.22, Crime and Misconduct Commission, p. 82

¹⁴⁹ Submission No.32, Mr A.J. MacSporran SC, Parliamentary Crime and Misconduct Commissioner, p. 11.

¹⁵⁰ Submission No.22, Crime and Misconduct Commission, p. 96

misconduct investigation, especially where they feel personally aggrieved by the conduct complained of. Various complainants to the Committee have raised concerns about the Commission's devolution of their complaint back to the agency complained of, including concerns that the matter will not be properly or independently investigated, that any evidence of misconduct found will be 'covered up', or that the seriousness of their concerns has not been fully appreciated by the Commission. The Committee acknowledges that even where there is no objective evidence that anything other than a full and thorough investigation was done by an agency, the perception of a biased process or outcome, or 'Caesar judging Caesar,' will often remain. It is that perception that can operate to erode public confidence in the CMC.

Despite its concerns about the potential for devolution to erode public confidence in the CMC, the Committee recognises that devolution has a crucial role to play in building the capacity within agencies to identify and avert risks of misconduct that could be peculiar to that agency.

In a practical sense, complainants' concerns about devolution can best be addressed 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 CMC itself occurs.

Recommendation 3

The Committee recommends that section 34(d) of the *Crime and Misconduct Act 2001* be strengthened to require greater consideration of the public interest in devolution decisions, particularly where the complaint relates to the culture of a unit of public administration or where the nature of the complaint is such that devolution is unlikely to remove public perceptions about a lack of impartiality.

5.4.3 Complaints management by agencies

In its submission to the current review the CMC indicated that agencies experience difficulties managing complaints of misconduct that involve alleged criminal conduct. Where a matter is being investigated both by the police and the relevant agency, the agency needs to be able to obtain information from the QPS in order to manage its internal disciplinary processes and should be able to take disciplinary action before the criminal proceedings are completed, while ensuring the interests of the accused person are appropriately protected.¹⁵¹

The CMC also expressed concern that the different sources of advice about the operation of the *Crime and Misconduct Act 2001* provided to agencies by internal agency legal officers, human resource managers and private law firms has '*resulted in striking inconsistencies and inequities in the way in which agencies deal with matters.*'¹⁵² The Commission argues that its partnership with Crown Law and the Public Service Commission has been important in attempting to ensure consistency of approach and advice so the regime under the CMA can be given full effect. The Commission states:¹⁵³

... it has become clear that the only way to ensure that consistent advice is given to avoid the possibility of undermining this regime is to tie agencies to obtaining advice from Crown Law in relation to issues arising under the regime.

The Parliamentary Commissioner in his submission to the current review commented that:¹⁵⁴

¹⁵¹ Submission No.22, Crime and Misconduct Commission, p. 98.

¹⁵² *ibid.*, p. 99.

¹⁵³ *ibid.*

¹⁵⁴ Submission No.32, Mr A.J. MacSporran SC, Parliamentary Crime and Misconduct Commissioner, pp. 8-9.

It seems very restrictive not to allow departments to at least seek such advice from their own legal sections. ...

Whilst I agree that agencies should be encouraged to obtain advice from Crown Law in relation to issues pertaining to the CM Act, I do not accept that it should be mandatory.

While consistency of approach across government is desirable, the concept of devolution and capacity building implies that agencies are given a certain freedom to operate as they consider appropriate. The Committee therefore does not support the proposition that agencies should be *required* to obtain advice from Crown Law in relation to issues arising under the regime of the *Crime and Misconduct Act 2001*. Agencies should be free to obtain advice as is appropriate, *including* from Crown Law. It would be more appropriate for the CMC to deal with issues of consistency through its capacity building and prevention activities.

5.4.4 Capacity Building

Over time the CMC has been allocating more of its Complaints Services resources to monitoring complaint handling by agencies and capacity building. This has been achievable in part by a freeing up of Complaints Services resources through reduced complaints processing (eg. by way of section 40 directions which allow agencies to report less significant matters by way of schedule on a monthly basis).¹⁵⁵

The CMC build capacity to prevent and deal with misconduct through a variety of projects and ongoing activities, including providing advice, support and relevant resources, conducting workshops and information sessions, meeting with chief executives and senior managers in public sector agencies, outreach activities (such as liaison meetings and visiting rural and regional areas), working with other oversight agencies, working with Indigenous communities, and conducting research.

The CMC also continues to build the capacity of agencies through the production of materials focussed on a range of misconduct risk areas. Their aim is to help provide an authoritative misconduct prevention advisory resource, and to help agencies formulate strategies and build capacity to minimise the risks associated with those areas. Resources produced by the CMC for agencies include research papers, guides, toolkits, training materials, manuals, articles and advisory pamphlets on prevention and dealing with misconduct. Ad hoc requests for advice on how to deal with complaints referred to agencies and on a range of prevention issues provide a useful guide as to what is needed when capacity-building projects and activities are being developed.

5.4.4.1 Analysis and comment

Bringing allegations of misconduct to an agency's attention and requiring it to investigate the circumstances of the alleged misconduct gives the agency a unique opportunity to examine and evaluate its own processes and operations. In doing so, operational deficiencies that might provide an opportunity for misconduct to occur can be identified and remedied. In effect it allows agencies to view their systems through the 'fresh eyes' of the complainant and see where problems have occurred or could occur. In this way devolution can support the misconduct prevention function by 'plugging gaps' in the system.

The Committee believes that agencies can learn and grow from dealing with misconduct themselves and can implement policy and procedural changes and educative and preventive measures as needed. This should result in a more mature organisation that is prepared to take responsibility for any problems and that is better equipped to meet community expectations.

¹⁵⁵ See further discussion of section 40 directions below at pp. 31-32.

5.4.5 *Monitoring*

The CMC's monitoring role establishes an important accountability mechanism which also provides information about any deficiencies in capacity. In its monitoring role the CMC conducts reviews and audits of complaints and quality assurance reviews of the integrity framework of public sector agencies and their capacity to prevent and deal with misconduct. In 2006-07 and 2007-08 the CMC reviewed a total of 237 complaints dealt with by public sector agencies. For 28 of those matters (12% of the total matters reviewed) the CMC was dissatisfied with the way in which the matters were dealt with by the relevant agencies. In those cases, the Commission identified a number of capacity and systemic issues and made recommendations to address those issues. In five of the cases the CMC assumed responsibility for the matters. The Commission also conducted compliance and integrity audits of complaints dealt with by 7 public sector agencies, examining a total of 133 complaints in the course of those audits. The CMC's submission notes that all agencies responded positively to the CMC's recommendations.¹⁵⁶

The Commission's reviews focus on individual complaints that are referred to agencies after having been identified at the assessment stage as warranting scrutiny, whether because of a need to maintain public confidence, or to follow up on possible systemic issues. Those factors will also determine the extent of any review undertaken. The Commission may review after the agency takes action, or before it takes any proposed action or may just seek regular interim reports. In reviewing the complaint, the focus is on compliance and integrity in the way in which the complaints are resolved, prevention issues and any capacity deficiencies that the agency may have. Commission audits variously focus on things such as compliance with standards, integrity of the manner in which complaints are dealt with generally, timeliness, and the way in which an agency is dealing with particular types of alleged misconduct. The random and targeted samples of complaints selected for these audits are taken from those referred to the agency to deal with, and which have not been individually reviewed by Complaints Services. For audits concerning compliance and integrity, the Commission has developed an evaluation system that enables it to make an assessment of an agency's capacity to deal with complaints on a sliding scale.¹⁵⁷

The Commission's Quality Assurance Reviews look at an agency's integrity framework, including its policies, code of conduct, complaints handling and records management systems, and training and internal monitoring systems. With the various limbs of the CMC's monitoring function, agencies are aware that any matter that is referred to them to deal with may be subject to significant scrutiny by the CMC. This reinforces in the agency a need for accountability, encourages their compliance with appropriate standards for complaints handling, and aids the public to be confident that matters will be properly handled.

Occasionally a misconduct investigation will highlight systemic issues which contributed to the occurrence of the investigated event, or failed to adequately foreshadow the possibility of such an event occurring. CMC prevention officers can then be briefed by the investigation officers on the nature of the misconduct and can provide complementary input to the investigation report or provide specialist advice directly to the agency. This allows the agency to move quickly to take remedial action, rather than wait for the outcome of any disciplinary or court action. The CMC's submission notes that feedback from agencies about the quality and practicality of the prevention advice provided is encouraging. It is acknowledged that the depth of advice typically provided by the CMC is highly valued by its recipients, who may otherwise have found it difficult to objectively analyse the misconduct event against the background of their prevention activities to determine weaknesses in their policies, guidelines or controls.¹⁵⁸

5.4.6 *Committee Comment*

A number of submissions to this review from various departments commented positively on their

¹⁵⁶ Submission No.22, Crime and Misconduct Commission, p. 101.

¹⁵⁷ *ibid.*, p. 88.

¹⁵⁸ *ibid.*, p. 92.

interactions with the Commission in addressing misconduct matters. The Committee considers it important that agencies, particularly smaller ones, are adequately resourced and assisted to fulfil their roles of preventing and dealing with misconduct. It is equally crucial that the CMC maintain its lead role and support agencies as required. The positive reactions by the agencies to the capacity building activities of the CMC suggest that the CMC is fulfilling its role in this regard.

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, or adequately equipped, to deal with misconduct. That Committee noted there was a 'wide variation in the extent of the corporate experience, structures, and policies of the various agencies.'¹⁵⁹ It made a number of recommendations regarding capacity building and devolution.¹⁶⁰ Those recommendations and the Government's response to those are set out in the Three Year Review Report of the 6th PCMC.¹⁶¹ The 6th PCMC reported an ongoing steady improvement in the ability and resolve of agencies to deal with and prevent misconduct themselves.¹⁶²

The current Committee acknowledges that the CMC continues to work cooperatively with agencies to help them improve their capacity to investigate and prevent misconduct within their own ranks.

5.5 Timeliness

The reviews by predecessor Committees have also considered the time taken to finalise some complaints to be a key issue. The nature of the submissions to the three yearly review conducted by the 5th PCMC led that Committee to observe¹⁶³:

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.

That issue was again raised by agencies in a number of submissions to the review by the 6th PCMC.¹⁶⁴

The current Committee has, like its predecessors, received complaints (both from persons who have made a complaint to the Commission and those who have been the subject of a complaint being dealt with by the Commission) raising issues of timeliness. In some cases those complaints about timeliness have been warranted, although in the main timeliness does not seem to be the problem it once was.

The Committee monitors closely the timeliness of CMC investigations, examining statistics provided regularly by the Commission and receiving briefings on initiatives taken by the Commission to reduce timeframes, both in matters it deals with itself and in turnaround times for matters referred back to agencies. It appears that the improvements reported by the reviews undertaken by the 5th and 6th Committees are ongoing. The CMC's submission to the current review notes that it continues to achieve its target of 85% of complaints being assessed within four weeks of receipt.¹⁶⁵ This improvement was attributed in part to the Commission extending the delegation of its authority for assessment decisions so as to enable assessment decisions to be made as expeditiously as possible at the appropriate level, and to reduce multi-handling of complaints.

¹⁵⁹ 5th PCMC, Report No. 64, *Three Year Review of the Crime and Misconduct Commission*, p. 26.

¹⁶⁰ *ibid.*, p. 27.

¹⁶¹ 6th PCMC, Report No. 71, *Three Year Review of the Crime and Misconduct Commission*, pp. 45–46.

¹⁶² *ibid.*, p. 44

¹⁶³ 5th PCMC, Report No. 64, *Three Year Review of the Crime and Misconduct Commission*, p. 27.

¹⁶⁴ Including submissions from the Deputy Premier, the then Minister for Communities, the Directors-General of the Department of Corrective Services and of Queensland Transport, the Local Government Association of Queensland and the Caboolture Shire Council.

¹⁶⁵ Submission No.22, Crime and Misconduct Commission, p. 83.

Section 40 directions have also been used by the Commission in recent years to aid timely complaints handling. These directions modify the usual case-by-case complaints notification required of agencies under section 38 of the CMA by allowing all departments and select larger agencies and councils to start dealing with certain types of complaints immediately and subsequently advising the Commission of those complaints by schedules submitted to the Commission monthly.

At the hearings for this review it was noted by the Commission that complaints handling has become more efficient and timeliness issues have been minimised as a result of the introduction of section 40 directions to chief executive officers of UPAs. This reduction in mechanistic complaints handling at the assessment stage by the Complaints Services area of the CMC frees up those staff to monitor complaints handling by agencies and to pursue capacity building initiatives with agencies.¹⁶⁶

The CMC has noted however that delay in complaints handling can remain an issue even once matters are devolved to UPAs. The Commission has 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. The submission from the CMC noted that the Commission was undertaking a detailed analysis of 'outstanding' reviews to identify the factors that contribute to the time taken to deal with complaints. It noted that many and varied factors can impact upon timeliness and that these will vary from agency to agency. One factor that was noted as common across agencies was a tendency to fully investigate complaints that do not warrant that level of response. Other factors that were noted as potentially contributing to delays were the unavailability of witnesses (e.g. on sick leave), the involvement of legal representatives, appeal processes, and legal challenges to the validity of the investigative process.¹⁶⁷

Evidence given by, and submissions from, the Queensland Police Commissioned Officers' Union of Employees and the QPS, also expressed ongoing concerns regarding timeliness. The QPCOUE expressed its major concern as being the timeliness of investigations carried out in respect of some of its members. It noted the protracted nature of some investigations and concerns expressed by its members at being interviewed a number of times over the same issue. The QPCOUE also observed the detrimental impact of such investigations on a subject officer's family if the officer is unable to work in a particular location or is moved around the Service. The impact on a subject officer's career prospects was also recognised, with the Union noting that promotions or even lateral transfers will generally be blocked, and medals not issued, during the investigation period:

*...their whole career is put on hold until that investigation is finalised... So in essence just the length of the investigation has been a penance.*¹⁶⁸

The submission from the Queensland Police Service was also concerned with timeliness issues:

In terms of complaint management and the CMC's over viewing role, I make the following observations and comments:

Although ESC and CMC maintain regular liaison regarding complaints, ESC managers and regional Assistant Commissioners have experienced delays in matters raised at the CMC not being assessed and forwarded to the Service in a timely manner. Concerned parties are being interviewed by police some weeks after making the initial complaint to the CMC. Delay in contacting concerned parties can reflect negatively on the Service and public confidence in the process.

ESC managers have raised concerns regarding some matters referred by the CMC to the QPS, in particular material supplied by the complainant to the CMC often does not accompany the

¹⁶⁶ 7th PCMC, Transcript of Proceedings, Three Yearly Review of the Crime and Misconduct Commission, 19 November 2008, p. 2

¹⁶⁷ Submission No.22, Crime and Misconduct Commission, p. 88.

¹⁶⁸ 7th PCMC, Transcript of Proceedings, Three Yearly Review of the Crime and Misconduct Commission, 19 November 2008, p. 37, Superintendent Savage and Superintendent Pointon.

*referral. The CMC have provided advice to the ESC that in some cases this is due to privacy issues, however, this hinders the QPS investigation process. There is scope to improve communication between agencies to commence investigations, inquiries and reviews in a timelier manner.*¹⁶⁹

The Committee is keenly aware of the importance of timely resolution of complaints and acknowledges the proactive steps taken by the Commission with a view to addressing issues of delay. Nevertheless the Committee considers it is vital that complaints against police officers and public sector officers are resolved as expeditiously as possible.

The Committee also considers there is a clear need for the Commission and successor Committees to continue to monitor the CMC's performance in handling complaints in a timely manner.

Recommendation 4

The Committee recommends that the Crime and Misconduct Commission provides new complainants with an outline of the likely steps involved in the assessment and/or investigation of their complaints and information about the potential timeframe for finalisation of their matter.

Recommendation 5

The Committee recommends that the timeliness of misconduct assessments and investigations, both by the Crime and Misconduct Commission and by units of public administration, continues to be closely monitored by the Crime and Misconduct Commission and by the incoming Parliamentary Crime and Misconduct Committee.

5.6 Frivolous and vexatious complaints

Although it did not make a submission to this review, the Local Government Association of Queensland (LGAQ) made a submission to the 6th Committee's 2006 review, suggesting that a person who makes a frivolous or vexatious complaint to the Commission be required to meet the costs of any investigation of that complaint. The LGAQ stated that such a sanction¹⁷⁰:

... 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.

The CMC observed that¹⁷¹:

... 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...

¹⁶⁹ Submission No.28, Queensland Police Service, pp. 2–3.

¹⁷⁰ 6th PCMC, Three Year Review of the Crime and Misconduct Commission, Submission No.17, LGAQ, p. 5.

¹⁷¹ *ibid.*, Submission No.34. CMC supplementary submission, pp. 3–4.

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.

Whilst the Committee shares the concern that frivolous complaints have the potential to cause damage to the reputations of agencies and/or individuals, the Committee accepts the difficulties inherent in proving that a complaint is frivolous or vexatious. For this reason, the Committee does not consider further sanction is appropriate, beyond the existing provisions in the CMA. The Committee endorses the comments of the 6th PCMC in this regard.¹⁷²

5.7 Communication / reputation issues

5.7.1 Referrals to the Office of the Director of Public Prosecutions

Publicising the fact that allegations against a person have been referred to the Office of the Director of Public Prosecutions can have a very damaging effect on the person's reputation, even if they are subsequently exonerated. The damage can be particularly severe for people who are already in the public eye such as members of parliament and local councillors. There have been occasions where the CMC has publicly announced that a matter has been referred to the ODPP on the basis that the matter is the subject of significant public controversy and the Commission's view is that the public interest justifies such an announcement.

The Committee notes that the CMC has developed and implemented a Prosecution Protocol Policy which defines the matters that will be referred to the ODPP for consideration. According to the CMC's submission to the current review, this policy will reduce the situations where referrals will be publicised. The submission explains:¹⁷³

The co-operative process will generally avoid any necessity to publicise a referral to the ODPP. It is, of course, possible that on rare occasions the CMC may have to consider whether to announce a referral to the ODPP, but the CMC is of the view that it is not feasible to attempt to establish detailed guidelines which would universally govern what will be a rare event occurring in unforeseeable circumstances. The only factor which would always be considered by the CMC is the public interest.

The Committee notes the protocol lists matters that are 'likely to attract considerable public interest' as one of the classes of misconduct matters that should be referred to the ODPP for consideration of prosecution proceedings.¹⁷⁴

Analysis and comment

The Committee is of the opinion that the mere fact a matter is in the public arena is not sufficient rationale for publicising its referral to the ODPP. The Committee is also opposed to the view that public notification is justified to protect the CMC from criticism about delays in resolving certain matters. Although it is vital that public confidence in the CMC is maintained, the CMC has more opportunity to recover its reputation than individuals. The Committee acknowledges that any decision about whether to

¹⁷² 6th PCMC, Report No. 71, *Three Year Review of the Crime and Misconduct Commission*, p. 52.

¹⁷³ Submission No.22, Crime and Misconduct Commission, p. 33.

¹⁷⁴ *ibid.*, p. 32.

publicly announce that a matter has been referred to the ODPP must be made on a case by case basis. It also recognises that recent changes in the CMC's relationship with the ODPP mean there are fewer occasions for this issue to arise than in the past. Nevertheless, the Committee is of the view that guidelines, based on the principles outlined above, would provide a consistent framework in which to evaluate the competing factors involved in determining whether disclosure is in the public interest.

Recommendation 6

The Committee recommends that the Crime and Misconduct Commission develops guidelines for determining when a referral to the Office of the Director of Public Prosecutions is publicised. The guidelines should reflect that, when evaluating competing factors to determine the public interest, protecting the reputation of individuals who have not been charged with an offence is the paramount consideration.

The Committee recognises that there may be circumstances where the Commission's inability to publicise its referral of a matter to the ODPP may expose the Commission to unwarranted criticism about the time taken to resolve that matter.

The Committee accepts that the CMC should be afforded a chance to defend its actions where the delay is not attributable to the CMC. Circumstances may occur in which the Committee rather than the Commission could defend the Commission's reputation for timeliness. In those circumstances, and if the Committee considers it appropriate, the Chair of the Committee may make a public statement clarifying that the Committee has considered the Commission's handling of the matter and providing its view on the appropriateness of the Commission's actions.

5.7.2 Confidentiality of complaints / restoring reputation

The referral of a person to the CMC for investigation has the potential to cause significant damage to that person's reputation. Consequently, the question whether complainants should be required to keep the existence and nature of complaints confidential until the complaint is dealt with has been raised in previous reviews.

In 1992 the CJC sought a legislative amendment that would make it an offence for a person who had made a complaint or given information to the Commission to disclose that fact or any details of the complaint. The CJC argued that the amendment was necessary to protect privacy and deter complaints that were politically motivated or designed to damage a person's reputation.¹⁷⁵

In its submission to the 2006 three yearly review, the LGAQ criticised the level of publicity that occurs after a complaint is made to the CMC, (regardless of the merits of the complaint). The LGAQ argued that the CMA should be amended to impose an obligation of confidentiality on complainants when making complaints against local councillors and other public officials.¹⁷⁶ The CMC did not support the proposed amendment on the basis that it would be difficult to justify given the public expectation that the work of the Commission is open and transparent and that public debate on matters should not be stifled. The Commission also mentioned the practical difficulties associated with enforcing such an offence.¹⁷⁷ The 6th PCMC took the view that, on balance, and having regard to the need for transparency, the CMA should not be amended to impose an obligation on persons to keep the existence and nature of complaints against public officials confidential before finalisation.¹⁷⁸ This Committee endorses that view.

¹⁷⁵ CJC submission to the 1st PCJC Three Year Review, 1992, Appendix C, pp. 49–51.

¹⁷⁶ 6th PCMC, Three Year Review of the Crime and Misconduct Commission, Submission No.17, Local Government Association of Queensland, pp. 3–4.

¹⁷⁷ 6th PCMC, Three Year Review of the Crime and Misconduct Commission, Submission No.34, Crime and Misconduct Commission, p. 4.

¹⁷⁸ 6th PCMC, Report No. 71, *Three Year Review of the Crime and Misconduct Commission*, p. 51, recommendation 14.

5.7.3 CMC communication with persons of interest

The Committee has previously raised with the Commission concerns about the way it informs people who have been under investigation that no further action is to be taken. In many cases that written notification is worded in a way that does not clearly exonerate the person.

When this issue was raised in 2006 the CMC stated:¹⁷⁹

The Commission agrees that, where the evidence is such that it is satisfied that the subject officer could not have engaged in the conduct alleged, the officer should be 'exonerated'. However, in most cases we are unable to do so. Generally, all we can do is reach the conclusion that there is insufficient evidence to forward a brief to a disciplinary or investigative body. That is, there can be no definite finding that the conduct alleged could not have occurred. To 'exonerate' when this is not warranted has significant ramifications. Two examples will illustrate this point.

Insufficient documentation

There are many cases where the documentation available to the CMC is such that no firm conclusions can be drawn on the primary allegations; consequently, there is insufficient evidence to warrant consideration of prosecution proceedings or disciplinary action. The failure to properly document transactions regularly masks corrupt or criminal behaviour. Exonerating the subject officer in relation to the primary allegations in these circumstances would merely give tacit approval to poor record-keeping.

Uncorroborated evidence

Another example is a situation where the evidence against the subject officer comes from a complainant or witness whose evidence cannot be corroborated. In these circumstances we might conclude that prosecution or disciplinary proceedings are not warranted, but a finding of exoneration would imply that the complainant or witness was not to be believed, when this was not necessarily the case. This clearly would be unfair to the particular complainant or witness, and would discourage complainants from coming forward.

Both of the above outcomes are undesirable.

Analysis and comment

The Committee recognises that the Commission cannot make determinations of guilt or innocence in misconduct matters. Where the alleged misconduct could clearly not have been engaged in (eg. the officer who is the subject of the allegation was overseas at the time of the alleged incident) then the Commission's notification will clearly reflect that there is no case to answer. Where a matter is simply incapable of substantiation on the material available to the CMC, something less than exoneration is appropriate. While the Commission will not always be in possession of evidence which exonerates the individual, letters to complainants should contain categorical statements only and not contain ambiguities, innuendo or suggest that the individual is entitled to anything less than the presumption of innocence. The Committee urges the CMC, in all its processes, to be mindful of the impact of an investigation on a person's reputation.

Recommendation 7

The Committee recommends that the CMC develop guidelines to ensure that its letters to persons who have been under investigation and in respect of whom no further action is to be taken reflect the Commission's recognition of that person's entitlement to a presumption of innocence.

¹⁷⁹ 6th PCMC, Three Year Review of the Crime and Misconduct Commission, Submission No.34, Crime and Misconduct Commission, p. 10.

5.8 Jurisdiction over private bodies exercising public functions

5.8.1 Introduction

The CMC and PCMC have grappled with the question of whether the CMC should have jurisdiction over private entities exercising public functions for some time. In its submissions to the three year reviews conducted by the 5th PCMC in 2003-2004 and the 6th PCMC in 2006, the CMC put the position that entities carrying out public functions should be subject to scrutiny by the Commission, especially where public funding is involved.¹⁸⁰ Both Committees agreed with the general principle, but recognised the complexity of the policy and practical issues that would be involved in its implementation. The Committees were particularly concerned about the timing of any changes in relation to resourcing and workloads for both the CMC and the affected entities and recommended that the Government give consideration to extending the misconduct jurisdiction of the CMC to private entities that exercise public functions and utilise public moneys.¹⁸¹

The Government responded in the following way to the recommendation made in the 6th PCMC's three year review report:¹⁸²

The Government notes:

- *Report No. 71 again does not give examples of particular accountability failures or concerns;*
- *The financial and resource implications of an extension of the Crime and Misconduct Commission's jurisdiction to private bodies are unknown, but are likely to be substantial.*
- *The Parliamentary Crime and Misconduct Committee considers that some public sector agencies still have some way to go in achieving appropriate capacity to deal with and prevent misconduct.*

Given these factors, the Government, while supporting the recommendation in principle, will not commit to detailed consideration to an extension of the jurisdiction of the Crime and Misconduct Commission to private entities that exercise public functions and utilise public monies, including an assessment of the resource and financial implications, during the current term.

Since the last three year review, any jurisdiction the CMC once had over private entities has been removed with changes to the legislation regulating government owned corporations (GOCs).

The Queensland Government is the owner of 15 GOCs that operate in a range of industry sectors including energy, ports, rail, investment and water.¹⁸³ Until recently the CMC had jurisdiction over those GOCs that fell into the category of *statutory GOCs*.¹⁸⁴ Unlike *company GOCs*, *statutory GOCs* were not incorporated under the *Corporations Act 2001* (Cth). By October 2008 all GOCs had become company GOCs, subject to the oversight of the Australian Securities and Investments Commission (ASIC), and the concept of *statutory GOCs* was removed from the *Government Owned Corporations Act 1993*.¹⁸⁵ No GOC is now designated to be a unit of public administration under the *Crime and Misconduct Act 2001* and consequently the CMC has no jurisdiction in relation to misconduct by officers of these corporations.¹⁸⁶

¹⁸⁰ 5th PCMC, Report No. 64, *Three Year Review of the Crime and Misconduct Commission*, pp. 34–35; 6th PCMC, Report No. 71, *Three Year Review of the Crime and Misconduct Commission*, pp. 53–54.

¹⁸¹ 5th PCMC, Report No. 64, *Three Year Review of the Crime and Misconduct Commission*, p. 35, recommendations 12 and 13; 6th PCMC, Report No. 71, *Three Year Review of the Crime and Misconduct Commission*, p. 54, recommendation 16.

¹⁸² Government Response to PCMC Report No. 71, *Three Year Review of the Crime and Misconduct Commission*, pp. 6–7.

¹⁸³ Energy generation – Tarong Energy Corporation Limited, CS Energy Limited, Stanwell Corporation Limited. Energy transmission – Powerlink Queensland. Energy distribution – ENERGEX Limited, Ergon Energy Corporation Limited. Ports – Port of Brisbane Corporation Limited, Gladstone Ports Corporation Limited, Mackay Ports Limited, Port of Townsville Limited, Cairns Ports Limited, Ports Corporation of Queensland Limited. Rail – QR Limited. Other – QIC Limited, SunWater Limited.

¹⁸⁴ *Government Owned Corporations Act 1993* (Qld), previous s. 181.

¹⁸⁵ *Government Owned Corporations Amendment Act 2007* (Qld), s. 62 and schedule.

¹⁸⁶ *Government Owned Corporations Act 1993* (Qld), s. 156.

5.8.2 *The CMC's submission*

The CMC remains concerned about the appropriateness of excluding GOCs from the Commission's misconduct function given community expectations about integrity and accountability. In its submission to the current review the Commission states:¹⁸⁷

The CMC considers that further consideration is warranted as to whether the public interest in GOCs requires additional safeguards which could be achieved by bringing serious or systemic misconduct in GOCs within the ambit of the CMC's misconduct function. Under this function the CMC could assist GOCs capacity building to deal with and prevent misconduct and provide scrutiny over serious official misconduct.

The CMC noted during the public hearing that, because some GOCs have never been within the CMC's jurisdiction, the Commission does not have statistics on misconduct in those organisations.¹⁸⁸ The CMC did, however provide the following examples of issues that suggest the Commission's misconduct function should apply to GOCs:¹⁸⁹

- ICAC in NSW has had an extensive investigation into very serious corruption allegations involving RailCorp, a NSW State-owned corporation. As at September 2008 ICAC had made findings of corrupt conduct against 21 people and has indicated in its final report it will make recommendations about changes to RailCorp's structure and practices to reduce exposure to similar misconduct in the future.
- In the past the CMC has investigated 'kickbacks' and other corrupt activities involving a QRail officer and four external contractors. Charges were laid concerning corrupt arrangements in the awarding of QRail contracts worth almost \$1 million. On 10 September 2005, all five people involved pleaded guilty to fraud with circumstances of aggravation, and were sentenced to terms of imprisonment ranging from two to six years.
- Prior to QRail's conversion as a corporate GOC, the CMC received an average of 3 complaints per month alleging misconduct within Queensland Rail.

In its submission to the current review the CMC proposed that, rather than declare all GOCs to be units of public administration thereby bringing them within the misconduct jurisdiction of the Commission:¹⁹⁰

... an obligation ... be placed on the CEO of a GOC that receives public funding or utilises public infrastructure, to carry out public functions, to report serious allegations of misconduct to their shareholding minister. The minister may then choose to refer it to the CMC for investigation.

5.8.3 *Analysis and comment*

The Committee agrees with the principle that entities that carry out public functions utilising public funds and public infrastructure should be subject to external scrutiny by a body like the CMC. This is particularly appropriate for GOCs that are responsible to the relevant Minister and ultimately the public.

The arguments advanced against GOCs being subject to government integrity and accountability mechanisms are two-fold. Firstly, like all Australian companies, GOCs must comply with the accountability, reporting and regulatory requirements of the *Corporations Act 2001* (Cth) and are subject to the independent regulation of ASIC. It is sometimes argued that additional accountability mechanisms are unnecessary.

¹⁸⁷ Submission No.22, Crime and Misconduct Commission, p. 20.

¹⁸⁸ 7th PCMC, Transcript of Proceedings, Three Yearly Review of the Crime and Misconduct Commission, 19 November 2008, p. 10.

¹⁸⁹ Submission No.22, Crime and Misconduct Commission, pp. 19–20.

¹⁹⁰ *ibid.*, p. 23.

In its submission to the present review the CMC drew a distinction between the nature of the oversight provided by ASIC and the CMC:¹⁹¹

While the CMC acknowledges that the governance framework of ASIC under the Corporations Act 2001 would regulate serious misconduct on the part of board members and most senior executives of a GOC, the practical reality is that ASIC would never become involved in the investigation of misconduct on the part of staff of the GOC.

The CMC Chairperson made this point again during public hearings when he said:¹⁹²

If a board member of Q-Rail engaged in totally inappropriate conduct, I think there is every chance that ASIC would come in and do something about it – perhaps the CEO and the very senior executives, I think there is every chance they would. They certainly would not if a purchasing officer was defrauding Q-Rail by a sweetheart deal with a contractor, which is more the sort of thing we would be concerned with.

The second argument often advanced for excluding GOCs from the CMC's misconduct jurisdiction relates to the fact GOCs are corporatized entities which largely operate in a commercially competitive environment. It is argued that imposing obligations on GOCs that do not apply to their privately-owned competitors would adversely affect their ability to compete on equal terms.

The Committee notes that the proposed reforms of Queensland freedom of information laws draw a distinction between GOCs that operate in competitive environments and those that do not, with only the first group being excluded from the proposed right to information regime.¹⁹³

While the Committee supports the general proposal to give the CMC jurisdiction to investigate serious allegations of misconduct against officers of GOCs, it does not agree that the referral of such matters should be at the discretion or determination of the relevant minister. In many cases the minister would not have the information, advice or support required to make the necessary decision. The Committee also notes the CMC's evidence that information about misconduct has often come directly from a member of the public or a whistleblower.¹⁹⁴ Accordingly, the jurisdiction of the CMC over matters involving a GOC should not be limited to those matters referred by the Minister.

Recommendation 8

The Committee recommends the relevant legislation be amended to give the Crime and Misconduct Commission jurisdiction to investigate serious allegations of misconduct against officers of Government Owned Corporations and to play a role in misconduct prevention and capacity building in Government Owned Corporations.

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

Section 49 of the CMA 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*

¹⁹¹ *ibid.*, p. 18.

¹⁹² 7th PCMC, Transcript of Proceedings, Three Yearly Review of the Crime and Misconduct Commission, 19 November 2008, p. 7.

¹⁹³ The Right to Information – A Response to the Review of Queensland's Freedom of Information Act, August 2008, p. 6. Draft Right to Information Bill 2009, clauses 15 and 24.

¹⁹⁴ 7th PCMC, Transcript of Proceedings, Three Yearly Review of the Crime and Misconduct Commission, 19 November 2008, p. 9.

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; ...*

During the 5th PCMC review, the then Director of Public Prosecutions (DPP) raised concerns about the general practice adopted by the CMC of obtaining advice from her office before laying criminal charges. The DPP's concerns were that this practice had significant resource implications for the DPP and resulted in delays in responding to briefs referred to the DPP.

In response, the CMC implemented a policy in relation to the classes of misconduct matters that should be referred to the DPP for consideration of prosecution proceedings. The Prosecution Protocol Policy provides that the CMC reports to the DPP under s.49(2)(a) of the Act where the matter reported upon is:

- likely to attract considerable public interest;
- one where the circumstances may warrant the DPP exercising the discretion not to prosecute although sufficient evidence exists;
- one on which the CMC seeks the DPP's advice for any reason.

In misconduct matters where the CMC seeks the DPP's advice, the Chairperson of the CMC will communicate with the DPP prior to referring such a matter. In all other misconduct matters where the Chairperson is of the view that consideration should be given to prosecution proceedings, the Chairperson may refer the matter to an appropriate police officer within the CMC for such consideration and, if considered warranted by that officer, for the preferment of appropriate charges.

In relation to the efficacy of the protocol, the CMC's submission observes that the protocol with the ODPP appears to be operating reasonably well and satisfies the requirements of both organizations.¹⁹⁵

At the public hearings the CMC's Chairperson, Mr Robert Needham, advised the Committee that the protocol:¹⁹⁶

...in general term is working quite well. We do indicate that there were three matters that went a little bit over a year on which, as at the time of our writing the submission, we had not received a response. I can indicate that we have just received that response and it is for charges to go ahead. That is unfortunate. It does take a year to get the response. But that one is the only one—when I say 'that one', there are about three charges of the one set of people—that has taken that sort of length of time. Generally now we have reduced the times to a matter of days or weeks. I think most of them have been within, say, about four weeks, which is very, very acceptable. It has meant that that problem that has arisen in the past of a public perception of delay on the part of the CMC and of public concern about it and perhaps concerns on the part of complainants has not arisen to the same degree as it had in the past.

In the circumstances, the Committee believes it is appropriate for the administrative arrangements in place between the CMC and the ODPP to continue. The Committee recommends that the incoming PCMC continues to monitor the operation of those arrangements.

¹⁹⁵ Submission No.22, Crime and Misconduct Commission, p. 33. See also further discussion of the protocol at 5.7.1.

¹⁹⁶ 7th PCMC, Transcript of Proceedings, Three Yearly Review of the Crime and Misconduct Commission, 19 November 2008, pp. 2–3.

Recommendation 9

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

5.10 Offence of misconduct in public office**5.10.1 Background**

The Queensland Criminal Code contains a number of offences relating to corruption and abuse of public office,¹⁹⁷ including the offences of official corruption¹⁹⁸ and abuse of office.¹⁹⁹ The CMC submits that the scope of these offences ‘*can be quite limited and most involve an element of benefit gained or given or detriment caused corruptly.*’²⁰⁰

The CMC provided the following examples of alleged criminal misconduct by public officers which were not prosecuted or were prosecuted under other provisions because they were considered unlikely to fall within the current Criminal Code corruption and abuse of office offences:²⁰¹

An off duty policeman’s serious misconduct where the behaviour is a misuse of his rank or capacity as a police officer e.g.: off duty police officer who contacted drug addicts he knew from their association with police inquiries, to request sexual favours – unsuccessfully prosecuted as procurement of a female for sexual activity.

Police officer engaged in recruitment of covert informants, who under the pretence that it was a requirement for the position, cut off samples of pubic hair of female recruits – prosecuted as stealing offences.

Police officers who arranged for phone calls of prisoners to external persons to be made via diversion from a police station phone. (Under the Arunta system calls to a police station by a prisoner are not required to be recorded).

A senior public servant provided information to a company director about companies to which contracts had been granted by his Department. The director then made approaches to the companies to acquire them. After the public servant resigned, he then acquired shares and became a director of the entity which had purchased the companies.

The CMC submit that enacting a broader offence similar to the common law offence of ‘*misconduct in public office*’ would ‘*cover any serious misconduct by a public officer that is unlawful and in breach of duty, without the element of benefit or detriment.*’²⁰²

The offence of misconduct in public office is extremely broad and difficult to define with any precision. The essence of the offence is that it ‘*proscribes public officials from acting (or omitting to act) contrary to the duties of their office in a manner which so injures the public interest that the punishment is*

¹⁹⁷ Criminal Code (Qld) Chapter 13 – section 87 (official corruption), section 88 (extortion by public officers), section 89 (public officers interested in contracts), section 90 (officers charged with administration of property of a special character or with special duties), section 91 (false claims by officials), section 92 (abuse of office), section 93 (corruption of surveyor and valuator), section 94 (false certificates by public officers), section 95 (administering extrajudicial oaths), section 96 (false assumption of authority), section 97 (personating public officers).

¹⁹⁸ Criminal Code (Qld), s. 87.

¹⁹⁹ *ibid.*, s. 92.

²⁰⁰ Submission No.22, Crime and Misconduct Commission, p. 30.

²⁰¹ *ibid.*, pp. 31–32.

²⁰² *ibid.*, p. 30.

warranted.’²⁰³ The elements of the offence have been formulated in a variety of ways in different jurisdictions. For example, in Victoria the prosecution must establish beyond reasonable doubt that:²⁰⁴

The accused in the exercise of duties in his or her public office:

- *acted or failed to act;*
- *the act or omission arose from improper motive;*
- *the act or omission so injures the public interest that the punishment is warranted.*

By contrast the Crown Prosecution Service in the United Kingdom lists the elements of misconduct in public office as:²⁰⁵

- a) *a public officer acting as such;*
- b) *wilfully neglects to perform his duty and/or wilfully misconducts himself;*
- c) *to such a degree as to amount to an abuse of the public’s trust in the office holder;*
- d) *without reasonable excuse or justification.*

Commentators have noted that although the common law offence of misconduct in public office had fallen into relative disuse during the mid-twentieth century, ‘*in more recent times its value as an offence has been recognized in many of the jurisdictions with a common law tradition.*’²⁰⁶ Reasons for this resurgence include the fact a single charge may be used to reflect an entire course of conduct and the offence ‘*may be used to reflect serious misconduct which is truly ‘criminal’ but which cannot be satisfactorily reflected by any other offence.*’²⁰⁷

5.10.2 Australia

Misconduct in public office is a common law offence in New South Wales and Victoria. Both the New South Wales Police Integrity Commission and the Office of Police Integrity in Victoria have recently recommended that prosecution of the offence be considered following certain investigations into police misconduct, much of which involved the release of confidential police information.²⁰⁸

The Director of the Office of Police Integrity in Victoria recently recommended consideration be given to codifying the offence of misconduct in public office in that State.²⁰⁹ The Director had previously noted:²¹⁰

Until recently, charges for the offence of misconduct in public office had been rare in this jurisdiction. This situation seems to be changing. The increased willingness to charge public servants, in particular police, with the offence and the success rates in prosecutions may relate to the fact that misconduct in public office is increasingly emerging as a prominent and recurring theme in corruption investigations both here and in other jurisdictions.

In Victoria, where the offence of misconduct in public office carries a maximum penalty of 10 years imprisonment,²¹¹ there have recently been a number of successful prosecutions.

An ex-police officer was sentenced to a substantial period of imprisonment when he pleaded guilty to ten counts of misconduct in public office for passing on confidential information to a known drug dealer who

²⁰³ Bourke’s *Criminal Law of Victoria*, para [140,850].

²⁰⁴ *ibid.*

²⁰⁵ Crown Prosecution Service (UK) *Misconduct in Public Office*, November 2007.

²⁰⁶ Colin Nicholls et al *Corruption and Misuse of Public Office*, Oxford University Press, 2006, p. 65.

²⁰⁷ *ibid.*

²⁰⁸ Police Integrity Commission (NSW) *Report to Parliament – Operation Mallard*, December 2007, pp. 77–80; Office of Police Integrity (Vic) *Exposing Corruption within Senior Levels of Victoria Police*, February 2008, pp. 13–15.

²⁰⁹ Office of Police Integrity (Vic), *Annual Report 2008*, pp. 14–15.

²¹⁰ Office of Police Integrity (Vic), *Exposing Corruption within Senior Levels of Victoria Police*, February 2008, p. 13.

²¹¹ *Crimes Act 1958* (Vic), s. 320.

was also a police informer, even though the prosecution conceded there was no evidence the officer had derived any gain from his actions. The information related to police investigations, surveillance and phone tapping involving the drug dealer and her associates. Much of the information was derived from police databases, sometimes using the passwords of other police officers without their knowledge.²¹²

A police officer who was present when another officer gained entry to premises by falsely representing he had a search warrant and who failed to prevent the other officer extorting money from a cannabis grower was initially sentenced to 14 months imprisonment for offences relating to misconduct in public office. The Court of Appeal increased the sentence to three years even though evidence was given that the officer did not intend to share in the proceeds of the other officer's misuse of authority.²¹³

A police officer who pleaded guilty to misconduct in public office for accessing a police database to provide information to a known drug trafficker was fined \$4,000.²¹⁴

5.10.3 *United Kingdom*

The common law offence of misconduct in public office recently received considerable media attention in the United Kingdom following the arrest of shadow immigration minister Mr Damian Green on suspicion of conspiring to commit misconduct in a public office and aiding and abetting, counselling or procuring misconduct in a public office.²¹⁵ Mr Green is alleged to have been involved in leaks of Home Office information. The investigations, which involved police searching Mr Green's home, parliamentary and constituency offices, seizing Mr Green's computer and detaining him for nine hours, have been criticised for breaching parliamentary privilege, interrogating an MP for doing his duty²¹⁶ and 'recriminalising the leaking of official information.'²¹⁷ The Crown Prosecution Service is considering issues of parliamentary privilege raised by Mr Green and as at 30 March 2009 had yet to make a decision on whether to lay charges.²¹⁸

Codification of the common law offence of misconduct in public office has also been considered in the United Kingdom. In 1998 the Home Secretary reported to the Joint Committee on Parliamentary Privilege about the difficulties in drafting the offence. As well as issues relating to the categories of public servant to include and whether it should apply to Members of Parliament, the Home Secretary made the point that:²¹⁹

We are conscious that we need to avoid unnecessary overlaps between any new offence and existing offences, civil remedies and disciplinary codes. Clearly, we do not wish to capture conduct which can be best left to disciplinary procedures or other effective mechanisms.

5.10.4 *Recent developments in Queensland*

Since making its submission to the current review, the CMC released a report into issues arising from an investigation into the conduct of former Director-General Scott Flavell which reiterated the view that *'the present Criminal Code offences are deficient in that they do not provide for all serious abuse or breach of public trust by a public official. For example, an instance of a senior public official misusing his position*

²¹² *R v Bunning* [2007] VSCA 205. The High Court refused special leave to appeal on 22 May 2008 – *Bunning v R* [2008] HCA SL 267.

²¹³ *DPP v Armstrong* [2007] VSCA 34

²¹⁴ *DPP v Marks* [2005] VSCA 277

²¹⁵ *House of Commons Hansard*, 4 December 2008, c 135.

²¹⁶ *House of Commons Hansard*, 3 December 2008, c 51.

²¹⁷ Maurice Frankel, 'Are we turning the clock back with Damian Green's arrest?' *The Times*, 4 December 2008.

²¹⁸ 'CPS Statement – Joint Statement on Christopher Galley and Damian Green' Crown Prosecution Service Press Release, 13 February 2009.

²¹⁹ Reply from the Home Secretary to a letter from the Chairman of the Joint Committee on Parliamentary Privilege, 18 November 1998.

for the benefit of a private entity does not easily fit within the present specific provisions of the Criminal Code.’²²⁰ The report recommended:²²¹

That the government introduce into the Criminal Code a broad offence similar to the common law offence of misconduct in public office.

Any legislative amendment will need to define “public officer” to include:

- 1) *a former public officer to cover the unlawful disclosure of information or documents obtained by virtue of their office, but disseminated after leaving office; and*
- 2) *a broad range of public officials similar to those included in the South Australian model.*²²²

The CMC stated that the Director of Public Prosecutions supported the proposal.²²³

On 12 February 2009 the Premier announced the Government would introduce a new offence of misconduct in public office into the Criminal Code.²²⁴

5.10.5 Analysis and comment

The Committee notes that the proposed offence covers a wide range of conduct and should only be applied to cases of serious misconduct that warrant criminal rather than disciplinary sanctions.

Recommendation 10

The Committee supports the introduction of a new offence of ‘misconduct in public office’ for cases of serious misconduct by public officials, but recommends that the legislation contain a statutory review provision for review after three years to ensure that the offence is only applied to cases of serious misconduct that warrant criminal sanction.

5.11 Misconduct Tribunals

5.11.1 Background

In March 2008 the Premier announced that Queensland’s system of civil and administrative justice would be reformed by amalgamating approximately 26 existing tribunals into a single body to be known as the Queensland Civil and Administrative Tribunal (QCAT).²²⁵ The jurisdiction of the misconduct tribunals is to be transferred to the new body.²²⁶

Misconduct tribunals are currently constituted under the *Misconduct Tribunals Act 1997* from a panel of members who are barristers or solicitors of the Supreme Court of at least five years standing, appointed by the Governor in Council on a part-time basis.²²⁷ A tribunal of one member is established when a matter arises within jurisdiction.²²⁸

²²⁰ Crime and Misconduct Commission, *Public Duty, Private Interests: Issues in Pre-separation Conduct and Post-separation Employment for the Queensland Public Sector*, December 2008, p. 27.

²²¹ *ibid.*, p. 32.

²²² Including all employees of the Crown, members of parliament, police officers, judicial officers, local government councillors and employees, contractors to the Crown and their employees – *Criminal Law Consolidation Act 1935 (SA)* s. 237.

²²³ Crime and Misconduct Commission, *Public Duty, Private Interests: Issues in Pre-separation Conduct and Post-separation Employment for the Queensland Public Sector*, December 2008, p. 27.

²²⁴ Ministerial Statement - Contact with Lobbyists Code, *Queensland Parliamentary Debates*, 12 February 2009, p. 195.

²²⁵ ‘Premier announces public sector reform initiatives’ *Ministerial Media Statement by the Premier*, 12 March 2008.

²²⁶ Exposure Draft of Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Bill 2009, clauses 689–693; Exposure Draft of Queensland Civil and Administrative Tribunal Bill 2009, clause 237 .

²²⁷ *Misconduct Tribunals Act 1997 (Qld)*, ss. 5, 6 and 8.

²²⁸ *ibid.*, s. 11.

The tribunals have both an original and an appellate jurisdiction. When exercising original jurisdiction misconduct tribunals hear and decide charges, of a disciplinary nature, of official misconduct made against prescribed persons. Official misconduct is the more serious form of misconduct and covers conduct that could, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services.²²⁹ A person charged with official misconduct before a misconduct tribunal must be a 'prescribed person' which includes members of the police service and people who hold an appointment in a unit of public administration declared by regulation to be subject to the jurisdiction of the tribunal.²³⁰ Only one of the matters dealt with by the misconduct tribunals in the 2007/08 reporting period was an original jurisdiction matter.²³¹

When exercising appellate jurisdiction misconduct tribunals hear and decide appeals against reviewable decisions, namely decisions made in relation to disciplinary charges of misconduct against prescribed persons, other than decisions by courts or misconduct tribunals.²³² All appeals dealt with by the misconduct tribunals during the 2007/08 reporting period related to findings of misconduct against, or sanctions imposed on members of the police service.²³³ Appeals may be brought by the person who was the subject of the charge, or by the CMC.²³⁴ When exercising appellate jurisdiction, the appeal is by way of rehearing on the evidence given before the original decision-maker. Limitations are placed on the introduction of new evidence.²³⁵

Exposure drafts of the legislation that will create QCAT include provisions abolishing the misconduct tribunals²³⁶ and transferring both their original and appellate jurisdiction to the new body through enabling provisions inserted into the *Crime and Misconduct Act 2001*.²³⁷ When these reforms are enacted, QCAT will hear allegations of official misconduct committed by a prescribed person. Reviews of decisions made in relation to allegations of misconduct against a prescribed person (other than decisions of a court or QCAT) will also be heard by QCAT. Where QCAT reviews decisions of original decision makers, the hearings will be by way of a fresh hearing on the merits instead of relying on material provided to the original decision maker.²³⁸ However, QCAT must give appropriate regard to the reasons for the decision given by the decision-maker and QCAT may accept evidence from original proceedings by way of a transcript of proceedings. These two provisions were seen as particularly important when reviewing decisions about police misconduct. The Tribunals Review Independent Panel of Experts stated:²³⁹

The Panel does not intend to prevent the appropriate weight being given to the original decision making of police disciplinary processes because of the particular need to uphold the philosophy of police discipline. ...

... there are good policy reasons why the processes that currently apply to disciplinary proceedings against police in the Misconduct Tribunal should continue to apply in the QCAT. For example, the interview material in police disciplinary processes being admitted into evidence without the officer in all cases being required to give that evidence again before the tribunal. It is important to maintain police confidence in the disciplinary process to ensure that members continue to come forward with information about alleged police misconduct. If the matters were

²²⁹ *Misconduct Tribunals Act 1997* (Qld), s. 12; *Crime and Misconduct Act 2001* (Qld), s. 15.

²³⁰ *Misconduct Tribunals Act 1997* (Qld), ss. 13–14; *Crime and Misconduct Act 2001* (Qld), s. 50.

²³¹ *Misconduct Tribunals, Tenth Annual Report, 1 July 2007 to 30 June 2008*, p. 4.

²³² *Misconduct Tribunals Act 1997* (Qld), ss. 15–16; *Crime and Misconduct Act 2001* (Qld), s. 50.

²³³ *Misconduct Tribunals, Tenth Annual Report, 1 July 2007 to 30 June 2008*, p. 15.

²³⁴ *Misconduct Tribunals Act 1997* (Qld), s. 18.

²³⁵ *ibid.*, ss. 23(4)–(5).

²³⁶ Exposure Draft of Queensland Civil and Administrative Tribunal Bill 2009, clause 237.

²³⁷ Exposure Draft of Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Bill 2009, clauses 689–693.

²³⁸ Exposure Draft of Queensland Civil and Administrative Tribunal Bill, clause 19.

²³⁹ Tribunals Review Independent Panel of Experts, *QCAT: Stage 2 Report on Legislative Amendments to Implement the Tribunal*, October 2008 at 53 and 54.

to be drawn out in lengthy re-hearings, where all concerned are required as a matter of course to provide their evidence again, in open hearings, and with the proceedings published, police may be less inclined to come forward with allegations of police misconduct.

The proposed changes will impact on the Committee's current role in relation to misconduct tribunals.

5.11.2 History

The misconduct tribunals were originally established under the *Criminal Justice Act 1989* (CJA) following recommendations of the Fitzgerald Inquiry.²⁴⁰ They were initially an organisational unit of the Criminal Justice Commission, forming part of the Commission's Official Misconduct Division,²⁴¹ although concerns about the appropriateness of this arrangement were raised almost immediately.²⁴² The Parliamentary Criminal Justice Committee's 1991 report on the operations of the CJC endorsed the recommendation of the CJC that the misconduct tribunals be constituted under their own separate legislation.²⁴³ The Committee also considered that '*because the powers of inquiry of the Tribunals are not limited, then the Tribunals should be accountable to an external body.*'²⁴⁴ The Committee's view was that the parliamentary committee '*should have a general review function (though not a supervisory function) in relation to the performance of Misconduct Tribunals constituted under separate legislation.*'²⁴⁵

In 1997 the tribunals were separated from the CJC and established as independent bodies under their own legislation, the *Misconduct Tribunals Act 1997*. Since then the parliamentary committee's primary role in relation to the tribunals has been involvement in the appointment of tribunal members. Before the Minister nominates a person for appointment to the tribunal the Minister must consult with the Chairperson of the Committee and obtain bipartisan support of the parliamentary committee for the nomination.²⁴⁶ The Committee may also review the misconduct tribunals when conducting its three year review of the CMC²⁴⁷ and a copy of the misconduct tribunals' annual report must be given to the parliamentary committee.²⁴⁸ This involvement will cease with the repeal of the *Misconduct Tribunals Act 1997*.

5.11.3 Analysis and comment

The Committee's role in relation to the misconduct tribunals appears to have largely been a legacy of the tribunals' relationship to the CJC. A previous Committee noted, prior to the enactment of the *Misconduct Tribunals Act 1997*, that the Committee's '*monitor and review role over the tribunals would be somewhat limited (as the PCJC could in no way be seen as an appeal mechanism from the tribunals).*'²⁴⁹ The Committee has not conducted a formal review of the tribunals since they were set up as independent bodies in 1997.

Although the establishment of QCAT will reduce the Committee's direct involvement with tribunals hearing disciplinary proceedings, the CMC will continue to have a significant role in these matters by

²⁴⁰ *Report of a Commission of Inquiry Pursuant to Orders in Council* (Fitzgerald Report), 1989, pp. 315–316; *Criminal Justice Act 1989* (Qld), ss. 40–55.

²⁴¹ *Criminal Justice Act 1989* (Qld), s. 41.

²⁴² Minutes of Evidence taken on 15 April 1991 at a public hearing between the Parliamentary Criminal Justice Committee and the Criminal Justice Commission and other material provided by the Commission to the Committee in relation to the roles and functions of the Committee and the Commission, pp. 44–45; Review of the Committee's operations and the operations of the Criminal Justice Commission, CJC Submissions and Minutes of Evidence taken on 6 June 1991, pp. 27 and 33.

²⁴³ PCJC, *Review of the Operations of the Parliamentary Crime and Justice Committee and the Criminal Justice Commission, Part B – Analysis and Recommendations*, 1991, p. 89, recommendation 23.

²⁴⁴ *ibid.*, p. 89.

²⁴⁵ *ibid.*

²⁴⁶ *Misconduct Tribunals Act 1997* (Qld), s. 7.

²⁴⁷ *ibid.*, s. 38. This has not occurred to date, see particularly: 3rd PCJC Three Year Review, 1998, p. 5; 4th PCMC Three Year Review, 2001, p. 214 footnote 512.

²⁴⁸ *ibid.*, s. 39.

²⁴⁹ PCJC, *Comments by the PCJC on the Draft Misconduct Tribunals Bill 1997*, p. 1. Tabled 7 October 1997.

starting proceedings²⁵⁰ and appealing QCAT decisions.²⁵¹ Therefore the Committee's function of monitoring and reviewing the CMC's functions and reporting to the Legislative Assembly on matters relevant to the CMC, may involve consideration of the Commission's dealings with QCAT. The Committee considers this level of involvement appropriate in relation to an independent tribunal.

5.12 Commission's powers to give information to units of public administration

5.12.1 Background

The CMC has the power to give information coming to its knowledge (including by way of complaint) to a unit of public administration with a proper interest in receiving the information.²⁵² Under section 269 of the CMA this power may only be delegated to the CMC chairperson or an assistant Commissioner.²⁵³

5.12.2 CMC submission

In its submission to the current review the CMC raised concerns about the inefficiencies that flow from this limited delegation. In its written submission the Commission stated:²⁵⁴

In practical terms, the limitations of the delegation make the referral to an agency of information about a less serious matter less efficient than the referral of a complaint of official misconduct, as the referral must be authorised at least at the assistant Commissioner level.

The CMC indicated during public hearings that the delegation in section 269 can also be unduly restrictive in situations where the Commission receives information about a matter that is outside its jurisdiction. Assistant Commissioner Lambrides explained:²⁵⁵

... for example, we got some information about an Aboriginal land trust which was provided to us to investigate some alleged fraud. When we looked closely we did not have jurisdiction over the Aboriginal land trust because it is not a unit of public administration. So we have this information. What are we going to do with it? We can disseminate it via myself or the chairperson, but it would be so much simpler if one of the officers in complaints services simply disseminated it to the Police Service with a dissemination notice so that it is clear that it has been disseminated formally. It would not have to come up to me or the chairperson for something which is very formal.

5.12.3 Analysis and comment

The Committee considers it anomalous that information about conduct that may warrant disciplinary action but that is not serious enough to constitute official misconduct can only be referred to another agency by the chairperson or an assistant Commissioner, while information about more serious official misconduct can be referred to the appropriate agency by officers at lower levels. The Committee also questions whether it is necessary for the chairperson and assistant Commissioners to be the only officers who can refer matters that fall outside the CMC's jurisdiction to the relevant agency.

The CMC suggested that the issue could be addressed by either inserting a new provision into the CMA that has the same effect as section 34(8) of the former *Criminal Justice Act 1989* or amending section 269 of the CMA to allow the authority under section 60(2) to be delegated to other senior officers.

²⁵⁰ *Exposure Draft of Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Bill 2009*, clause 691 – proposed sections 219F and 219G of the CMA.

²⁵¹ *Exposure Draft of Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Bill 2009*, clause 691 – proposed section 219L of the CMA.

²⁵² *Crime and Misconduct Act 2001* (Qld), s. 60(2).

²⁵³ *ibid.*, s. 269(2).

²⁵⁴ Submission No.22, Crime and Misconduct Commission, p. 13.

²⁵⁵ 7th PCMC, Transcript of Proceedings, Three Year Review of the Crime and Misconduct Commission, 19 November 2008, p. 6.

Section 34(8) of the CJA authorised the Chief Officer of the CJC's Complaints Section to refer matters that may require disciplinary action to the relevant agency. Section 38(4) of the CJA provided:²⁵⁶

The complaints section may refer to the principal officer of a unit of public administration any complaint, information or matter that, in the opinion of the chief officer of the section, involves, or may involve, cause for taking disciplinary action (other than for official misconduct) by the principal officer against a person holding an appointment in the unit of public administration.

The Committee considers it desirable that any legislative amendment should rectify the specific problems, namely those associated with information received about misconduct, rather than changing the level of delegation for a potentially broader range of matters. The Committee therefore supports the insertion of a provision into the CMA that would authorise the senior complaints officer to refer certain matters to the appropriate unit of public administration, namely matters for which disciplinary action may be considered and matters that are outside the Commission's jurisdiction.

Recommendation 11

The Committee recommends that the *Crime and Misconduct Act 2001* be amended to authorise the Director of Complaints Services to refer certain matters to the appropriate unit of public administration, namely matters for which disciplinary action, other than for official misconduct, may be considered, and matters that require investigation but that are outside the Commission's jurisdiction.

²⁵⁶ *Criminal Justice Act 1989* (Qld), s. 38(4).

6. COERCIVE POWERS

6.1 Introduction

The CMC has a range of powers that enable it to investigate major crime and misconduct and carry out its witness protection and civil confiscation functions effectively. They include search, surveillance and seizure powers, as well as the power to conduct hearings and require witnesses to attend and answer questions or produce documents.

The CMC's powers vary according to whether a particular investigation is a crime, misconduct or confiscation related investigation. They are set out in the *Crime and Misconduct Act 2001* and the *Police Powers and Responsibilities Act 2000* and include the power to:

- Require the production of documents or things relevant to an investigation;²⁵⁷
- Enter and search the official premises of a unit of public administration, inspect, seize and remove or copy documents or things found on the premises that are relevant to an investigation;²⁵⁸
- Apply to a Magistrate or Supreme Court judge for a search warrant;²⁵⁹
- Enter a place and exercise search warrant powers in order to prevent the loss of evidence and subsequently apply to a Magistrate for a post-search approval order;²⁶⁰
- Seize evidence relating to an investigation;²⁶¹
- Apply to a Supreme Court judge for monitoring orders and suspension orders to obtain information about a person's financial transactions and suspend transactions for 48 hours;²⁶²
- Apply to a Supreme Court judge for a warrant for the use of surveillance devices;²⁶³
- Apply for approval and authority to conduct controlled operations and controlled activities which may involve officers in unlawful activities;²⁶⁴
- Acquire and use assumed identities;²⁶⁵
- Apply to a Supreme Court judge for a covert search warrant;²⁶⁶
- Apply to a Supreme Court judge for an additional powers warrant which authorises the inspection of financial records, seizure of documents such as passports and instruments of title, and requires sworn affidavits or statutory declarations relating to property, financial transactions or movements of money or other assets;²⁶⁷
- Hold hearings in relation to any matter relevant to the performance of its functions;²⁶⁸
- Require a person to attend a Commission hearing to give evidence or produce a document or thing or establish a reasonable excuse or claim for privilege;²⁶⁹ and

²⁵⁷ *Crime and Misconduct Act 2001* (Qld), sections 72 (crime investigations), 74 (crime investigations and witness protection functions), 74A (confiscation related investigations), 75 (misconduct investigations).

²⁵⁸ *ibid.*, s. 73 (misconduct investigations).

²⁵⁹ *ibid.*, Chapter 3, Part 2 (crime investigations, misconduct investigations and confiscation related investigations).

²⁶⁰ *ibid.*, Chapter 3, Part 3 (crime investigations).

²⁶¹ *ibid.*, Chapter 3, Part 5 (crime investigations, misconduct investigations and confiscation related investigations).

²⁶² *ibid.*, Chapter 3, Part 5A (confiscation investigations).

²⁶³ *ibid.*, Chapter 3, Part 6 (misconduct investigations) and PPRA Chapter 13 (crime investigations).

²⁶⁴ *ibid.*, Chapter 3, Part 6A (misconduct investigations) and PPRA Chapter 11 (crime investigations).

²⁶⁵ *ibid.*, Chapter 3, Part 6B (misconduct investigations) and PPRA Chapter 12 (crime investigations).

²⁶⁶ *ibid.*, Chapter 3, Part 7 (crime investigations).

²⁶⁷ *ibid.*, Chapter 3, Part 8 (misconduct investigations and crime investigations relating to terrorism).

²⁶⁸ *ibid.*, Chapter 4, Part 1.

²⁶⁹ *ibid.*, s. 82 (crime investigations, misconduct investigations and witness protection functions).

- Apply to a Supreme Court judge for an arrest warrant in certain circumstances where a person has failed to attend a commission hearing as required by an attendance notice.²⁷⁰

During the past three years the CMC has used its powers for investigating major crime as follows:²⁷¹

	2005-06	2006-07	2007-08
Investigative hearing days	104	81	151
Notices to attend hearing	113	75	177
Witnesses attending	92	66	163
Witnesses legally represented	17	26	64
Witnesses applying for financial assistance	2	6	4
Surveillance warrant operations	31	28	10

During the past three years the CMC has used its powers for investigating misconduct as follows:²⁷²

	2005-06	2006-07	2007-08
Power to enter	15	3	0
Notices to discover information	223	198	139
Notices to attend hearing	71	121	54
Search warrant applications	22	24	4
Surveillance warrant applications	0	0	0

6.2 Hearings by the Crime and Misconduct Commission

6.2.1 Background

The CMC may hold hearings on any matter relevant to the performance of its functions, other than confiscation related investigations.²⁷³ Hearings are generally not open to the public²⁷⁴ and are conducted by the chairperson, an assistant Commissioner or, in the case of a closed hearing, another person qualified for appointment as chairperson.²⁷⁵ Hearings are to be conducted quickly, with as little formality and technicality as is consistent with a fair and proper consideration of the issues. The presiding officer is not bound by the rules of evidence and may decide the procedures to be followed. Evidence may be taken on oath.²⁷⁶ Witnesses may be legally represented and may be examined, cross-examined or re-examined on any matter the presiding officer considers relevant.²⁷⁷

For hearings relating to crime investigations²⁷⁸ and misconduct investigations, the CMC has the power to compel witnesses to attend,²⁷⁹ produce documents,²⁸⁰ and answer questions²⁸¹ subject to certain claims of privilege and reasonable excuse.

6.2.2 Use of the hearings powers

In its submission to the current review the CMC advised that the hearings power is an important investigative tool which is used judiciously and in accordance with appropriate checks and balances. The

²⁷⁰ *Crime and Misconduct Act 2001 (Qld)*, Chapter 3, Part 10.

²⁷¹ Crime and Misconduct Commission, *Annual Report 2007-08*, p. 17.

²⁷² *ibid.*, p. 27.

²⁷³ *Crime and Misconduct Act 2001 (Qld)*, s. 176.

²⁷⁴ *ibid.*, s. 177.

²⁷⁵ *ibid.*, s. 178.

²⁷⁶ *ibid.*, s. 180.

²⁷⁷ *ibid.*, s. 181.

²⁷⁸ Including witness protection functions.

²⁷⁹ *Crime and Misconduct Act 2001 (Qld)*, ss. 82, 167–171.

²⁸⁰ *ibid.*, ss. 185 (crime investigations) and 188 (misconduct investigations).

²⁸¹ *ibid.*, ss. 190 (crime investigations) and 192 (misconduct investigations).

hearings power is used to:²⁸²

Elicit the truth about events that have occurred, even where the evidence obtained during the hearing may not be able to be used against a person;

Test a witness's version of events to assess (and possibly exclude) the witness's involvement in a matter. In particular, other versions of events are put to witnesses, such as evidence obtained by surveillance and evidence obtained from other witnesses which may contradict evidence given by the witness;

Seek the truthful version of events from a witness who has provided inconsistent versions of events or versions of events which differ from other witnesses and other evidence collated during the investigation;

Identify other chains of inquiry which may identify admissible evidence proving facts in issue;

Secure the evidence of uncooperative persons and persons with professional confidentiality issues (e.g. doctor-patient confidentiality);

Eliminate certain scenarios and refocus investigations.

The Queensland Police Service submission stressed the value of CMC investigative hearings to the work of the QPS:²⁸³

[State Crime Operations Command] and QPS regional police, regularly seek the use of CMC coercive powers including, principally, investigative hearings. This is usually done to overcome the stalling of historical major and/or organised crime investigations by individuals who choose not to co-operate with police inquiries and who are likely to possess important information.

These hearings have, in the main, proved to be extremely valuable in progressing these investigations and have resulted in a range of beneficial outcomes including significant criminal arrests, confirmation on oath of the evidence able to be given by prospective prosecution witnesses, charges of perjury for non-compliant individuals, and expediting the timely conclusion of protracted/historical coronial matters. Hearings are now being requested, and held, at much earlier stages of investigations as investigators better understand their tactical and strategic value.

The CMC has been responsive to the needs of the QPS in prioritising both the timing and location of investigative hearings to maximise operational outcomes. In rare cases this has included extraordinary 'emergent' hearings conducted out-of-hours at very short notice.

6.2.3 Funding issues

According to figures provided by the CMC, there was a significant increase in demand by the QPS for use of the Commission's hearing powers during 2007-08.²⁸⁴ This trend appears likely to continue as the police have developed a greater appreciation of the value of the CMC's investigative powers to their investigations.²⁸⁵ In its submission to the current review, the CMC claimed the increased demand for hearing services 'is placing the CMC's budget under additional pressure to meet the associated costs, including costs of witnesses, travel and transcription services.'²⁸⁶ The Commission therefore seeks the Committee's support for additional funding to enable it to meet the increasing demand for the use of its investigative hearings powers.²⁸⁷

²⁸² Submission No.22, Crime and Misconduct Commission, pp. 4-5.

²⁸³ Submission No.28, Queensland Police Service, p. 5.

²⁸⁴ Submission No.22, Crime and Misconduct Commission, p. 55.

²⁸⁵ 7th PCMC, Transcript of Proceedings, Three Yearly Review of the Crime and Misconduct Commission, 19 November 2008, p. 16; Submission No.28, Queensland Police Service, p. 5.

²⁸⁶ Submission No.22, Crime and Misconduct Commission, p. 55.

²⁸⁷ *ibid.*, p. 56.

The CMC's claims are supported by the QPS in their submission to the current review.²⁸⁸

Increased understanding of the investigative hearings process across the QPS and their demonstrated success has resulted in a significant increase in requests to the CMC. This has led to necessary prioritisation of requests and some significant delays in scheduling hearings. To date, this has not resulted in any significant operational or prosecutorial detriment, however, with requests for hearings likely to continue to escalate an increase in relevant capacity within CMC would be of significant benefit to the QPS.

Analysis and comment

The Committee recognises the value of the CMC's investigative powers, particularly in relation to major crime. The CMC's figures and the evidence from the QPS support the view that, although demand has varied over the past five years, the more recent growth in demand is likely to continue. Although the CMC has, to date, met the increasing demand by reallocating internal resources, this potentially detracts from other areas of the Commission's operations. The Committee therefore supports the CMC's call for additional funding to continue to meet the growing demand for the use of its investigative hearings power.

Recommendation 12

The Committee recommends the Government consider the allocation of additional resources to the Crime and Misconduct Commission to support its hearings function.

6.3 Claims of privilege at hearings

6.3.1 Background

Sections 190 and 192 of the CMA make it an offence for a witness to refuse to answer a question put by the presiding officer at a crime or witness protection hearing²⁸⁹ or a misconduct hearing,²⁹⁰ subject to limited claims of privilege. The Explanatory Notes issued with the Crime and Misconduct Bill in 2001 note that a person may only refuse to answer a question during a crime investigation hearing on the ground of legal professional privilege²⁹¹ whereas a person may refuse to answer a question asked during a misconduct investigation on the ground of legal professional privilege, public interest immunity or parliamentary privilege.²⁹² What has been referred to by one judge as 'curious drafting',²⁹³ has meant, however, that this intention has not been achieved and there continues to be doubt about the privileges that may be claimed in particular hearings.

The difficulty largely stems from the fact schedule 2 of the CMA defines 'privilege' in the context of particular types of investigation, which, when read with sections 190 and 192, creates ambiguity. As a general rule, statutory provisions are not to be construed as abolishing important common law rights, privileges and immunities (such as legal profession privilege and the privilege against self-incrimination) in the absence of clear words or a necessary implication to that effect.²⁹⁴

²⁸⁸ Submission No.28, Queensland Police Service, p. 5.

²⁸⁹ *Crime and Misconduct Act 2001* (Qld), s. 190.

²⁹⁰ *ibid.*, s. 192.

²⁹¹ Explanatory Notes issued with the Crime and Misconduct Bill 2001, p. 55.

²⁹² Explanatory Notes issued with the Crime and Misconduct Bill 2001, p. 56.

²⁹³ *Callanan v B* [2005] 1 Qd R 348 at [23] per Jerrard J.A.

²⁹⁴ *Daniels Corp International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at [11]; *S v Boulton* (2006) 151 FCR 364 at [121]

6.3.2 Spousal privilege

Callanan v B

In 2005 the Court of Appeal considered whether a witness at a CMC crime hearing could refuse to answer questions about her husband's involvement in dangerous drug-related activities by claiming spousal privilege. The Court found there was a common law privilege against spouse incrimination and that section 190 of the CMA, when read in conjunction with the definition of 'privilege' for crime investigations in schedule 2, was too ambiguous to abrogate the privilege.²⁹⁵ Thus, witnesses attending a CMC investigative hearing can refuse to answer questions that may incriminate their spouse.²⁹⁶

Previous consideration

The 6th PCMC noted the CMC's concerns that the ability of witnesses to refuse to answer questions on the ground of spousal privilege would prejudice the investigation of major crime and misconduct. The Committee supported amending the CMA to clarify that spousal privilege does not apply in CMC hearings,²⁹⁷ particularly in light of the fact that the privilege has not been available in criminal trials in Queensland since amendments to the *Evidence Act 1977* came into force in January 2004.²⁹⁸

The Government did not support this recommendation and drew a distinction between compelling a spouse to provide information as part of an investigation which could then be used to make the spouse a compellable witness and compelling a spouse, who had already volunteered information or provided a statement, to give evidence at trial. The Government also noted that '*there is no guarantee that a spouse who is compelled to give evidence at CMC hearings will be co-operative or even honest in the answers given – thereby defeating the purpose of the removal of the privilege.*'²⁹⁹

CMC submission

The CMC claims that since the decision in *Callanan v B* its practice in most cases has been to avoid calling spouses to investigative hearings. In its submission to the current review the Commission states:³⁰⁰

The ability of the CMC to 'get to the truth' about major crime and official misconduct has been curtailed by the ability of witnesses to claim spousal privilege. Claims of spousal privilege by witnesses appearing at CMC hearings have increased and there is scope for spousal privilege to be abused to enable witnesses to avoid answering questions which may incriminate themselves.

Claims of spousal privilege may prevent the CMC from effectively dealing with investigations into public crises such as terrorism threats or food tampering. In the past, CMC investigative hearings have been used to quickly identify suspects, to enable investigative efforts to concentrate on those suspects and reduce the threat to the public. At such hearings, the CMC will be unable to test the truth of information supplied by a suspect (such as evidence of an alibi) by examining the suspect's spouse.

The CMC's submission to the current review also makes the following points:³⁰¹

- Witnesses attending CMC hearings are required to answer a question that may incriminate themselves but are not required to answer a question that may incriminate their spouse.

²⁹⁵ *Callanan v B* [2005] 1 Qd R 348

²⁹⁶ Spousal privilege has been held to apply only to couples who are legally married and not to de facto couples - *S v Boulton* (2006) 151 FCR 364.

²⁹⁷ 6th PCMC, Report No. 71, Three Year Review of the Crime and Misconduct Commission, p. 59.

²⁹⁸ *Evidence Act 1977* (Qld), s. 8 as amended by the *Evidence (Protection of Children) Amendment Act 2003* (Qld).

²⁹⁹ Government response to PCMC, Report No. 71, Three Year Review of the Crime and Misconduct Commission, pp. 7–8.

³⁰⁰ Submission No.22, Crime and Misconduct Commission, p. 24.

³⁰¹ *ibid.*, pp. 24–25.

- Spousal privilege cannot be claimed by witnesses appearing before investigative hearings conducted by the Australian Crime Commission, the New South Wales Crime Commission, the Independent Commission Against Corruption, or the Corruption and Crime Commission of Western Australia; and
- A witness before a CMC hearing who is married does not have to answer the same questions that a de facto spouse must answer.³⁰²

The CMC also advises that there are indications that the Government is reviewing its position in relation to:³⁰³

- Whether a witness attending a CMC hearing should be entitled to refuse to answer questions on the ground of spousal privilege; and
- Appropriate safeguards to attach to any evidence given by a witness compelled to give evidence against their spouse.

The Parliamentary Commissioner strongly endorsed the comments in the CMC's submission claiming it is anomalous that spousal privilege can frustrate an investigative hearing when it cannot be claimed in a criminal trial.³⁰⁴

Analysis and comment

The Committee recognises that the decision to abolish an existing common law privilege depends upon balancing competing interests, in this case, the interests of preserving matrimonial harmony³⁰⁵ and the public interest in ensuring the CMC is able to effectively gather evidence in order to fulfil its purpose of combating and reducing the incidence of major crime and public sector misconduct.³⁰⁶

The nature of a marriage relationship means the evidence of a person's spouse may be highly relevant to a particular inquiry. According to the CMC, the availability of the privilege is in fact impeding the Commission's ability to investigate major crime and official misconduct as the Commission is reluctant to call spouses to hearings and when spouses are called, they increasingly claim the privilege. There is an indication that the CMA was intended to abrogate all forms of privilege except those specifically mentioned in the Act, but the relevant sections were not drafted clearly enough to achieve this intention.³⁰⁷ The continued availability of spousal privilege does appear anomalous given that the privilege cannot be claimed by de facto partners and is no longer available in criminal proceedings.

The Committee therefore supports amendments to the CMA to clarify that a witness at a CMC hearing cannot refuse to answer questions on the grounds of privilege against spousal incrimination.

The Committee notes however, that the nature and consequences of this type of compelled evidence would be similar to evidence given under self-incrimination privilege and it may be appropriate to impose some restrictions on the use that can be made of the evidence in subsequent proceedings as is the case with evidence given following a claim of self-incrimination privilege.

³⁰² Spousal privilege has been held to apply only to couples who are legally married and not to de facto couples - *S v Boulton* (2006) 151 FCR 364.

³⁰³ Submission No.22, Crime and Misconduct Commission, p. 23.

³⁰⁴ Submission No.32, Mr A.J. MacSporran, Parliamentary Crime and Misconduct Commissioner, p. 5.

³⁰⁵ *Callanan v B* [2005] 1 Qd R 348 at [8]

³⁰⁶ *Crime and Misconduct Act 2001* (Qld), s. 4(1)(a).

³⁰⁷ *Callanan v B* [2005] 1 Qd R 348 at [13]

Recommendation 13

The Committee recommends that the *Crime and Misconduct Act 2001* be amended to clarify that a witness cannot refuse to answer a question at a Crime and Misconduct Commission hearing on the ground of spousal privilege and that consideration be given to the use that may be made of evidence given under spousal privilege.

6.3.3 Other privileges

The decision in *Callanan v B* highlighted structural defects in sections 190 and 192 of the CMA that have implications beyond spousal privilege and ‘renders it uncertain precisely which forms of privilege were intended to be abolished and which of them preserved.’³⁰⁸

Misconduct investigations – section 192

The defects in section 192 relating to misconduct investigations³⁰⁹ were addressed in recent amendments contained in the *Criminal Code and Jury and Another Act Amendment Act 2008*. This followed a decision of the Supreme Court which found that section 192, when read with the definition of privilege in schedule 2, did not abrogate the privilege against self-incrimination.³¹⁰

In *Witness D v Crime and Misconduct Commission* a witness, who had refused to answer a question at a CMC misconduct hearing on the ground that it might incriminate him, successfully sought a declaration from the Supreme Court that he was entitled to claim privilege against self-incrimination. The judge applied the decision of the Court of Appeal in *Callanan v B* and found the relationship between the definition of privilege in the schedule and section 192 was all but identical to the relationship between the definition and section 190. His Honour therefore concluded that there were ‘neither the clear words nor the necessary implication which would be necessary to hold that such an important common law right as the privilege against self-incrimination [had] been abrogated.’³¹¹

Section 192 was amended by the *Criminal Code and Jury and Another Act Amendment Act 2008*³¹² to clarify that a witness at a CMC misconduct investigation hearing is not entitled to refuse to answer a question on a ground of privilege against self-incrimination.

The amendment also sought to clarify the privileges that are available to witnesses at misconduct hearings, namely legal professional privilege, public interest immunity and parliamentary privilege. Although the new provisions do not expressly abrogate other common law privileges, including spousal privilege, it may be open to a court to find abrogation by necessary implication.³¹³

Crime investigations – section 190

The privileges available at crime hearings are yet to be fully clarified. While the courts have confirmed that section 190 has effectively abolished the privilege against self-incrimination in crime hearings,³¹⁴ the ambiguous wording of the provision, when read with the definition in schedule 2, casts doubt on whether the section has abolished other common law privileges.

³⁰⁸ *Callanan v B* [2005] 1 Qd R 348 at [14] – referring particularly to s. 190.

³⁰⁹ *Crime and Misconduct Act 2001* (Qld), s. 192.

³¹⁰ *Witness D v Crime and Misconduct Commission* [2008] QSC 155.

³¹¹ *Witness D v Crime and Misconduct Commission* [2008] QSC 155 at [12].

³¹² Which came into force on 19 September 2008 although the provisions relating to self-incrimination privilege apply retrospectively to 1 January 2002 – *Crime and Misconduct Act 2001* (Qld), s. 385.

³¹³ *Stoten v Sage* (2005) 144 FCR 487

³¹⁴ *Witness C v Crime and Misconduct Commission* [2008] QSC 196; *Witness A v Crime and Misconduct Commission* [2005] QSC 119

The CMC submission notes that there may be common law privileges, other than spousal privilege, which a witness may rely on to refuse to answer questions on the basis that they have not been clearly abrogated by the legislation.³¹⁵

Analysis and comment

The Committee considers the lack of clarity about the privileges available to witnesses at CMC hearings is detrimental to both the rights of the witnesses and the ability of the CMC to function effectively.

Recommendation 14

The Committee recommends that the *Crime and Misconduct Act 2001* be amended to expressly nominate the grounds of privilege a witness may rely on to refuse to answer a question at a Crime and Misconduct Commission hearing and to clarify that these are the only privileges that may be claimed.

6.4 Self-incrimination privilege and false evidence

6.4.1 Background

Section 197 of the CMA provides some protection from liability for people who are compelled to answer questions or produce documents, things or written statements that may incriminate them. The provision states:

- (1) *This section applies if—*
- (a) *before an individual answers a question put to the individual by the commission or a commission officer or produces a document or thing or a written statement of information to the commission or a commission officer, the individual claims self-incrimination privilege in relation to the answer or production; and*
 - (b) *apart from this Act, the individual would not be required to answer the question or produce the document, thing or statement in a proceeding if the individual claimed self-incrimination privilege in relation to the answer or production; and*
 - (c) *the individual is required to answer the question or produce the document, thing or statement.*
- (2) *The answer, document, thing or statement given or produced is not admissible in evidence against the individual in any civil, criminal or administrative proceeding.*

There are a number of exceptions to the protection. For example, section 197(3)(b)(i) provides:

- (3) *However, the answer, document, thing or statement is admissible in a civil, criminal or administrative proceeding—*
- ...
- (b) *if the proceeding is about—*
 - (i) *the falsity or misleading nature of an answer, document, thing or statement mentioned in subsection (1) and given or produced by the individual;*

³¹⁵ Submission No.22, Crime and Misconduct Commission, p. 25.

6.4.2 CMC submission

The CMC is concerned that the inclusion of the words ‘mentioned in subsection 1’ in section 197(3)(b)(i) limits the use to which evidence given by a witness under the self-incrimination privilege can be used in perjury proceedings. In its submission the CMC explains that:³¹⁶

If a witness gives false evidence on a first occasion without claiming privilege; then gives evidence on a second occasion claiming self-incrimination privilege and contradicting the evidence given on the first occasion, the answers given by the witness on the second occasion cannot be used against the witness to prove the falsity of answers given on the first occasion.

Answers that are provided following a claim of self-incrimination privilege are only admissible in perjury proceedings that relate to answers for which the privilege is claimed. They would not be admissible in perjury proceedings that relate to answers for which a claim of self-incrimination privilege was not made.

The CMC notes that the Director of Public Prosecutions issued a Guideline in March 2008 clarifying circumstances in which perjury charges would not be pursued against witnesses who had given false evidence to the CMC. The Guideline states:³¹⁷

Perjury during investigative hearings

Where a witness has been compelled to give evidence under oath at an investigative hearing and the witness has committed perjury in the course of giving that evidence, it will generally not be in the public interest to prosecute the witness for the perjury if, the witness subsequently corrected the perjury and was otherwise reasonably considered by the Director, acting on the advice of the agency or agencies involved in the investigation, to have been fully truthful in giving evidence about all matters material to the investigation.

The CMC submits that the DPP’s Guideline provides an adequate safeguard for witnesses who give false evidence but subsequently ‘purge their perjury’. The CMC requests the Committee’s support for an amendment to section 197 of the CMA to remove the anomaly.

6.4.3 Analysis and comment

When it was originally enacted, the exemption in section 197(3)(b)(i) restricted the use of an answer³¹⁸ for which self-incrimination privilege had been claimed, to proceedings about the falsity or misleading nature of that particular answer. Amendments to the CMA by the *Crime and Misconduct and Other Legislation Amendment Act 2006* expanded the exemption to:³¹⁹

Allow self-incriminating evidence that a person has been compelled to give at a Crime and Misconduct Commission hearing to be used in proceedings against that person for the falsity of other compelled evidence. [Emphasis added]

However this did not extend to permitting the self-incriminating evidence to be used in a proceeding about the false or misleading nature of evidence that was given without claiming self-incrimination privilege such as evidence that was freely given. The CMC argues that witnesses who give false evidence without first claiming self-incrimination privilege should not be given an advantage over witnesses who do claim the privilege.

The Committee agrees it is anomalous that evidence for which a person has claimed self-incrimination privilege should be admissible to prove the falsity of any evidence for which the privilege was claimed

³¹⁶ *ibid.*, p. 7.

³¹⁷ Office of the Director of Public Prosecutions, *Director’s Guidelines*, Guideline 5(vii)

³¹⁸ Included ‘answer, document or thing’.

³¹⁹ Explanatory Notes issued with the Crime and Misconduct and Other Legislation Amendment Bill 2006, p. 2.

but not evidence for which the privilege was not claimed.

Recommendation 15

The Committee recommends that section 197 of the *Crime and Misconduct Act 2001* be amended to allow evidence for which a person has claimed self-incrimination privilege to be admissible in a proceeding about the falsity or misleading nature of an answer given during a Crime and Misconduct Commission hearing, whether or not the answer was given under a claim of self-incrimination privilege.

6.5 Seizing evidence

6.5.1 Background

The powers of CMC officers to seize evidence vary depending on whether the investigation is a crime investigation, confiscation related investigation or misconduct investigation. Officers conducting a crime investigation may seize evidence from a place they lawfully enter or a public place.³²⁰ By contrast, officers conducting a confiscation related investigation or misconduct investigation may only seize evidence from a place entered under a search warrant,³²¹ unless they are police officers seconded to the CMC who continue to have a general power to seize evidence by virtue of the PPRA.³²² This means that a police officer seconded to a misconduct or confiscated related investigation can seize evidence in situations where a civilian CMC officer can not.

6.5.2 CMC submission

The CMC Chairperson described the difficulties created by this situation as follows:³²³

If they are interviewing someone and there is that physical object there and the person is not prepared to hand it over, if it was a police officer the police officer could seize it, whereas if there are purely civilian investigators there they cannot do that. They have to come back and get a notice from me to this person to be able to require them to hand it over, and of course by that time it could be gone.

The CMC therefore requests the support of the Committee to amend the Act to provide CMC officers working in misconduct and confiscation investigations with the power to seize evidence located in a public place or another place that an officer has lawfully entered.³²⁴

6.5.3 Analysis and comment

The Committee sees no reason why the power of Commission officers to seize evidence should be restricted to crime investigations and not misconduct or confiscation related investigations. The CMC's request also has the support of the Parliamentary Commissioner.³²⁵

Recommendation 16

The Committee recommends that the *Crime and Misconduct Act 2001* be amended to give Commission officers involved in misconduct or confiscation related investigations the power to seize evidence located in a public place or another place the officer has entered lawfully.

³²⁰ *Crime and Misconduct Act 2001* (Qld), s. 110.

³²¹ *ibid.*, ss. 110A (confiscation related investigations) and 111 (misconduct investigations).

³²² *ibid.*, s. 255(5); *Police Powers and Responsibilities Act 2000* (Qld), s. 196.

³²³ 7th PCMC, Transcript of Proceedings, Three Yearly Review of the Crime and Misconduct Commission, 19 November 2008, p. 6.

³²⁴ Submission No.22, Crime and Misconduct Commission, p. 10.

³²⁵ Submission No.32, Mr A.J. MacSporran, Parliamentary Crime and Misconduct Commissioner, p. 2.

6.6 Uniform provisions for Commission's powers

6.6.1 Background

The issues raised in the previous sections of this report concerning claims of privilege at hearings³²⁶ and seizure powers³²⁷ are examples of a wider problem caused by the duplication of provisions in the CMA.

Chapters 3 and 4 of the CMA deal with compulsory powers, hearings and privilege claims. In many cases there are separate provisions for what is essentially the same power. For example, powers relating to notices to produce or discover, are contained in section 74 for crime investigations,³²⁸ section 74A for confiscation related investigations, and section 75 for misconduct investigations.³²⁹

This is a legacy of the merger of the CJC and QCC to form the CMC. The resulting legislation, the *Crime and Misconduct Act 2001*, was drafted to preserve the CJC's misconduct function as set out in the *Criminal Justice Act 1989* and the QCC's crime function as contained in the *Crime Commission Act 1997*. The situation was further complicated in 2002 when additional provisions were inserted into the CMA to confer a confiscation function on the CMC.

6.6.2 CMC submission

In its submission to the current review the CMC claims that this leads to inefficiencies within the Commission and confusion amongst legal practitioners. In particular:³³⁰

The CMC has developed its management processes to apply consistently across the functional areas of the organisation and separate provisions relating to the exercise of the same power often creates inefficiencies and other difficulties, such as:

- *Each functional area requires slightly different procedural guidelines, document templates, and variations to document management systems to reflect what are essentially the same powers under a different provision for each functional area.*
- *CMC staff are encouraged to broaden their experience by moving around the different functional areas in the CMC and staff in some areas support various functional areas. The current different provisions for each functional area can lead to confusion, errors and additional time to check the Act.*
- *When courts make decisions in respect of a provision related to one functional area, because the language used in the provision is not in the same language as for the equivalent provision for another functional area, this may lead to uncertainty as to whether the decision is applicable to the other functional area.*
- *The CMC often deals with legal practitioners who represent different clients in various matters the CMC is investigating. Legal practitioners sometimes wrongly assume the provisions related to certain powers operate consistently across the various functions of the Commission.*

6.6.3 Analysis and comment

The Committee acknowledges that there is unnecessary duplication of certain provisions in chapters 3 and 4 of the CMA, the rationale for which is historical rather than practical. The difficulties discussed earlier

³²⁶ see 6.3 above.

³²⁷ see 6.5 above.

³²⁸ and witness protection functions.

³²⁹ See Submission No.22, Crime and Misconduct Commission, p. 29 for other examples.

³³⁰ Submission No.22, Crime and Misconduct Commission, p. 29.

in this report relating to claims of privilege at hearings³³¹ and seizure powers³³² are evidence of the confusion and unintended consequences that can arise from this duplication. The Committee also notes that the subtle differences in sections that confer what is essentially the same power on the Commission for different functions can hamper the development of consistent management practices throughout the organisation and deter staff movement between sections.

Recommendation 17

The Committee recommends a review of chapter 3 and 4 powers in the *Crime and Misconduct Act 2001* in order to develop uniform provisions with generic application to Crime and Misconduct Commission functions where appropriate.

6.7 Cross-border investigations

6.7.1 Background

In 2002 the Prime Minister and State and Territory leaders agreed to introduce model laws to provide a national set of powers for cross-border investigations covering controlled operations, surveillance devices, assumed identities and witness anonymity.³³³ The model laws are to be enacted by each jurisdiction and mutually recognised by each other jurisdiction, thus creating a nationally consistent legal framework which allows law enforcement officers acting under authorities issued in one jurisdiction to continue the investigation in another jurisdiction.

Queensland enacted legislation based on the model laws in 2005. The *Cross-Border Law Enforcement Legislation Amendment Act 2005* which came into force on 30 June 2006, conferred powers on the CMC in relation to its major crime function only.³³⁴ The CMC's power to engage in controlled operations, acquire assumed identities and use surveillance devices for crime investigations is contained in the *Police Powers and Responsibilities Act 2000* and the Parliamentary Commissioner has a role in auditing and reporting on the CMC's use of those powers.

In its submission to the current review, the CMC provided the following information about the status of mutual recognition and enactment of model legislation in other States:³³⁵

Controlled operations

- *New South Wales has passed legislation which recognises Queensland's controlled operations laws (Chapters 11 and 12 of the PPRA) effective from September 2007. Queensland is negotiating the recognition of the New South Wales legislation as a corresponding law.*
- *Victoria has enacted the model legislation for controlled operations, mutual recognition has not yet been negotiated.*
- *Other States are in various stages of preparing their model legislation.*

Surveillance device warrants

- *Victoria and Queensland have each recognised each other's surveillance device warrants laws as corresponding laws, effective 1 July 2006.*
- *New South Wales has enacted the model legislation for surveillance devices, mutual recognition has not yet been negotiated.*
- *Other States are in various stages of preparing their model legislation.*

³³¹ see 6.3 above.

³³² see 6.5 above.

³³³ Leaders Summit on Terrorism and Multijurisdictional Crime, Cross-Border Investigative Powers for Law Enforcement Report, November 2003.

³³⁴ The CMC's powers to use surveillance devices and controlled operations for misconduct investigations remain in the CMA.

³³⁵ Submission No.22, Crime and Misconduct Commission, p. 15.

Assumed identities

- Victoria and Queensland have recognised each other's assumed identities laws as corresponding laws, effective 1 July 2006.
- New South Wales has not yet introduced the model legislation for assumed identities.
- Other States are in various stages of preparing their model legislation.

6.7.2 Controlled operations

Chapter 11 of the *Police Powers and Responsibilities Act 2000* enables the CMC to obtain authorisation for undercover officers to engage in activities (controlled operations) that may involve unlawful conduct in order to gather evidence that could lead to the prosecution of a person for a serious criminal offence.

The Parliamentary Commissioner is required to prepare an annual report about the controlled operations activities of the CMC, a copy of which must be given to the Chairperson of the PCMC to be tabled in the Legislative Assembly.³³⁶ The Parliamentary Commissioner has produced two such reports to date covering the periods 1 July 2006 to 30 June 2007³³⁷ and 1 July 2007 to 30 June 2008.³³⁸ The Commissioner based the reports on information provided to him by the CMC Chairperson every 6 months and the Commissioner's inspection of the CMC's records, both of which are required by legislation.³³⁹ The Parliamentary Commissioner found that the Chairperson's reports were adequate and comprehensive and the inspection of the CMC's records verified the information provided by the Chairperson. The Parliamentary Commissioner concluded on both occasions that the overall impression was that the CMC demonstrated a good degree of discernment in deciding whether to seek the exercise of these powers and used the powers judiciously resulting in a number of arrests and charges in respect of serious criminal offences.³⁴⁰

6.7.3 Assumed identities

Under chapter 12 of the *Police Powers and Responsibilities Act 2000* the Chairperson of the CMC may grant an authority for the acquisition or use of an assumed identity in relation to major crime investigations.

At the end of each financial year the Chairperson of the CMC must give the Chairperson of the PCMC a report containing certain information about authorities for assumed identities, including a statement about whether any fraud or other unlawful activity was identified by the audit of records the Parliamentary Commissioner is required to conduct.³⁴¹ The PCMC must table a copy of the report in the Legislative Assembly.³⁴² Two such reports have been tabled covering the periods 1 July 2006 to 30 June 2007³⁴³ and 1 July 2007 to 30 June 2008.³⁴⁴ The first report stated there had been 70 authorities granted during the year and none refused. The following year five authorities were granted and none were refused. Both reports

³³⁶ *Police Powers and Responsibilities Act 2000* (Qld), s. 269.

³³⁷ Office of the Parliamentary Crime and Misconduct Commissioner, *Report of the Work and Activities of the Crime and Misconduct Commission Under Chapter 11 of the Police Powers and Responsibilities Act 2000 (Qld)*, September 2007. Tabled 17 October 2007.

³³⁸ Office of the Parliamentary Crime and Misconduct Commissioner, *Report of the Work and Activities of the Crime and Misconduct Commission Under Chapter 11 of the Police Powers and Responsibilities Act 2000 (Qld)*, September 2008. Tabled 9 October 2008.

³³⁹ *Police Powers and Responsibilities Act 2000* (Qld), ss. 268 and 272.

³⁴⁰ Office of the Parliamentary Crime and Misconduct Commissioner, *Report of the Work and Activities of the Crime and Misconduct Commission Under Chapter 11 of the Police Powers and Responsibilities Act 2000 (Qld)*, September 2007, p. 7; Office of the Parliamentary Crime and Misconduct Commissioner, *Report of the Work and Activities of the Crime and Misconduct Commission Under Chapter 11 of the Police Powers and Responsibilities Act 2000 (Qld)*, September 2008, p. 7.

³⁴¹ *Police Powers and Responsibilities Act 2000* (Qld), s. 316.

³⁴² *ibid.*, s. 314.

³⁴³ CMC, *Annual Report to the Parliamentary Crime and Misconduct Committee for the Period 1 July 2006 to 30 June 2007: Compliance Requirements under the Police Powers and Responsibilities Act 2000 (Qld) for Assumed Identities and Surveillance Devices*. Tabled 17 October 2007.

³⁴⁴ CMC, *Annual Report to the Parliamentary Crime and Misconduct Committee for the Period 1 July 2007 to 30 June 2008: Compliance Requirements under the Police Powers and Responsibilities Act 2000 (Qld) for Assumed Identities and Surveillance Devices*. Tabled 11 September 2008.

stated that the Parliamentary Commissioner had advised that the results of the audits of records were quite satisfactory.

6.7.4 *Surveillance warrants*

Chapter 13 of the *Police Powers and Responsibilities Act 2000* gives the CMC the power to obtain warrants or emergency authorisations for the installation, use, maintenance and retrieval of surveillance devices in serious criminal investigations.

The Parliamentary Commissioner is required to inspect the records of the CMC from time to time to decide the extent of compliance with chapter 13 by the Commission and its law enforcement officers.³⁴⁵ The Parliamentary Commissioner must report to the Chairperson of the Committee every 6 months on the results of each inspection and the report must be tabled by the Committee Chairperson within 14 sitting days of its receipt.³⁴⁶

The first such report covering the period 1 July 2006 to 30 April 2007 was generally favourable but highlighted a number of instances of non-compliance by the CMC with its legislative obligations. The deficiencies identified by the Parliamentary Commissioner included:³⁴⁷

- Less than full compliance with the procedures for the discontinuance of the use of surveillance devices under warrants;
- Compliance affidavits for seven surveillance device warrants that had been removed prior to the warrants ending were not provided within the time stated in the warrants, namely 21 clear days of removal of the devices. Instead the affidavits referred to the 'post warrant deadline' and were provided within 21 clear days after the time the warrants ended;
- Applications for five surveillance device warrants did not state the kind of devices sought to be authorised by the warrants; and
- Seven documents (applications, warrants and compliance affidavits) contained typographical errors or were otherwise inaccurate.

The Committee wrote to the CMC Chairperson expressing its concerns and seeking advice regarding the actions taken by the CMC to address the deficiencies. The Committee tabled its own report which noted the Committee's concerns with the CMC's non-compliance and the Commission's response to each finding of non-compliance.³⁴⁸

The Parliamentary Commissioner's second and third reports of inspections found the CMC and its officers had fully complied with their statutory obligations under the *PPRA*.³⁴⁹ The fourth report,³⁵⁰ covering the period 1 May 2008 to 10 November 2008, noted one defect with one surveillance device warrant which authorised the use of an optical surveillance device in a dwelling but did not state the parts

³⁴⁵ *Police Powers and Responsibilities Act 2000* (Qld) ss. 362 and 322.

³⁴⁶ *ibid.*, s. 363.

³⁴⁷ Office of the Parliamentary Crime & Misconduct Commissioner, *Report on the Results of the Inspection of the Records of the Crime and Misconduct Commission Pursuant to Section 362 of the Police Powers and Responsibilities Act 2000 (Qld)*, April-May 2007 at 13.

³⁴⁸ PCMC, Report No. 75, *A Report on the Parliamentary Crime and Misconduct Commissioner's report on his inspection, pursuant to Section 362 of the Police Powers and Responsibilities Act 2000 (Qld), of the CMC's records regarding surveillance device warrants for the period 1 July 2006 to 30 April 2007*. Tabled 17 October 2008.

³⁴⁹ PCMC, Report No. 77, *A Report on the Parliamentary Crime and Misconduct Commissioner's report on his inspection, pursuant to Section 362 of the Police Powers and Responsibilities Act 2000 (Qld), of the CMC's records regarding surveillance device warrants for the period 1 March 2007 to 30 November 2007*. Tabled 17 April 2008. Office of the Parliamentary Crime and Misconduct Commissioner, *Report on the Results of the Inspection of the Records of the Crime and Misconduct Commission Pursuant to Section 362 of the Police Powers and Responsibilities Act 2000 (Qld), May 2008*. Tabled 11 September 2008.

³⁵⁰ Office of the Parliamentary Crime and Misconduct Commissioner, *Report on the Results of the Inspection of the Records of the Crime and Misconduct Commissioner Pursuant to Section 362 of the Police Powers and Responsibilities Act 2000 (Qld)*, December 2008. Tabled 12 February 2009.

of the dwelling in which the device may be installed as required by the legislation.³⁵¹

As the first report showing instances of non-compliance by the Commission was tabled with a report by the Committee, the Committee considered it fair and appropriate to table a Committee report noting that the Parliamentary Commissioner's second report had found full compliance. The third and fourth reports were tabled in the Legislative Assembly without additional reports by the Committee.

6.7.5 Analysis and comment

The Committee notes that the CMC's compliance with the PPRA requirements for controlled operations, assumed identities, and surveillance warrants has been generally positive. Any deficiencies observed by the Parliamentary Commissioner have served to clarify the procedural requirements of the new legislative provisions and assist the CMC to formulate appropriate policies and improve its processes.

The new inspection and reporting regimes put in place by the *Cross-Border Law Enforcement Legislation Amendment Act 2005* have also enhanced the Committee's ability to continuously monitor and review the CMC. Tabling the results of the reviews, with or without additional Committee comment, offers a valuable opportunity to provide ongoing public information about the performance of the CMC.³⁵²

The Committee notes that the reporting and inspection regimes vary for each of the three types of operations. The Committee receives information about controlled operations conducted by the CMC from an annual report prepared by the Parliamentary Commissioner.³⁵³ In relation to surveillance warrants, the Committee receives annual reports from the CMC³⁵⁴ as well as six monthly reports from the Parliamentary Commissioner setting out the results of the Commissioner's inspections of the CMC's surveillance device warrant records.³⁵⁵ By contrast, information about the activities of the CMC that involve assumed identities is provided to the Committee annually by the CMC chairperson.³⁵⁶ Although this report must include a statement about whether any fraud or unlawful activity was identified in the regular audit of assumed identity records conducted by the Parliamentary Commissioner³⁵⁷ there is no requirement that the actual audit report be provided to the Committee or that the Parliamentary Commissioner report directly to the Committee about issues relating to assumed identities.

The Committee acknowledges that the relevant provisions of the *Police Powers and Responsibilities Act 2000* were enacted to give effect to model laws that were developed nationally to support cross-border criminal investigations. Nevertheless, the Committee considers it anomalous that it receives information about controlled operations and surveillance warrants from the independent Parliamentary Commissioner while any information about assumed identities comes directly from the CMC.

Recommendation 18

The Committee recommends that the Government amend the *Police Powers and Responsibilities Act 2000* to require the Parliamentary Commissioner to provide to the Parliamentary Crime and Misconduct Committee a copy of the report on the results of each audit conducted under section 316 of that Act in relation to assumed identities.

³⁵¹ Parliamentary Crime and Misconduct Commissioner's Report, p. 10. This constituted a breach of s. 331(1)(b)(vi) of the PPRA.

³⁵² Note the Courier Mail's report of the Parliamentary Commissioner's first report on the CMC's compliance with the procedural requirements for surveillance warrants – 'CMC officers rapped over slack surveillance records' Courier Mail, 18 October 2007, p. 8.

³⁵³ *Police Powers and Responsibilities Act 2000* (Qld), s. 269.

³⁵⁴ *ibid.*, s. 358.

³⁵⁵ *ibid.*, s. 363.

³⁵⁶ *ibid.*, s. 314.

³⁵⁷ *ibid.*, s. 316.

6.8 Telephone interception powers

6.8.1 Background

The Commonwealth *Telecommunications (Interception and Access) Act 1997* (Cth) provides a national regime for telecommunications interception in Australia. It prohibits the interception of telecommunications³⁵⁸ subject to a number of exceptions, including interception under a warrant.³⁵⁹ Interception warrants are available to State law enforcement authorities³⁶⁰ that have been declared by the Commonwealth Minister to be ‘interception agencies.’³⁶¹ Before such a declaration can be made the relevant State Premier must request the declaration and the Commonwealth Minister must be satisfied that State law establishes the recordkeeping, reporting and inspection regime required by the Commonwealth legislation.³⁶² The State must also enter an agreement to pay all expenses connected with the issue of warrants.³⁶³

For a number of years Queensland has been the only State whose law enforcement authorities have not been declared ‘interception agencies’ under the Commonwealth Act and consequently have not had direct access to telecommunications interception powers.³⁶⁴ The value of such powers to agencies like the CMC has been acknowledged in many reviews, including those conducted by the PCMC³⁶⁵ and its predecessor, the PCJC.³⁶⁶ Until recently however, concerns about the adequacy of safeguards under the Commonwealth legislation and the ability of Queensland to require independent scrutiny *before* a warrant is issued have prevented Queensland joining the national regime. Although the Commonwealth Act requires an independent body to provide ‘back end’ accountability by inspecting and reporting on how interception agencies have complied with the law, the Queensland Government has pushed for an additional ‘front end’ layer of accountability to enable an independent body, the Public Interest Monitor (PIM), to participate in the warrant application process. For this to occur the Commonwealth Act must be amended to recognise the PIM’s involvement in Queensland, thereby ensuring any Queensland telecommunications interception legislation is not invalid on the basis of inconsistency with the Commonwealth Act.

In August 2008 the Premier announced that an agreement had been reached with the Commonwealth Government to allow the PIM to be involved in applications for telephone interception warrants in Queensland.³⁶⁷

On 10 February 2009 the Premier introduced the Telecommunications Interception Bill 2009 into the Legislative Assembly to enable Queensland to become part of the national regime. The Bill established the recording, reporting and inspection regime required by the Commonwealth Act, including establishing the PIM and the Parliamentary Crime and Misconduct Commissioner as the respective inspecting entities for the QPS and CMC with the role of ensuring the agencies have complied with their recordkeeping and reporting obligations. The Bill also requires the involvement of the PIM in the interception warrant

³⁵⁸ *Telecommunications (Interception and Access) Act 1997*, (Cth) s. 7(1).

³⁵⁹ *ibid.*, s. 7(2)(b).

³⁶⁰ Known as ‘eligible authorities’ - *Telecommunications (Interception and Access) Act 1997* (Cth) s. 5. In Queensland this includes the police force and the CMC.

³⁶¹ *Telecommunications (Interception and Access) Act 1997*, (Cth) s. 39.

³⁶² *ibid.*, s. 35(1).

³⁶³ *ibid.*, s. 35(2).

³⁶⁴ The CMC has had limited access to telephone intercept product through joint operations with federal and interstate law enforcement agencies which have telecommunications interception powers – CMC submission, p. 27.

³⁶⁵ PCMC, Report No. 71, *Three Year Review of the Crime and Misconduct Commission* Three Year Review, 2006, pp. 60–63; PCMC, Report No. 64, *Three Year Review of the Crime and Misconduct Commission*, pp. 61–65.

³⁶⁶ PCJC, Report No. 55, *Three Yearly Review of the Crime Justice Commission*, pp. 72–74; PCJC, Report No.50, *A Report on the Introduction of the Telecommunications Interception Powers in Queensland – Balancing Investigative Powers with Safeguards*; PCJC, Report No. 29, *A Review of the Criminal Justice Commission’s Report on Telecommunications Interception and Criminal Investigation in Queensland*.

³⁶⁷ ‘Telephone tapping powers in Queensland’ Joint Ministerial Media Release by the Premier and the Minister for Police, Corrective Services and Sport, 28 August 2008.

application process. The explanatory notes issued with the Bill explain that the PIM would be involved in the application process by:³⁶⁸

Requiring the QPS and CMC to consult with the PIM before making an application under the Commonwealth Act;

Entitling the PIM to appear at and make submissions to hearings of the warrants;

Requiring the QPS and CMC to fully disclose to the PIM all relevant matters, both favourable and adverse to the issuing of a warrant; and

Enabling the PIM to report to the State Minister about any non-compliance by the QPS or CMC with the State or federal Acts.

The Queensland Bill lapsed when the 52nd Parliament of Queensland was prorogued on 23 February 2009. It is expected that the Bill will be reintroduced in the 53rd Parliament.

The Commonwealth Attorney-General introduced the Telecommunications Interception Legislation Amendment Bill (No. 2) 2008 into the House of Representatives on 3 December 2008 in order to facilitate the introduction of the QPS and CMC into the national telecommunications interception regime. The Bill will amend the *Telecommunications (Interception and Access) Act 1997* (Cth) to include the Queensland PIM in the interception regime as it applies in Queensland. This was considered necessary to ensure the Queensland legislation would not be declared constitutionally invalid on the basis of inconsistency with the Commonwealth Act.³⁶⁹ The Bill will allow the PIM to make submissions to the Judge or AAT member considering an application by a Queensland agency for an interception warrant. It will also allow the PIM to question the applicant or a person who is required to give further information in connection with the application, in the presence of the Judge or AAT member, for the purpose of making a submission.³⁷⁰ The Bill was passed by the House of Representatives on 5 February 2009 and introduced into the Senate the same day.

6.8.2 Role of the PCMC

Neither the Commonwealth Act nor the proposed Queensland legislation provides an active role for the PCMC in the telecommunications interception regime. The Queensland Bill does however provide that:

- The PIM must give the PCMC Chairperson a copy of any report the PIM makes to the Minister on non-compliance by the CMC with either the Queensland or Commonwealth Act.³⁷¹
- The Parliamentary Commissioner (as inspecting entity for the CMC) must give the PCMC Chairperson a copy of any report the Commissioner makes to the Minister about the results of an inspection of the CMC's records to determine compliance with the record keeping and reporting requirements.³⁷²

The reports given to the PCMC chairperson must not include information mentioned in section 63 of the Commonwealth Act, namely intercepted information or 'interception warrant information.' This second category includes information about: an application for an interception warrant; the issue of an interception warrant; the existence or non-existence of an interception warrant; the expiry of an interception warrant; or any other information that is likely to enable the identification of the telecommunications service or person to which an interception warrant relates.³⁷³ These provisions were

³⁶⁸ Explanatory Notes issued with the Telecommunications Interception Bill 2009 (Qld), p. 3.

³⁶⁹ Australia. House of Representatives. Parliamentary Debates, 3 December 2008, p. 12300.

³⁷⁰ Proposed section 45 of the *Telecommunications (Interception and Access) Act 1997* (Cth).

³⁷¹ Telecommunications Interception Bill 2009 (Qld) clause 12.

³⁷² Telecommunications Interception Bill 2009 (Qld) clause 24.

³⁷³ *Telecommunications (Interception and Access) Act 1997* (Cth) s. 6EA.

inserted into the Commonwealth Act in 1995³⁷⁴ in order to preserve ‘both privacy and the security of investigations.’³⁷⁵ They were not intended to ‘prevent general statistical information about warrants being communicated, used etc.’³⁷⁶

Nevertheless, the Committee is concerned that the limitations on the information that can be provided in these reports has the potential to impede the Committee from effectively fulfilling its function of monitoring, reviewing and reporting to Parliament on the CMC’s performance.

Recommendation 19

The Committee recommends that consideration be given to legislative amendments that would ensure that the reports by the Public Interest Monitor and Parliamentary Commissioner can contain details of incidents of non-compliance by the Crime and Misconduct Commission with telecommunications interception legislation to the degree necessary to facilitate effective oversight by successor committees.

6.8.3 Separate or shared facilities?

Once the legislative framework is in place to allow the CMC and QPS to conduct telecommunications interception, questions arise about the best way to establish, fund and resource these activities in Queensland.

One submission to the current review suggested that it would ‘be enormously wasteful to fully fund two TI facilities, one for the Queensland Police Force and one for the CMC.’³⁷⁷ The submission went on:³⁷⁸

... it is clear that the agency to house TI is the CMC. Among CMC duties is the policing of our Police. This would prove impossible if TI operations were housed within the Police Service.

In the interests of full and exhaustive investigations of matters involving the Police, the CMC must have unimpeded access to TI and this is best provided by housing TI within the CMC.

I believe there is no reason that this should hinder any Queensland Police operation. Police, after securing relevant warrants, would present these to the CMC and have the intercepts carried out.

This would build on the established information and co-operation between these two agencies, without restricting the CMC’s unique investigative processes.

Placing TI within a civilian organisation would also provide additional oversight and transparency in the use of TI powers, especially as the PCMC provides independent scrutiny of CMC operational policy and practice.

By contrast the CMC strongly urged that funding be made available for the Commission to establish its own interception facility separate from that of the QPS for reasons which include:³⁷⁹

- confidentiality and security;
- lines of accountability;
- the difficulty of determining relative priority at time of high demand for use of the facility; and

³⁷⁴ *Telecommunications (Interception) Amendment Act 1995* (Cth).

³⁷⁵ Explanatory Memorandum for the *Telecommunications (Interception) Amendment Bill 1994* (Cth), p. 9.

³⁷⁶ *ibid.*

³⁷⁷ Submission No.1, Ms Rosa Lee Long MP.

³⁷⁸ *ibid.*

³⁷⁹ Submission No.22, Crime and Misconduct Commission, p. 27.

- the importance of ensuring there is no public perception that when the CMC is investigating police misconduct, the investigation could be compromised in any way by QPS employees associated with any shared QPS/CMC interception facility.

At public hearings held as part of the current review the CMC Chairperson made the point that:³⁸⁰

... the main part of the cost is in the monitoring – the monitoring posts and the physical people who are there doing the monitoring. There are some relatively large sums of money in the hardware, but that is the smaller part of the costs that are involved. The larger part of the cost is going to be the same whether it is controlled by one entity or two.

In its submission to the current review the CMC acknowledged that it would work cooperatively with the QPS by sharing information on technical and legal issues and staff training.³⁸¹ The CMC also indicated that it would investigate the feasibility of sharing a telecommunications interception collection facility with another State integrity agency or a federal agency, both as a short term and longer term solution.³⁸²

The Commissioner of Police also supported the concept of two separate operational entities, particularly given the fact the CMC investigates police misconduct. The Commissioner acknowledged that cost savings could be made if both agencies worked together in relation to equipment purchasing and maintenance arrangements.³⁸³

6.8.4 Analysis and comment

Previous Committees have supported the view that the CMC should operate its own telecommunications interception facility.³⁸⁴

The Committee agrees there are a number of important reasons for requiring the CMC telecommunications interception facility to be separate from the QPS, including issues of security, differing operational practices and priorities, and most importantly, public confidence in the independence of the CMC. This should not, however, impede the CMC from working co-operatively with the QPS in the interests of efficiency and minimising costs associated with the establishment of telecommunications interception capabilities in Queensland.

Recommendation 20

The Committee recommends that the Crime and Misconduct Commission be funded to operate its own telecommunications interception facility, separate from any to be utilised by the Queensland Police Service.

6.9 Notices to discover where a matter is before a Misconduct Tribunal

6.9.1 Background

Misconduct tribunals constituted under the *Misconduct Tribunals Act 1997* have exclusive jurisdiction to hear and decide disciplinary charges of official misconduct made against prescribed persons, namely members of the police service and people who hold an appointment in a unit of public administration

³⁸⁰ 7th PCMC, Transcript of Proceedings, Three Year Review of the Crime and Misconduct Commission, 19 November 2008, p. 12.

³⁸¹ Submission No.22, Crime and Misconduct Commission, p. 27.

³⁸² Submission No.22, Crime and Misconduct Commission, p. 27; 7th PCMC, Transcript of Proceedings, Three Year Review of the Crime and Misconduct Commission, 19 November 2008, p. 12.

³⁸³ 7th PCMC, Transcript of Proceedings, Three Year Review of the Crime and Misconduct Commission, 19 November 2008, pp. 34–35.

³⁸⁴ 6th PCMC Three Year Review, 2006, p. 63; 5th PCMC Three Year Review, 2004, p. 65; 4th PCJC Three Year Review, 2001, pp. 73–74; PCJC, *A Report on the Introduction of Telecommunication Powers in Queensland – Balancing Investigative Powers with Safeguards*, Report No. 50, 1999, pp. 38–40.

declared by regulation to be subject to the jurisdiction of the tribunal.³⁸⁵ The tribunals also hear and decide appeals against decisions made in relation to disciplinary charges of misconduct against a prescribed person where the decisions were made by bodies other than courts or misconduct tribunals.³⁸⁶ Appeals are conducted by way of rehearing on the evidence that was before the original decision maker. The tribunal may give leave to adduce new evidence in limited circumstances.³⁸⁷

When undertaking a misconduct investigation, the CMA prohibits the CMC from issuing a notice to discover to a person who is subject to a disciplinary charge before a misconduct tribunal or any of the person's witnesses.³⁸⁸

Section 75(9) of the CMA provides:

The chairperson must not give a notice to discover to a person who is subject to a disciplinary charge of official misconduct before a misconduct tribunal (or any of the person's witnesses or prospective witnesses) in relation to information, documents or things relevant to the charge.

6.9.2 CMC submission

In its submission to the current review the CMC suggested it would be appropriate to omit this provision from the CMA on the grounds that:³⁸⁹

- There may be instances where the CMC needs to undertake further inquiries after a matter has been referred to a misconduct tribunal for review;
- It is unclear whether the provision applies in situations where a misconduct tribunal directs the CMC to undertake investigations;³⁹⁰ and
- The provision is inconsistent with section 331 of the CMA which provides the CMC with the power to continue to investigate matters even where the matters are the subject of proceedings before a court or tribunal.

6.9.3 Analysis and comment

The Committee notes that the Government proposes to include the misconduct tribunals in the Queensland Civil and Administrative Tribunal (QCAT) which will have the power to review matters by way of fresh hearing on the merits.³⁹¹ The draft legislation establishing the new tribunal removes the CMA provision that prevents the CMC issuing a notice to discover when a matter is before the tribunal.³⁹²

The Committee supports this amendment, particularly in light of the fact QCAT will hear appeals afresh, increasing the likelihood that the CMC will need to undertake further inquiries in relation to the matters raised by any fresh evidence.

Recommendation 21

The Committee recommends that section 75(9) of the *Crime and Misconduct Act 2001* be repealed to allow the Crime and Misconduct Commission to issue notices to discover to a person who is subject to a disciplinary charge before a misconduct tribunal or any of the person's witnesses.

³⁸⁵ *Misconduct Tribunals Act 1997* (Qld), ss. 13–14; *Crime and Misconduct Act 2001* (Qld), s. 50.

³⁸⁶ *Misconduct Tribunals Act 1997* (Qld), s. 16; *Crime and Misconduct Act 2001* (Qld), s. 50.

³⁸⁷ *Misconduct Tribunals Act 1997* (Qld), s. 23.

³⁸⁸ *Crime and Misconduct Act 2001* (Qld), s. 75(9).

³⁸⁹ Submission No.22, Crime and Misconduct Commission, pp. 9–10.

³⁹⁰ *Misconduct Tribunals Act 1997* (Qld), s. 27.

³⁹¹ Exposure Draft – Queensland Civil and Administrative Tribunal Bill 2009, clauses 19 and 237.

³⁹² Exposure Draft – Queensland Civil and Administrative Tribunal (Jurisdictional Provisions) Amendment Bill 2009, clause 686.

7. THE INTELLIGENCE FUNCTION

7.1 Introduction

The Crime and Misconduct Commission's intelligence functions play a vital role in supporting the Commission's other functions, including its crime, misconduct, witness protection and prevention functions.

Under the *Crime and Misconduct Act 2001*, the CMC's intelligence functions involve:³⁹³

- undertaking intelligence activities to support the proper performance of its functions;
- analysing the intelligence data collected to support its functions;
- minimising unnecessary duplication of intelligence data; and
- ensuring that intelligence data collected and held to support its functions is appropriate for the proper performance of its functions.

The Commission is required to build up a database of intelligence information about all its functions from a range of sources including its own operations, the police service and sources from the Commonwealth or any State.³⁹⁴

According to the CMC's submission to the current review:³⁹⁵

The Intelligence area provides valuable information through collecting, correlating and analysing information and intelligence relevant to the Commission's responsibilities. It monitors various crime markets in Queensland to identify emerging trends or changes in threat levels and shares relevant intelligence with other law enforcement and government agencies. The area facilitates the exchange of information between the crime and misconduct areas and provides tactical information and intelligence support for investigative teams.

7.2 Tactical intelligence

Intelligence analysis plays an important role in assisting the CMC perform its misconduct, crime and witness protection functions. Intelligence collated in the Commission's intelligence database is also disseminated to other agencies when appropriate.

In its submission to the current review the CMC stated:³⁹⁶

A total of 668 intelligence reports have been collated to the CMC's Intelligence Recording and Analysis System (IRAS) since April 2006. Of these, 385 were disseminated by electronic transfer to the Australian Criminal Intelligence Database (ACID) for sharing with other law enforcement agency personnel who use ACID.

During the period 1 April 2006 to 30 September 2008, 161 disseminations have been made to partner agencies under section 55(2) of the CM Act. Of these, 91 were on the CMC's initiative, and the remainder in response to specific requests. These disseminations covered issues such as organised crime and drug networks, paedophile matters, amphetamine syndicates, outlaw motorcycle gangs, and money laundering. On a number of occasions, successful enforcement action has resulted from the intelligence that we have disseminated.

³⁹³ *Crime and Misconduct Act 2001 (Qld)*, s. 53.

³⁹⁴ *ibid.*, s. 54.

³⁹⁵ Submission No.22, Crime and Misconduct Commission, p. 3.

³⁹⁶ *ibid.*, p. 57.

7.3 Strategic intelligence assessments

The Strategic Intelligence Unit (SIU) produces strategic intelligence assessments which monitor trends, predict changes, and assess the risks posed by particular criminal activities and networks. These assessments are used by the CMC, other law enforcement agencies and policy makers to make decisions about priorities and resources and develop responses to current and emerging threats.

As well as being used to support the work of the CMC, this information is also shared with other agencies, and in appropriate circumstances, with the general public. This is done in a variety of ways including the production of:

- Publicly available crime bulletins designed to raise community awareness about organised crime issues, trends and forecasts. During the period covered by the current review the CMC produced one crime bulletin entitled *The Cocaine Market in Queensland* which was released to the public in September 2007.
- Classified ‘in-confidence’ intelligence digests to provide law enforcement agencies with information about emerging trends in Queensland and the risk they pose. One intelligence digest has been produced since April 2006.³⁹⁷
- More substantial strategic assessments on specific issues where there is potential for the issue to affect law enforcement in Queensland. Since April 2006 three significant strategic assessments have been produced.³⁹⁸
- Submissions to inquiries conducted by parliamentary committees. Detailed submissions were provided to two inquiries conducted by the Commonwealth Parliamentary Joint Committee on the Australian Crime Commission, namely the 2007 inquiry into the future impact of serious and organised crime on Australian society and the 2008 inquiry into legislative arrangements to outlaw serious and organised crime groups.³⁹⁹

The CMC also reports that work began in May 2008 on a strategic assessment of organised crime markets which uses a market-based approach to analyse the nature and extent of organised criminal activity in Queensland and assess the relative risk posed by particular illicit markets. It is anticipated that a classified law enforcement report and an unclassified crime bulletin will be published for each of the four topics that make up the project, namely: organised property crime; fraud and money laundering; illicit drug markets; and trends and issues in organised crime.⁴⁰⁰

7.4 Target development

The CMC’s Strategic Intelligence Unit (SIU) proactively identifies crime or misconduct targets for further investigation by the Commission or other law enforcement agencies. Target development involves ‘*identifying indicators of potential significant criminal activity by one or more individuals, and the planned collection and analysis of data in order to determine the nature and extent of the criminal activity and its scope in terms of networks.*’⁴⁰¹

Target development often involves close liaison with partner law enforcement agencies including the QPS, federal and interstate agencies.

The CMC reports that since April 2006:⁴⁰²

³⁹⁷ *ibid.*

³⁹⁸ *ibid.*

³⁹⁹ *ibid.*, pp. 57-58.

⁴⁰⁰ *ibid.*, p. 57.

⁴⁰¹ *ibid.*, p. 59.

⁴⁰² *ibid.*

- The SIU has undertaken a series of target development projects;
- Three matters have been referred to the Crime Intelligence Research Review Committee as suitable targets for further investigation. One matter progressed to CMC tactical operations and two remain as CMC operational probes;
- The SIU was involved in a joint investigation with the Australian Crime Commission;
- Another matter was disseminated to the Australian Taxation Office for further action;
- The SIU provided intelligence support for Crime in relation to another matter that was already at operational phase; and
- There are two ongoing initiatives aimed at targeting child sex offenders, including identifying incarcerated child sex offenders deemed likely to re-offend on release.

7.5 Human source program

The CMC's human source program involves the use of individuals who are in a position to provide confidential information, much of which is not available from other sources. Human sources are particularly important in investigating and gathering intelligence about organised crime.

The CMC advises that since April 2006:⁴⁰³

... the CMC has managed 24 confidential human sources, and of these 9 are currently registered. Information from these sources provided the basis for a significant portion of the 668 information reports uploaded to the CMC intelligence database (IRAS) during the relevant period.

The CMC provides training for officers working in this highly specialised area. The *Human Source Operations Course*, conducted jointly by the CMC and the Australian Crime Commission, has been presented on seven occasions since April 2006. The course has also attracted interest from a number of police services in other jurisdictions and in March 2008 the CMC assisted the Victorian Office of Police Integrity with the delivery of a human source operations course.⁴⁰⁴

The CMC also advises that a review of the Commission's policies and procedures relating to the use of human sources is being conducted in order to determine whether they meet current standards of best practice.⁴⁰⁵

7.6 Intelligence data reviews

The Parliamentary Commissioner has a statutory obligation to conduct an annual review of intelligence data held by the CMC and the QPS.⁴⁰⁶ The purposes of the review are:⁴⁰⁷

- (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—*

⁴⁰³ *ibid.*, p. 60.

⁴⁰⁴ *ibid.*

⁴⁰⁵ *ibid.*, p. 59.

⁴⁰⁶ *Crime and Misconduct Act 2001* (Qld), s. 320(1).

⁴⁰⁷ *ibid.*, s. 320(2)

- (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.*

The Parliamentary Commissioner must provide a copy of the findings and recommendations of the review to the Chairperson of the CMC, the Commissioner of Police and the Parliamentary Committee.⁴⁰⁸

During the term of the current PCMC, the Parliamentary Commissioner reported to the Committee on the results of the intelligence reviews for 2006, 2007 and 2008. Each report found that:

- All items of intelligence data reviewed at the CMC were appropriately held by the CMC having regard to its functions. The Parliamentary Commissioner was satisfied that, at an organisational level, neither agency holds inappropriate material.
- The Parliamentary Commissioner found no evidence of unnecessary duplication of intelligence data held by the agencies.
- Since both the CMC and QPS store their criminal intelligence on the Australian Criminal Intelligence Database (ACID), they are working cooperatively as partners (along with most other law enforcement agencies throughout Australia) to achieve optimal use of the resources used to record the data.
- The Parliamentary Commissioner was satisfied that neither agency is placing inappropriate restrictions on access to intelligence data by the other agency.

⁴⁰⁸ *ibid.*, s. 320(3)

8. RESEARCH AND PREVENTION

8.1 Introduction

The CMC fulfils its research functions⁴⁰⁹ by undertaking a wide range of projects examining policing, crime, public sector misconduct and related public policy issues. The research supports the functions of the CMC while also providing vital information to stakeholders and the general public to enhance a broader understanding of the relevant issues. The CMC's research and associated publications play a significant role in monitoring trends and reviewing and evaluating changes in the areas of crime, criminal justice and public sector integrity. They also contribute directly to the Commission's prevention function.⁴¹⁰

Much of the CMC's research is undertaken at the Commission's own initiative to support its functions. From time to time, however, legislation will require the CMC to review the effects of changes to the law, particularly where there has been an expansion of police powers.⁴¹¹ The CMC also receives referrals from the Minister to undertake research on matters relating to the administration of criminal justice or misconduct.⁴¹²

The CMC's research area often collaborates with other institutions on a project. Recent partners have included universities, public sector agencies such as the QPS and Queensland Health, and other integrity bodies such as the Queensland Ombudsman.

Another of the CMC's key roles is building the capacity of public sector agencies, including the QPS, to prevent and deal with misconduct effectively and appropriately.⁴¹³ This is achieved through a range of activities including: providing agencies with advice and relevant resources; conducting workshops and information sessions; meeting with chief executives and senior managers in public sector agencies; outreach activities such as liaison meetings and visits to rural and regional areas; working with other oversight agencies such as the Ombudsman; and working directly with Indigenous communities.

8.2 Policing Research

8.2.1 Introduction

An important focus of the CMC's research and prevention activities is the continuous improvement of the Queensland Police Service. The current police research program is divided into the following areas: enhancing integrity in the QPS; evaluating the use of police powers including the use of force; reviewing police methods of operation; and monitoring police education and training.⁴¹⁴

8.2.2 *Enhancing integrity in the QPS*

Assessing public attitudes

The CMC regularly conducts a survey of public attitudes towards the QPS in order to monitor public confidence in the police force and measure changes over time. The survey measures public attitudes to the QPS as well as public knowledge and confidence in complaints processes. Results of the 2008 survey, the seventh in the series, are anticipated to be released later in 2009.⁴¹⁵

⁴⁰⁹ *Crime and Misconduct Act 2001* (Qld), s. 52.

⁴¹⁰ *ibid.*, ss. 23–24.

⁴¹¹ See for example the review of the public nuisance offence discussed in more detail at 8.5.2 of this report.

⁴¹² *Crime and Misconduct Act 2001* (Qld), s. 52(1)(c). See for example the inquiry into policing in Indigenous communities at 8.5.3 of this report.

⁴¹³ *Crime and Misconduct Act 2001* (Qld), ss. 33–34.

⁴¹⁴ Submission No.22, Crime and Misconduct Commission, pp. 116–119.

⁴¹⁵ Results of the last survey were published in June 2006 – CMC, *Public Perceptions of the Queensland Police Service: Findings from the 2005 Public Attitudes Survey*, June 2006.

Monitoring ethical standards

The CMC has surveyed police recruits and first year constables about ethical standards and conduct since 1995. The survey asks participants to respond to a series of misconduct scenarios and also asks questions about ethics training and education, the complaints and disciplinary processes, and QPS culture and values. Survey results are sent to the QPS for their information and consideration. The CMC advise that the Commission plans to release a major report in 2009 that highlights the changes in the ethical standards of police recruits and first year constables since the first surveys were conducted in 1995.⁴¹⁶

Predicting police misconduct

Information about police recruits who trained in 1997 and 1998 is being collated and examined in order to determine whether there are early warning signs of future misconduct. The study is examining factors including: age and gender; training location; post-graduation factors such as deployment location and work activity; officers' complaint and allegation histories by number and type of allegation; and attrition from the Service. It is anticipated that a report will be published in 2009.⁴¹⁷

8.2.3 Evaluating the use of police powers including the use of forceReviewing dog bite incidents and complaints (November 2007)

The CMC reviewed complaints it received between 1999 and 2006 about bites by QPS dogs and examined QPS bite incident data. The resulting report made five recommendations for consideration by the QPS Dog Squad.⁴¹⁸

Reviewing the police use of Tasers

The CMC contributed to the QPS review of its Taser trial. Tasers are devices designed to incapacitate or distract an offender by transmitting an electrical current to the person causing excruciating pain, involuntary muscle contractions and a temporary loss of mobility. The QPS trial began on 1 July 2007 in Brisbane and the Gold Coast. The CMC advises that the Commission contributed to the review by conducting a literature review, analysing complaints made to the CMC alleging misuse of Tasers and exploring the utility of the device's data port audit feature. The Commission was also involved in redrafting the QPS Taser policy to minimise the risk of misuse.⁴¹⁹

A research and issues paper was published by the CMC in November 2008 providing an overview of Australian and international research about the use of Tasers by law enforcement agencies.⁴²⁰

Contributing to the development of a more restrictive police pursuits policy

The CMC is monitoring the conduct of a QPS 'Safe Driving Policy' that commenced in January 2008. The policy requires officers to weigh the seriousness of the offence and the benefits of a pursuit against the risks to the offender, the public or themselves before commencing or continuing a vehicular pursuit.⁴²¹

8.2.4 Reviewing police methods of operationThe Princess Alexandra Hospital Police Beat (February 2007)

The CMC published the findings of an evaluation of a six month trial of the Princess Alexandra Hospital Police Beat, thought to be the first police beat in Australia to encompass a hospital campus. The evaluation concluded that the project had achieved a great deal in a very short period and suggested a

⁴¹⁶ Submission No.22, Crime and Misconduct Commission, pp. 116–117.

⁴¹⁷ *ibid.*, p. 117.

⁴¹⁸ Crime and Misconduct Commission, *The Queensland Police Dog Squad: A CMC review of complaints and bite incidents*, November 2007.

⁴¹⁹ Submission No.22, Crime and Misconduct Commission, p. 118.

⁴²⁰ Crime and Misconduct Commission, *Tasers: A brief overview of the research literature*, November 2008.

⁴²¹ Submission No.22, Crime and Misconduct Commission, p. 117.

range of ways to improve the management of call-outs, have a greater impact on the community's perception of safety, and enhance stakeholder satisfaction.⁴²²

The CMC also advised that it has provided advice to the Northern Police Region in relation to the establishment of a police beat on the James Cook University Campus in Townsville.⁴²³

8.2.5 Possible future investigations

In its submission to the three year review, the INCorrections Network drew the Committee's attention to the findings of the *No Vagrancy* report published in June 2007 which examined the impact of the criminal justice system on people living in poverty in Queensland.⁴²⁴ The report found that many people who participated in the research reported being searched frequently and sometimes unlawfully and were unsure of their rights regarding police searches.⁴²⁵ The report recommended:⁴²⁶

That the Crime and Misconduct Commission undertake an investigation into police powers related to search and seizure, with a particular focus on:

- *the frequency of police searches conducted in public places;*
- *the frequency of strip searches conducted in the course of police investigations;*
- *the level of knowledge amongst members of the public regarding when a search or seizure conducted by police is lawful; and*
- *the extent to which the use of police powers related to search and seizure is conducted in accordance with the legislation.*

The *No Vagrancy* report also mentioned that research suggested 'good order 'offenders' may present an easy target for police officers who need to prove to their superiors that they have been hard at work.'⁴²⁷

The report recommended:⁴²⁸

That an independent inquiry into police practices be conducted, with particular attention being paid to the extent to which police productivity is measured by arrest quotas.

The Committee has concerns that arrest data are sometimes inflated by the use of minor police-only charges such as resist arrest and obstruct police.

Recommendation 22

The Committee recommends that the Crime and Misconduct Commission consider undertaking research into police powers of search and seizure.

Recommendation 23

The Committee recommends that the Crime and Misconduct Commission consider undertaking research into measures of police productivity.

⁴²² Crime and Misconduct Commission, *The Princess Alexandra Hospital Police Beat: An Evaluation by the CMC*, February 2007, p. xii.

⁴²³ Submission No.22, Crime and Misconduct Commission, p. 119.

⁴²⁴ Submission No.25, INCorrections.

⁴²⁵ Walsh, Tamara. *No Vagrancy: An Examination of the Impact of the Criminal Justice System on People Living in Poverty in Queensland*, June 2007, p. 76.

⁴²⁶ *ibid.*, p. 76, recommendation 8.

⁴²⁷ *ibid.*, p. 76.

⁴²⁸ *ibid.*, p. 77, recommendation 9.

8.3 Crime research

8.3.1 Introduction

The CMC's Research and Prevention Unit undertakes a wide range of research projects designed to support the CMC's crime and crime prevention functions and inform and support the Commission's organised crime and criminal paedophilia investigations.

Since 2006, all crime research projects have required the approval of the Crime Intelligence and Research Review Committee to ensure each project has the capacity to make a practical contribution to the CMC's fight against major crime.⁴²⁹

8.3.2 Drugs

Given the significance of illicit drugs to law enforcement and policy development, the CMC conducts a range of research activities to monitor illicit drug use and the relationship with criminal activity.

Profiling the Queensland amphetamine market (December 2006)

This report provides a profile of amphetamine supply and demand in Queensland. It examines the characteristics of Queensland amphetamine users, outlines users' perceptions of law enforcement and assesses the impact of law enforcement activity. It draws on the views of both users and people who work with users including health professionals, researchers, people involved in law enforcement and non-government organisations.⁴³⁰

Illicit drug use in Queensland: a survey of households 2002-05 (February 2007)

The annual household survey conducted by the Office of Economic and Statistical Research (OESR) includes a number of questions relating to illicit drug use. This subsection of the survey is known as the Queensland Household Illicit Drug Use Survey. The CMC summarised the key finding of the surveys conducted between 2002 and 2005 in its publication *Illicit Drug Use in Queensland*.⁴³¹

The cocaine market in Queensland: A strategic assessment (September 2007)

This crime bulletin examined current trends and issues for cocaine use and the status of the market in Queensland. It aimed to assess the threat posed by cocaine and whether additional law enforcement attention was required.⁴³²

Drugs and crime: Trends among watch-house detainees (March 2008)

The report examined the drug use patterns and criminal behaviour of detainees from various watch-houses in Queensland, New South Wales, Western Australia and South Australia.⁴³³ It used data collected by the Australian Institute of Criminology, State police services and local researchers through the Drug Use Monitoring in Australia (DUMA) project.

Exploring drug use II: Drug use by hospital emergency department patients (August 2008)

This study replicated and extended the 2002 PADIE I project, re-examining the nature and extent of alcohol and drug use among patients attending the Gold Coast Hospital Emergency Department.⁴³⁴

⁴²⁹ Submission No.22, Crime and Misconduct Commission, p. 60.

⁴³⁰ Crime and Misconduct Commission, *Profiling the Queensland amphetamine market*, December 2006.

⁴³¹ Crime and Misconduct Commission, *Illicit drug use in Queensland: A survey of households 2002-05*, February 2007.

⁴³² Crime and Misconduct Commission, Crime Bulletin 8, *The cocaine market in Queensland: A strategic assessment*, September 2007.

⁴³³ Crime and Misconduct Commission, *Drugs and Crime: Trends among watch-house detainees*, March 2008.

⁴³⁴ Crime and Misconduct Commission, *Exploring drug use II: Drug use by hospital emergency department patients: A follow-up to PADIE I*, August 2008.

Post release recidivism - drug offending

This study is examining factors that contributed to the re-arrest and re-imprisonment of offenders who were originally part of the Australian Institute of Criminology's 2001 Adult Male Drug Use Careers of Offenders (DUCO) study. It will provide evidence about the nature and dynamics of crime-related drug use. The project is expected to be completed at the end of 2009.⁴³⁵

Natural history of young amphetamine users

The CMC is collaborating with Queensland Health and the Queensland Alcohol and Drug Research and Education Centre on a longitudinal study of amphetamine use by 18 to 22 year olds. The study collects data from general population samples of young amphetamine users rather than people attending treatment centres, prisons or watch houses. This will allow researchers to examine the factors which influence young peoples' choices about drug use including the impact of significant life events on their decisions.⁴³⁶

8.3.3 PaedophiliaAxis II

In 2000 the Queensland Crime Commission and the QPS conducted an extensive inquiry into child sex offending, known as Project Axis. The CMC is undertaking a follow-up inquiry which will review changes in research, policy and legislative developments in child sex offending since 2000. The CMC advise that the Axis II project will include the following volumes and activities:⁴³⁷

- The prevalence and incidence of child sexual offences – comparing Queensland with Australia and internationally.
- Victim characteristics and the impact of these characteristics on the disclosure of child sexual abuse.
- Offender characteristics and the impact of these characteristics on the disclosure of child sexual abuse.
- The behaviour of child sexual offenders (targeting and grooming of victims, internet offending and associations among child sexual offenders) and the impact of offence dynamics on the disclosure of child sexual abuse.
- Criminal justice response to child sexual offenders – detecting, reporting and investigating sexual offenders.
- Criminal justice response to child sexual offenders – prosecuting and sentencing sexual offenders.
- Criminal justice response to child sexual offenders – risk assessment of sexual offenders.
- Criminal justice response to child sexual offenders – treating sexual offenders.
- Criminal justice response to child sexual offenders – monitoring sexual offenders including preventative detention and extended supervision orders.
- The community response to child sexual offending including community-based prevention programs, services for victims of sexual abuse, programs and legislation aimed at facilitating and supporting disclosure of child sexual abuse, community perceptions of child sexual abuse and the impact of the media on programs, policies and legislation.

Organised child sexual offending

The CMC reported that it is preparing to undertake research into organised child sexual abuse and networked child sexual offenders as there appears to be a dearth of recent research in this area. The project will be undertaken in collaboration with the QPS Taskforce Argos and CMC Taskforce Cerberus

⁴³⁵ Submission No.22, Crime and Misconduct Commission, p. 61.

⁴³⁶ *ibid.*, p. 60.

⁴³⁷ *ibid.*, pp. 62–65.

and will draw on data collected by Taskforce Argos during a recent international investigation into an organised child sex offender network.⁴³⁸

8.3.4 Other research projects 2006-08

Project OPAL (Offending Persons Across the Lifecourse)

The Offending Persons Across the Lifecourse (OPAL) project which was conducted in 2007 examined the risks and needs of 480 non-custodial offenders in Queensland. Interviewers recorded the life experiences of the offenders including their experience of childhood, adolescent and adult trauma and victimisation, illicit drug and alcohol abuse, and criminal activities.

The results of the project have been published in a number of forms including CMC research publications, journal articles, book chapters and conference papers. The CMC publications are:

- *Breaking the Cycle: A study of victimisation and violence in the lives of non-custodial offenders* (July 2007).
- *Childhood Physical Abuse and Adult Offending: are they linked, and is there scope for early intervention?* (July 2007).
- *Mandatory treatment and perceptions of treatment effectiveness: a Queensland study of non-custodial offenders with drug and/or alcohol abuse problems* (October 2008).

The Committee notes the value of this work and encourages the CMC to undertake follow-up investigations to expand the scope of the knowledge base.

8.4 Public sector/misconduct research

Public perceptions of the Queensland public service and local government (September 2007)

The CMC regularly surveys attitudes and experiences of Queenslanders in relation to the behaviour of public sector and local government employees. The survey also gauges the public's confidence in, and willingness to participate in, complaints processes. Monitoring trends in public perceptions is particularly important given the principle of devolution which makes agencies increasingly responsible for conducting their own misconduct investigations. The results of the survey conducted in 2005 were published in September 2007 and found that public perceptions of the public service and local government generally remain favourable.⁴³⁹ A further survey was conducted in 2008 and the results will be reported in due course.

Public sector whistleblowing

The CMC was one of the partner organisations in the national research project, *Whistling While They Work*, led by Griffith University and funded by the Australian Research Council. The first major report of the project was released in September 2008.⁴⁴⁰

Misconduct in corrections

The CMC is collaborating with Griffith University on a project that has surveyed the perceptions of corrective services officers about the extent of misconduct in correctional centres, the causes of misconduct and the work environment in prisons. The project compares data from surveys conducted in

⁴³⁸ *ibid.*, p. 66.

⁴³⁹ Crime and Misconduct Commission, *Public Perceptions of the Queensland Public Service and Local Government: Findings from the 2005 Public Attitudes Survey*, September 2007, p. 36.

⁴⁴⁰ Brown, A.J. (ed) *Whistleblowing in the Australian Public Sector: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations*, ANU E-Press, 2008.

2001 and 2007 in order to focus on any changes to the nature and extent of official misconduct in corrections and identify any misconduct risks. The CMC advises that:⁴⁴¹

The project identified some significant improvements in officers' perceptions of misconduct between the 2001 and the 2007 surveys, and also highlighted areas for improvement. For example, there were some enduring issues between management and custodial officers, including a perceived lack of protection from management for officers who report suspected misconduct. The report will make recommendations to Queensland Corrective Services (QCS) to improve the policies and procedures in relation to the reporting of suspected misconduct, the relationship between managers and custodial officers, and the management of longer-serving custodial officers.

8.5 Public policy research

8.5.1 Introduction

Many of the CMC's research projects have a significant public policy focus. These projects often involve evaluating the effect of legislative changes or the implementation of the recommendations of an earlier investigation.⁴⁴² Some projects are required by legislation, while others are the result of a Ministerial referral.

8.5.2 Completed research

Regulating outcall prostitution (October 2006)

During 2005 and 2006 the CMC conducted a public inquiry examining whether outcall prostitution services by licensed brothels and escort agencies should be legalised. The report of the inquiry, released in October 2006, concluded that '*legalising outcall prostitution services from either licensed brothels or independent escort agencies would pose too many risks to the legal prostitution industry in Queensland and have a potentially detrimental impact on the Queensland community.*'⁴⁴³ The report also made recommendations aimed at creating a more equitable situation for legal operators and decreasing the attraction of working for illegal operators.⁴⁴⁴ In October 2008 the Police Minister announced that Cabinet supported all the CMC's recommendations.⁴⁴⁵

Review of implementation of the *Protecting Children* report (June 2007)

In 2003 the CMC conducted a public inquiry into the abuse of children in foster care in Queensland. The inquiry report, released in December 2004, made 110 recommendations, including a recommendation that the Government review and report to the CMC on the implementation of the recommendations within two years.⁴⁴⁶ The results of the CMC's review of the action that had been taken to implement the recommendations were released in June 2007.⁴⁴⁷ The CMC concluded that '*progress in implementing the CMC's recommendations has been commendable, although there is still more work to be done to keep pace with community expectations about how Queensland's child protection system should operate.*'⁴⁴⁸ The report highlighted areas where further resources needed to be invested to achieve these goals.

Review of implementation of the *Seeking Justice* report (March 2008)

⁴⁴¹ Submission No.22, Crime and Misconduct Commission, p. 109.

⁴⁴² For example reviewing government implementation of the *Protecting Children* report and the *Seeking Justice* report.

⁴⁴³ Crime and Misconduct Commission, *Regulating Outcall Prostitution: Should Legal Outcall Prostitution Services Be Extended to Licensed Brothels and Independent Escort Agencies?* October 2006, p. 68.

⁴⁴⁴ *ibid.*, p. x.

⁴⁴⁵ 'Spence: Cabinet endorses tougher approach to illegal prostitution' *Ministerial Media Statement by the Minister for Police, Corrective Services and Sport*, 13 October 2008.

⁴⁴⁶ Crime and Misconduct Commission, *Protecting Children: An Inquiry into Abuse of Children in Foster Care*, January 2004, recommendation 9.4.

⁴⁴⁷ Crime and Misconduct Commission *Reforming Child Protection in Queensland: A Review of the Implementation of Recommendations Contained in the CMC's Protecting Children Report*, June 2007.

⁴⁴⁸ *ibid.*, p. vii.

The CMC released the report of its inquiry into the way the QPS and Office of the Director of Public Prosecutions handle allegations of sexual offences in June 2003.⁴⁴⁹ The report made 23 recommendations about training, staffing, liaison practices, policies and legislative changes. In addition, the report recommended that the CMC review the implementation of the recommendations after two years.⁴⁵⁰ The CMC released the results of this review in March 2008.⁴⁵¹ In the submission to the current review the Commission explained:⁴⁵²

... that good progress had been made in implementing most of the recommendations in the Seeking Justice report. In particular, it found that the QPS had made significant inroads into the implementation of reforms to improve the handling of sexual offences by the criminal justice system. In contrast, while the ODPP was described as also having made some progress in implementing the recommendations, the CMC review demonstrated that the agency still had significant work to do in certain areas.

The report recommended that the ODPP and the QPS cooperate more closely in the handling of sexual offences, improve staff training in handling these sensitive matters, and periodically report their progress in this area to their respective ministers. The CMC intends to monitor progress towards the achievement of these recommendations.

The Committee notes that, although the initial report recommended review after two years, the results of the review were released well over four years after the first report. The CMC explain this delay in the following terms:⁴⁵³

Due to a delay in the receipt of the QPS/ODPP submission to this review (received by the CMC on 10 April 2006), as well as limitations on the CMC's staff resources, it was impossible to fulfil this obligation within the timeframe specified.

Review of the public nuisance offence (May 2008)

The CMC was required by legislation to review the use of the public nuisance offence following its introduction in 2004.⁴⁵⁴ The review was to commence as soon as practicable after 1 October 2005.⁴⁵⁵

The CMC set out to assess the impact of the introduction of the public nuisance offence and whether Queensland's public nuisance laws were being used properly, fairly and effectively.⁴⁵⁶ It did this by examining people's views through consultations and submissions and comparing QPS and court data in the twelve months leading up to the introduction of the offence (1 April 2003 to 31 March 2004) with data from the twelve months following the introduction of the offence (1 April 2004 to 31 March 2005). A literature review and analysis of the legislation and case law were also undertaken.

The results of the review, published in May 2008, found that:⁴⁵⁷

... the legislative change itself did not appear to have a significant impact on public nuisance offending or on the police and courts response to it.

⁴⁴⁹ Crime and Misconduct Commission, *Seeking Justice: An Inquiry into the Handling of Sexual Offences by the Criminal Justice System*, June 2003.

⁴⁵⁰ *ibid.*, recommendation 24.

⁴⁵¹ Crime and Misconduct Commission, *How the Criminal Justice System Handles Allegations of Sexual Abuse: A Review of the Implementation of the Recommendations of the Seeking Justice Report*, March 2008.

⁴⁵² Submission No.22, Crime and Misconduct Commission, p. 127.

⁴⁵³ Crime and Misconduct Commission, *How the Criminal Justice System Handles Allegations of Sexual Abuse: A Review of the Implementation of the Recommendations of the Seeking Justice Report*, March 2008, p. ix.

⁴⁵⁴ *Vagrants, Gaming and Other Offences Act 1931*, s. 7AA subsequently transferred to the *Summary Offences Act 2005* s. 6.

⁴⁵⁵ *Vagrants, Gaming and Other Offences Act 1931*, s. 7AA; *Summary Offences Act 2005* s. 7.

⁴⁵⁶ Crime and Misconduct Commission, *Policing Public Order: A Review of the Public Nuisance Offence*, May 2008, p. 9.

⁴⁵⁷ *ibid.*, p. xvii.

We certainly found marginalised groups were over-represented, but that this over-representation had not been amplified since the introduction of the new offence.

On the contrary, the picture that emerged to us was that the principal focus of the offence was on managing the behaviours of ‘party people’ and that this focus has strengthened over time in response to community ‘signals’ and concerns around public order.

...

... it is our conclusion that, on balance, Queensland’s public nuisance laws are being used fairly and effectively, in the sense that police are taking action to respond to the messages being sent by the broader community.

The report made five recommendations including: requiring police to indicate which ‘limb’ of the public nuisance definition the alleged behaviour falls under in order to identify and monitor the number of offences based on offensive language; creating a separate offence of public urination; encouraging the QPS to de-escalate public nuisance incidents wherever possible; introducing on-the-spot fines as an option available to police dealing with public nuisance behaviour; and continuing to address the underlying causes of public nuisance offending.⁴⁵⁸

The Government subsequently announced that it recognised ‘*the community benefit in the CMC recommendations and [was] implementing all recommended reforms.*’⁴⁵⁹ To this end, the offence of public urination was inserted into the *Summary Offences Act 2005* in December 2008⁴⁶⁰ and a 12 month trial began on 1 January 2009 giving police the option of issuing on-the-spot fines for public nuisance offences and the offence of public urination committed in the South Brisbane and Townsville police districts.⁴⁶¹

The CMC’s review has not been without its critics. In a submission to the three year review, Dr Tamara Walsh of the University of Queensland raised concerns about the methodology and data used by the CMC and the conclusions reached on the basis of that data. Dr Walsh stated:⁴⁶²

*... in its review, the CMC consulted the following sources of data: QPS data, courts data, 24 written submissions (three of which were written by branches of QPS) and the **narratives of 354 police officers** (**‘qualitative police data’**). These police narratives were relied upon by the CMC in reaching the conclusions it did, despite the fact that these accounts provide a heavily biased perspective. No attempt was made by the CMC to engage with those who have been charged with public nuisance, or with the vulnerable groups most often targeted in public nuisance policing. This approach seems unduly skewed towards the views of police officers. [bolding in original]*

The Committee notes that the police narratives consisted of ‘*information recorded by police in their crime reports database which described the behaviour and the circumstances relating to a public nuisance incident.*’⁴⁶³ The narratives were used to determine whether the behaviour and circumstances of public nuisance offences had changed over the study period. They were used because statistical data from the police and courts did not provide sufficient detail about the particular behaviour or circumstances of each charge. The CMC acknowledged that ‘*narrative descriptions do not provide an unbiased account of the incidents described*’⁴⁶⁴ but recognised that they ‘*do provide some information about the sorts of*

⁴⁵⁸ *ibid.*, pp. xviii–xx.

⁴⁵⁹ Minister’s second reading speech on the Summary Offences and Other Acts Amendment Bill, *Queensland Parliamentary Debates*, 11 November 2008, p. 3368.

⁴⁶⁰ *Summary Offences and Other Acts Amendment Act 2008* (Qld) inserted new section 7 into the *Summary Offences Act 2005* (Qld).

⁴⁶¹ *Summary Offences and Other Acts Amendment Act 2008* (Qld) amended section 394 of the *Police Powers and Responsibilities Act 2000* (Qld). See also amendments to the *State Penalties Enforcement Regulation 1999* (Qld) made by the *State Penalties Enforcement and Another Regulation Amendment Regulation (No. 1) 2008*.

⁴⁶² Submission No.16, Dr Tamara Walsh.

⁴⁶³ Crime and Misconduct Commission, *Policing Public Order: A Review of the Public Nuisance Offence*, May 2008, p. 39.

⁴⁶⁴ *ibid.*, p. 39.

*behaviours and circumstances which prompt police to make a crime report of public nuisance.*⁴⁶⁵ The conclusion drawn from the examination of the narratives was that they *'did not show any dramatic change in the types of behaviour which police identified as public nuisance.'*⁴⁶⁶

The Committee is of the opinion that, because the narratives were used to compare the types of behaviour and circumstances identified **by police** as public nuisance offences over the study period, they were an appropriate source of data for examining changes in the exercise of **police discretion** in dealing with public nuisance behaviours.

The Committee also notes that the CMC compared its findings from the police narratives with concerns expressed by stakeholders about inappropriate use of the public nuisance offence to deal with trivial behaviours or behaviours that should have been dealt with by alternative offences, and acknowledged that it was impossible to reach any firm conclusions on the basis of police narratives without full examination of all the circumstances.⁴⁶⁷ The CMC did encourage stakeholder input through consultations conducted throughout Queensland and a call for submissions. The issues paper specifically encouraged people to provide any details of actual experiences they or their clients had had with the enforcement of the public nuisance offence provision.⁴⁶⁸

Dr Walsh also criticised the CMC for averaging the trend in the number of public nuisance incidents over a ten year period, stating:⁴⁶⁹

... averaging out this 'trend' masks the fact that, according to their own figures (relegated to an appendix), the rate of increase in public nuisance incidents doubled after the new offence was introduced: the increase between 1997/98 and 2003/04 (a six year period) was 36%, while the increase between 2003/04 and 2006/07 (a three year period) was 38%.

In addition, Dr Walsh observed that by only comparing data from the 12 months immediately preceding and immediately following the introduction of the offence the *'CMC was able to avoid acknowledging that, according to figures released by QPS, there was a 19% increase in good order offending (of which public nuisance is the primary sub-category) in the first six months of 2006 alone. This would suggest something of a 'marked' change, despite the CMC's findings to the contrary.'*⁴⁷⁰

The Committee notes that the CMC acknowledged the results *'show an increase in the number and rate of public nuisance offences when we compare the 12 months before and after the introduction of the new offence'* but argued that *'the regional variations in the degree and direction of the change tend to argue against the conclusion that the introduction of the new offence was driving the changes.'*⁴⁷¹

The CMC also acknowledge a *'notable increase in the upward trend from July 2006'*⁴⁷² but this period fell outside the range of the study. The report stated that:⁴⁷³

Police Commissioner Bob Atkinson has attributed the increase in the rate of good order offences in 2006-07 to 'the Police Service's activity in targeting alcohol and violence related incidents in and around licensed premises.'

⁴⁶⁵ *ibid.*, p. 39.

⁴⁶⁶ *ibid.*, p. 112.

⁴⁶⁷ *ibid.*, p. 50.

⁴⁶⁸ Crime and Misconduct Commission, *The New Public Nuisance Offence: An Issues Paper*, May 2006.

⁴⁶⁹ Submission No.16, Dr Tamara Walsh.

⁴⁷⁰ *ibid.*

⁴⁷¹ Crime and Misconduct Commission, *Policing Public Order: A Review of the Public Nuisance Offence*, May 2008, p. 112.

⁴⁷² *ibid.*, pp. 55 and 112.

⁴⁷³ *ibid.*, pp. 55–56.

8.5.3 *Current research*

Review of off-road motorbike noise provisions

The *Police Powers and Responsibilities Act 2000* was amended in July 2006 giving police new powers to resolve complaints about excessive motorbike noise through a series of graduated responses that include issuing a noise abatement direction notice, impounding the motorbike and applying to the court for a forfeiture order.⁴⁷⁴

The legislation requires the CMC to review the effectiveness of the motorbike noise provisions in mitigating the emission of excessive noise from off-road motorbikes as soon as practicable after the end of one year following their commencement, namely after July 2007.⁴⁷⁵ The CMC released a discussion paper in June 2008⁴⁷⁶ and has received over 400 submissions, most of which are published on the Commission's website.

Inquiry into policing Indigenous communities

The CMC received a referral from the Attorney-General and Minister for Justice on 1 February 2007 asking the Commission to conduct a review into policing issues in Aboriginal communities living on deed of grant in trust (DOGIT) areas.⁴⁷⁷ Under a revised terms of reference, the CMC is to examine and make recommendations to the Government with respect to:

- possible changes to existing police policy and procedure that would result in improved relations between the QPS and the discrete Indigenous communities;
- current practices relating to detention in police custody in remote communities, including the monitoring of detainees in watch-houses and other police facilities in the discrete Indigenous communities and the possible involvement of Community Justice Groups or other civilians in the monitoring of detainees; and
- the optimal use of existing and future State resources available to deliver criminal justice services in the discrete Indigenous communities.

The CMC published an issues paper in April 2007, conducted extensive consultations, received public submissions and held a public forum in Cairns on 16 October 2007. At the end of 2007 data was received from the QPS on offences, offenders, crime victims and police staffing in Indigenous communities. Data on prisoners in police detention was received in February 2008 however the data did not provide accurate information on prisoners in watch houses which led the CMC to request access to a sample of Cape York watch house custody register books as an alternative source. These were received at the end of April 2008 and compilation and analysis of the data was completed in September 2008. The CMC advise that the project has also been delayed by staffing issues, including serious illness and the diversion of staff members to other projects.⁴⁷⁸

The inquiry report is expected to be completed in 2009.⁴⁷⁹

Reviewing police 'move-on' powers

In June 2006 the *Police Powers and Responsibilities Act 2000* was amended to expand the powers of police to issue a direction to individuals or groups to move on or leave a public place.⁴⁸⁰ Since June 2006

⁴⁷⁴ *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005* (Qld).

⁴⁷⁵ *Police Powers and Responsibilities Act 2000* (Qld), s. 808.

⁴⁷⁶ Crime and Misconduct Commission, *The CMC's Review of Queensland's Off-Road Motorbike Noise Laws*, June 2008.

⁴⁷⁷ See also: 'CMC to investigate policing in Aboriginal communities' *Ministerial Media Statement by the Premier and Minister for Trade*, 31 January 2007.

⁴⁷⁸ Submission No.22, Crime and Misconduct Commission, p. 131.

⁴⁷⁹ *ibid.*

⁴⁸⁰ *Police Powers and Responsibilities and Other Acts Amendment Act 2006* (Qld) amended *Police Powers and Responsibilities Act 2000* (Qld) Part 5.

the power has been available to police in all public places in Queensland. The legislation requires the CMC to review the use of the move-on powers by police officers as soon as practicable after 31 December 2007.⁴⁸¹

The review will consider: use of the move-on power by police including when and where the move-on powers are used and who they are used against; how people who fail to obey a move-on direction are dealt with by police; and positive or negative consequences of the use of move-on powers in Queensland. The CMC issued an invitation for public comment in December 2008 seeking information from individuals and stakeholder groups about their experiences of the police move-on powers.⁴⁸² The review report is anticipated to be tabled in Parliament prior to December 2009.⁴⁸³

8.5.4 Future research

Reviewing the ‘evade police’ offence

In 2006 the *Police Powers and Responsibilities Act 2000* was amended to address the issue of drivers failing to stop when directed to do so by a police officer driving a police vehicle.⁴⁸⁴ The amendments provide for an offence called an evasion offence; make particular provision to assist police officers investigate evasion offences; and enable a court to order the impoundment or forfeiture of a vehicle after the court finds the driver guilty of an evasion offence. The CMC is required to review the use of these powers as soon as practicable after 30 June 2009.⁴⁸⁵

Review of the *Child Protection (Offender Prohibition Order) Act 2008*

The *Child Protection (Offender Prohibition Order) Act 2008*, which commenced on 2 June 2008, gives the courts the power to make orders prohibiting particular sexual offenders from engaging in conduct posing a risk to the lives or sexual safety of children. The Act requires the CMC to review its operation five years after its commencement.⁴⁸⁶

8.5.5 Timeliness

Issues of timeliness have arisen in relation to a number of the CMC’s recent review projects. For example, the review of the implementation of the *Seeking Justice* report, which was to commence as soon as practicable after June 2005, was not released until March 2008. The reasons given for this delay were a delay in receiving the QPS/ODPP submission and limited CMC staff resources.⁴⁸⁷ The inquiry into policing in Indigenous communities has also been delayed by data collection and staffing problems.

The Committee appreciates that the time taken to complete a project is dependent on many factors, including: the complexity of the project; the reliance on external agencies for data and information; the range of projects that are being undertaken at any one time; and the fact it is not possible to anticipate the receipt of a referral from the Minister. The CMC has advised that steps have been taken to address these issues by:⁴⁸⁸

... improving our project management skills and by integrating projects to prevent replication. The matter of the disruption created by unexpected referrals has also been the subject of discussion between the Chairperson and the Minister. Further consultations on this topic may

⁴⁸¹ *Police Powers and Responsibilities Act 2000* (Qld), s. 49.

⁴⁸² Crime and Misconduct Commission, *Review of Queensland’s Police Move-on Powers: Invitation for Public Comment*, December 2008.

⁴⁸³ Submission No.22, Crime and Misconduct Commission, p. 130.

⁴⁸⁴ *Police Powers and Responsibilities and Other Acts Amendment Act 2006* (Qld) inserted what is now chapter 22 into the *Police Powers and Responsibilities Act 2000* (Qld).

⁴⁸⁵ *Police Powers and Responsibilities Act 2000* (Qld), s. 789.

⁴⁸⁶ *Child Protection (Offender Prohibition Order) Act 2008* (Qld), s. 60.

⁴⁸⁷ Crime and Misconduct Commission, *How the Criminal Justice System Handles Allegations of Sexual Abuse: A Review of the Implementation of Recommendations of the Seeking Justice Report*, March 2008, p. ix.

⁴⁸⁸ Submission No.22, Crime and Misconduct Commission, p. 131.

occur and result in the CMC better accommodating referrals and having prior notice of them to allow input on resources and timeframes.

The CMC also advise that efficiencies will be achieved in research areas by developing an integrated work program that will ‘*integrate projects with similar goals and themes across disciplines and CMC divisions.*’⁴⁸⁹ In particular:⁴⁹⁰

Where possible, we hope to integrate new government legislative review agendas into similar existing work agendas. For example, current work on criminal paedophilia research will be mindful of other child sexual offence research and legislative reviews.

As part of our forward planning process we hope to develop ways to collect data for follow-ups of previous reviews that ‘piggy back’ on data collection processes for new reviews and on projects being undertaken by external stakeholders.

The Research and Prevention plan is to utilise clusters of expert knowledge across divisions resulting in already acquired knowledge platforms being utilised in areas of most need. Such sharing of knowledge prevents duplicated reading, learning, and planning thus enabling improved timeframes, the construction of robust research design across divisions, and our CMC resources being used more proactively and effectively.

8.6 Capacity building and prevention

8.6.1 Introduction

The CMC is responsible for raising standards of integrity and conduct throughout the Queensland public sector, including the Queensland Police Service.⁴⁹¹ A significant part of this role involves increasing the capacity of public sector agencies to deal with and prevent misconduct themselves. While certain capacity building and prevention activities specifically target the QPS, the CMC also conducts a wide range of programs and produces many resources aimed at the public sector as a whole.

8.6.2 Queensland Police Service

Project Verity

Project Verity is the CMC’s major capacity building initiative with the QPS. It is a joint CMC-QPS project designed to enhance the culture of integrity and reduce the incidence of misconduct in the QPS. A significant part of the project involves examining the most effective way to devolve responsibility for decisions about the handling of complaints from the QPS Ethical Standards Command (ESC) to appropriate levels within the police regions and commands.⁴⁹²

A model for devolution has been developed and a trial of the model began in one police region in July 2007 and is ongoing. An evaluation of the trial has revealed a number of issues with its implementation which are being addressed in the implementation of a further trial in a second region which began in March 2008.

The CMC advise that ‘*there will not be any further roll-out of Verity until any problems identified can be remedied and a satisfactory evaluation of the trials completed.*’⁴⁹³ The CMC also reports that:⁴⁹⁴

⁴⁸⁹ *ibid.*, p. 132.

⁴⁹⁰ *ibid.*

⁴⁹¹ *Crime and Misconduct Act 2001* (Qld), s. 33.

⁴⁹² Submission No.22, Crime and Misconduct Commission, pp. 113–114.

⁴⁹³ *ibid.*, p. 114.

⁴⁹⁴ *ibid.*

A strategic assessment and recent misconduct operations have identified a range of possible factors contributing to a perceived 'slippage' within the Police Service. These factors include management and supervision, and performance management and the disciplinary system. The CMC does not consider that any of these factors are a bar to the implementation of Project Verity, but rather strengthen the focus on the practical implementation of the underlying principles and the need for a strong monitoring framework and prevention focus.

During public hearings, the Assistant Commissioner of the QPS Ethical Standards Command said of Project Verity:⁴⁹⁵

... my view is that Verity is a terrific tool to push down the vast majority of discipline where it should belong, and that is down to the work unit, the district level. It puts managers and supervisors back and accountable in terms of the management of their people, and it gives the general public and other officers who are complainants in matters a more timely outcome for this matter, but it does not lose the important issues in terms of oversight, and that is incredibly important.

Complaints against police by Indigenous people

The CMC has been working with the QPS Ethical Standards Command and Cultural Advisory Unit to develop effective, timely and culturally appropriate ways to deal with complaints made by Indigenous people against police.⁴⁹⁶

8.6.3 Misconduct

The CMC has a lead role in building the capacity of public sector agencies to prevent and deal with cases of misconduct effectively and appropriately.⁴⁹⁷ This is achieved through a range of activities including: providing agencies with advice and relevant resources; conducting workshops and information sessions; meeting with chief executives and senior managers in public sector agencies; outreach activities such as liaison meetings and visiting rural and regional areas; working with other oversight agencies such as the Ombudsman; and working directly with Indigenous communities.

Advisory programs and development of misconduct resources

The CMC produces a broad range of misconduct prevention materials and resources that are easily accessible on the Commission's website. Resources developed over the period under review include:⁴⁹⁸

- *Managing Public Records Responsibly* - a guide to the management and retention of public records produced in collaboration with the Queensland State Archives (March 2009).
- *Receiving Gifts and Benefits: Managing the Risks* - a guide to when it is permissible for a public official to accept a gift or benefit, and when it is not permissible (July 2008).
- *Managing Internal Witnesses: A Good Practice Checklist for the Public Sector* - produced by the CMC, the Queensland Ombudsman and the Office of the Public Service Commissioner (May 2008).
- *Retention and Disposal of Council Records* - a collaboration between the CMC and the Queensland State Archives, setting out the rules and regulations for the management (including disposal) of public records (April 2008).
- *2008 Councillor Information Kit* for elected councillors and CEOs, developed in collaboration with four other agencies.⁴⁹⁹ This project also resulted in the Governance for the Elected Members

⁴⁹⁵ 7th PCMC, Transcript of Proceedings, Three Year Review of the Crime and Misconduct Commission, 19 November 2008, p. 33.

⁴⁹⁶ Submission No.22, Crime and Misconduct Commission, p. 115.

⁴⁹⁷ *Crime and Misconduct Act 2001* (Qld), s. 34(b).

⁴⁹⁸ Submission No.22, Crime and Misconduct Commission, pp. 101–104.

(GEMs) training program and a Councillor Induction CD – a resource for local government CEOs.⁵⁰⁰

- *Exposing Wrongdoing: A CMC Guide to Whistleblowing in Queensland* - a guidebook on how to blow the whistle on serious wrongdoing in Queensland publicly funded organisations (February 2008).
- *Keeping Your Code of Conduct Relevant: Guidelines for Best Practice* and *Keeping Your Code of Conduct Relevant: A Best Practice Checklist* - to help public sector agencies review their codes of conduct (November 2007).
- *Handling Confidential Information Guidelines and Policy for Local Governments* - produced in collaboration with the Department of Local Government, Planning, Sport and Recreation (November 2007).⁵⁰¹
- *Facing the Facts: A CMC Guide for Dealing with Suspected Official Misconduct in Queensland Public Sector Agencies* - a guide to help CEOs and managers recognise when to refer a matter to the CMC and how to deal with particular matters (3rd edition, August 2007).
- *Outside Employment: Risks and Remedies* - proposes measures that public agencies can take to minimise the risks associated with staff engaging in other work. The paper complements a directive issued by the Public Service Commission (June 2007).
- *Public-Private Partnerships: Identifying Governance Risks* - published following the release of the Government policy encouraging private sector involvement in public sector projects (March 2007).
- *Ethics, Probity and Accountability in Procurement* - provides best practice guidance to Queensland Government agencies and employees in conducting procurement (October 2006).
- *Sponsorship Management: Achieving Mutually Beneficial Outcomes* - provides information about how to minimise the corruption risks of sponsorships (September 2006).

Conducting workshops and information sessions

The CMC undertakes a range of outreach activities that allow the Commission to provide direct advice and information to agency and community representatives. These activities have included:

- *Facing the Facts* workshops and presentations that cover: the purpose of the CMA; the roles of the CMC and public sector managers in embedding a strong culture of integrity; the meaning of official misconduct; the obligation to notify the CMC of complaints; and the management and prevention of complaints. The CMC advise that over the last two years, 750 people from across the public sector have attended 30 workshops.⁵⁰²
- Each year the CMC hosts four regional visits in order to consult with, and deliver training to, agencies in those areas.⁵⁰³
- CMC staff also participate in seminars and workshops at the request of public sector agencies and integrity-focussed professional associations within Australia and internationally.⁵⁰⁴

⁴⁹⁹ The Local Government Association of Queensland, the Department of Local Government, Sport and Recreation, the Queensland Ombudsman's Office and the Queensland Audit Office.

⁵⁰⁰ Submission No.22, Crime and Misconduct Commission, p. 102.

⁵⁰¹ *ibid.*, p. 102.

⁵⁰² *ibid.*, p. 104.

⁵⁰³ *ibid.*, p. 105.

⁵⁰⁴ *ibid.*

Meeting with chief executives, senior managers and liaison groups

The CMC initiates a range of liaison activities with public sector agencies in order to develop and strengthen the partnership approach to building a culture of integrity and reducing misconduct. These activities include:

- The CMC Chairperson and a senior CMC officer visiting individual Directors-General and Chief Executives, particularly new appointees. The CMC advise that *‘in the last two years, 21 visits have occurred to public sector agencies.’*⁵⁰⁵
- CMC officers participate in meetings with agency CMC Liaison Officers held in Brisbane two or three times a year.⁵⁰⁶
- The CMC provides specialist advice and resources for local government and collaborates on local government issues with the Local Government Association of Queensland, Local Government Managers Australia and the Department of Infrastructure and Planning.⁵⁰⁷
- The CMC has also been building working partnerships with other anti-corruption agencies. In July 2009 the Commission will host the Australasian Public Sector Anti-Corruption Conference (APSACC) in Brisbane.⁵⁰⁸

Working with Indigenous communities

The CMC uses a range of strategies to assist in building the capacity of Indigenous communities in order to minimise fraud, financial mismanagement and misconduct. Strategies include: employing Indigenous Liaison Officers who engage directly with Indigenous communities; promoting the work of the CMC; providing training to Indigenous councils; and working with government agencies that are responsible for overseeing Indigenous matters.

A need has been identified for ongoing training and workshops in Indigenous communities following council amalgamations. The CMC advise that:⁵⁰⁹

Our Indigenous advisors are currently establishing networks with all Indigenous councils throughout Queensland, with a view to providing training and workshops on good governance in their councils. It is envisaged that the Indigenous advisors will begin a scheduled program of visits and workshops with Indigenous councils and community groups to continue to provide this support to the Indigenous communities.

⁵⁰⁵ *ibid.*

⁵⁰⁶ *ibid.*, p. 106.

⁵⁰⁷ *ibid.* The local government portfolio was previously with the Department of Local Government, Sport and Recreation.

⁵⁰⁸ *ibid.*, pp. 106–107.

⁵⁰⁹ *ibid.*, p. 108.

9. WITNESS PROTECTION

9.1 Introduction

One of the CMC's key functions is to run the witness protection program in Queensland.⁵¹⁰

The United Nations Office on Drugs and Crime recently highlighted the importance of witness protection programs:⁵¹¹

The ability of a witness to give testimony in a judicial setting or to cooperate with law enforcement investigations without fear of intimidation or reprisal is essential to maintaining the rule of law. Increasingly, countries are enacting legislation or adopting policies to protect witnesses whose cooperation with law enforcement authorities or testimony in a court of law would endanger their lives or those of their families.

Protection may be as simple as providing a police escort to the courtroom, offering temporary residence in a safe house or using modern communications technology (such as videoconferencing) for testimony. There are other cases, though, where cooperation by a witness is critical to successful prosecution but the reach and strength of the threatening criminal group is so powerful that extraordinary measures are required to ensure the witness's safety. In such cases, resettlement of the witness under a new identity in a new, undisclosed place of residence in the same country or even abroad may be the only viable alternative.

In 1989 the Fitzgerald Inquiry identified the need for a formal witness protection program in Queensland and recommended the establishment of a separate division in the Criminal Justice Commission to provide witness protection services.⁵¹² Witness protection has been a function of the CMC and its predecessor, the CJC, since the Commission's formation in 1989. Over 1500 people have been successfully protected in this time.⁵¹³

The Queensland witness protection program is regulated by the *Witness Protection Act 2000* (Qld) (WPA) and forms part of the National Witness Protection Program. The State program therefore protects people who are included under the State legislation as well as people who are being protected under a complementary Commonwealth or State law.⁵¹⁴

9.2 The Witness Protection program

9.2.1 Introduction

The Chairperson of the CMC has ultimate responsibility for administering the Queensland witness protection program which is run by the Commission's Witness Protection Unit (WPU). The Chairperson is assisted by the Witness Protection Advisory Committee (WPAC), which is made up of:⁵¹⁵

- the Assistant Commissioner of Police;
- the Director Witness Protection and Operations Support (Chair);
- the Executive Director of the CMC;
- the Detective Superintendent, Operations Coordinator, Witness Protection and Operations Support;

⁵¹⁰ *Crime and Misconduct Act 2001* (Qld), s. 56(a) and *Witness Protection Act 2000* (Qld), s. 5.

⁵¹¹ United Nations Office on Drugs and Crime, *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime*, 2008, p. 1.

⁵¹² *Report of a Commission of Inquiry Pursuant to Orders in Council* (Fitzgerald Report), 1989, pp. 318–321.

⁵¹³ Crime and Misconduct Commission, *Annual Report 2007-08*, p. 34.

⁵¹⁴ *Witness Protection Act 2000* (Qld), s. 5 and *Witness Protection Regulation 2001* (Qld), s. 4.

⁵¹⁵ Submission No.22, Crime and Misconduct Commission, p. 121.

- the CMC Official Solicitor; and
- the Detective Inspector, Officer in Charge, Witness Protection Unit.

Although it has no statutory basis, the WPAC supports the Chairperson by making assessments, evaluations, recommendations and directions in respect of applications for protection, applications for new identities, withdrawals from witness protection, and other matters of significance. The WPAC also provides advice and guidance to the WPU and authorises financial or other arrangements where a person withdraws from witness protection.⁵¹⁶

9.2.2 Applications and admissions

To be included in the witness protection program, a person must be in danger as a result of having helped a law enforcement agency perform its functions or through association with a person who has provided such assistance.⁵¹⁷ People assisted by the program come from all walks of life and include victims of crime and innocent bystanders to a crime; as well as people who have inside information about criminal or corrupt activity, often as a result of their own involvement with crime or corruption.

Applications for protection are usually submitted to the Witness Protection Unit on behalf of a witness by a law enforcement agency. Law enforcement agencies include not only the QPS and the CMC, but also a commission of inquiry, the Australian Federal Police, a police force of another State, the Australian Crime Commission, the Commonwealth Integrity Commissioner, ICAC, the New South Wales Crime Commission and Police Integrity Commission, the Victorian Office of Police Integrity and Western Australian Corruption and Crime Commission.⁵¹⁸

Decisions about whether to include a person in the program are made by the Chairperson of the CMC after considering a range of factors including the seriousness of the offence the person can help with; the extent of the help the person can offer; any other way of protecting the person; and the nature of any threat to the person.⁵¹⁹ A person must not be included in the program as a reward for giving evidence or making a statement.⁵²⁰ Interim protection is available in urgent cases before a final decision is made.⁵²¹

Applications and admissions to witness protection during the review period:⁵²²

	2005-06	2006-07	2007-08
Applications for witness protection assessed (persons)	89	130	96
Admissions to witness protection (persons)	57	78	42

9.2.3 Witness protection services

Officers of the CMC's Witness Protection Unit (WPU) protect the personal safety of people who are part of the witness protection program by providing court security, close personal protection, and where necessary, securing the person in a safe location on a temporary or permanent basis. In certain cases a protected person's identity may be changed. Applications have also been made to courts to enable protected witnesses to give evidence via video conferencing in order to reduce the risk of harm to the witness, judiciary and general public, while also putting the witness at ease when providing evidence.⁵²³

⁵¹⁶ *ibid.*, p. 121.

⁵¹⁷ *Witness Protection Act 2000* (Qld), s. 6(1).

⁵¹⁸ *ibid.*, Schedule 2 – definition of 'law enforcement agency'; *Witness Protection Regulation 2001* (Qld), s. 5.

⁵¹⁹ *Witness Protection Act 2000* (Qld), s. 6(1).

⁵²⁰ *ibid.*, s. 6(4)(b).

⁵²¹ *ibid.*, s. 9.

⁵²² Crime and Misconduct Commission, *Annual Report 2007-08*, p. 35.

⁵²³ *ibid.*, p. 34.

In addition to providing physical protection, the CMC ensures protected witnesses receive any necessary professional support and guidance, including assistance with drug or alcohol addictions and other mental or physical problems.⁵²⁴

Witness protection services during the review period:⁵²⁵

	2005-06	2006-07	2007-08
Total people protected	136	106	83
Total operations	70	44	42
People whose protection arrangements were concluded	69	62	66
People under protection at the end of the reporting year	28	41	19
Expenses to achieve strategic goal 'To provide an effective witness protection service'	\$4.3m	\$4.3m	\$4.4m

There has been a distinct decline in the number of people protected under the witness protection program over the three year review period. These fluctuations are largely due to factors outside the control of the CMC as applications for protection come from law enforcement agencies and, even where people are assessed as eligible for protection, they may decline to be part of the program.

9.2.4 *Witness protection outcomes*

The Witness Protection Unit has maintained a 100 per cent success rate in keeping witnesses from harm.⁵²⁶

The CMC reports that evidence given by protected witnesses has played a key role in prosecutors being able to secure convictions in cases that included murder, attempted murder, serious assaults, robbery, rape, indecent dealing, drug trafficking, production and possession of drugs, arson, and serious property and weapons offences.⁵²⁷ For example:⁵²⁸

- A protected witness gave evidence via video link-up in relation to the attempted murder of that witness. The accused was found guilty and sentenced to 16 years imprisonment.
- Close personal protection was provided for a witness who gave evidence against the defendant who had been charged with rape, threats, assault occasioning bodily harm, stalking and serious drug trafficking charges. The defendant was found guilty of the charges, classified as a serious violent offender and sentenced to 14 years imprisonment.
- The Witness Protection Unit assisted an interstate law enforcement agency by offering protection to a registered informant who was assisting with investigations into corrupt activities by police officers. Witness protection officers escorted the witness to a trial interstate where he provided crucial evidence.

⁵²⁴ *ibid.*, p. 36.

⁵²⁵ *ibid.*, p. 35.

⁵²⁶ Submission No.22, Crime and Misconduct Commission, p. 120.

⁵²⁷ Crime and Misconduct Commission, *Annual Report 2007-08*, p. 36.

⁵²⁸ Submission No.22, Crime and Misconduct Commission, pp. 120–121.

9.3 The Witness Protection Act 2000

9.3.1 Introduction

The *Witness Protection Act 2000* provides the statutory basis for the witness protection program in Queensland. It sets out: the eligibility criteria for inclusion in the program;⁵²⁹ the availability of interim protection;⁵³⁰ the requirement for, and terms of protection agreements;⁵³¹ circumstances in which protection can be ended by suspension, withdrawal or termination;⁵³² arrangements for short-term protection;⁵³³ mechanisms for protecting identities including changing a person's identity and providing witness anonymity;⁵³⁴ and restrictions on disclosing certain information.⁵³⁵

The *Witness Protection Act 2000* also ensures that Queensland is part of the National Witness Protection Program. It provides the complementary State law required before Federal Government agencies will provide Commonwealth identity documents, such as passports and tax file numbers, to State protected witnesses.⁵³⁶ The Act also provides the statutory basis for arrangements with witness protection authorities in other jurisdictions.⁵³⁷

9.3.2 Recent legislative amendments

Significant amendments were made to the *Witness Protection Act 2000* in 2006⁵³⁸ to enhance the CMC's ability to perform its witness protection function effectively and implement recommendations of the 5th Committee in its 2004 three year review.⁵³⁹ Most notably, the amendments allow the CMC to enter into short-term witness protection arrangements with streamlined approval processes.⁵⁴⁰ The short-term arrangements are available in situations where a person, who is not included or being considered for inclusion in the witness protection program, requires protection for a specific purpose and a specific period, such as the duration of a court appearance.

The 2006 legislation also gave the CMC the power to require the production of documents or things where it is necessary to protect the security of a protected person or the integrity of the witness protection program or the Commission's witness protection activities.⁵⁴¹ For example, this power can be used to require a financial institution to provide information about when and where a witness last accessed their bank account. This information can then be used to locate the person and confirm their safety or determine whether they are compromising witness protection arrangements.

9.3.3 Giving evidence under a new identity

In the last three year review, the CMC raised an issue about whether a witness who had been issued a new identity commits perjury if they give evidence to a court in their former name.

In its submission to the current review, the CMC explains that amendments to the *Witness Protection Act*

⁵²⁹ *Witness Protection Act 2000* (Qld), s. 6.

⁵³⁰ *ibid.*, s. 9.

⁵³¹ *ibid.*, ss. 7–8; 10–11.

⁵³² *ibid.*, ss. 12–14.

⁵³³ *ibid.*, Part 2A.

⁵³⁴ *ibid.*, Part 3.

⁵³⁵ *ibid.*, ss. 36–38.

⁵³⁶ *Witness Protection Act 1994* (Cth), s. 24.

⁵³⁷ *Witness Protection Act 2000* (Qld), ss. 40–43.

⁵³⁸ *Crime and Misconduct and Other Legislation Amendment Act 2006* (Qld).

⁵³⁹ PCMC, Report No. 64, *Three Year Review of the Crime and Misconduct Commission*, pp. 87–88.

⁵⁴⁰ *Witness Protection Act 2000* (Qld), Part 2A inserted by *Crime and Misconduct and Other Legislation Amendment Act 2006* (Qld).

⁵⁴¹ Amendments to the *Crime and Misconduct Act 2001* (Qld), s. 74 by the *Crime and Misconduct and Other Legislation Amendment Act 2006* (Qld).

2000 made by the cross-border law enforcement legislation which came into force on 30 June 2006⁵⁴² largely overcome these concerns:⁵⁴³

Section 27(2)(a) of the WP Act now provides that a witness with a new identity cannot be asked a question that might reveal their new identity. This would include a question which asks the witness to state their name at the commencement of giving evidence.

While leave of the Court may be obtained to ask a question of a protected person which may reveal their new identity or location, section 27A of the WP Act contains a number of safeguards which the Court must consider before granting such leave. Section 27A(8) of the WP Act provides any court who receives a disclosure certificate with the power to make any other order it considers appropriate to protect the protectee's identity or to prevent the disclosure of where the protectee lives.

While statements of witnesses prepared for the purposes of criminal proceedings do not include the new identity or current address of a witness, section 590AP of the Criminal Code grants the Prosecutor the right not to disclose information in relation to the location of a witness, where disclosure of that information would present a reasonably ascertainable risk to the welfare or protection of any person.

9.4 National Witness Protection Program

Queensland is part of the National Witness Protection Program. The Australian Federal Police, the police services of all other States and a range of other crime and corruption agencies are declared to be 'law enforcement agencies' for the purposes of the Queensland legislation.⁵⁴⁴ In 2007, the declaration was expanded to include Victoria's Office of Police Integrity, the New South Wales Crime Commission, the Commonwealth Integrity Commissioner and the Western Australian Crime and Corruption Commission.⁵⁴⁵ This enables people who are in danger as a result of helping one of these agencies⁵⁴⁶ to be protected under the Queensland witness protection program.

The witness protection legislation for the Commonwealth and each Australian State are declared to be complementary witness protection laws in Queensland.⁵⁴⁷ The CMC Chairperson can make arrangements with the chief executive officer of the Australian Federal Police and the police services of other States,⁵⁴⁸ about any matter relating to the administration of a complementary witness protection law, including the exercise by the Chairperson of functions conferred under the law; procedures for sharing costs incurred under the arrangements; and provision for the Chairperson to be provided with documents necessary to decide whether to provide protection or help to a person and what protection and help are appropriate for the person.⁵⁴⁹

Arrangements may also be entered into with the Commonwealth about the issue of Commonwealth identity documents which include passports and tax file numbers.⁵⁵⁰

⁵⁴² *Cross-Border Law Enforcement Legislation Amendment Act 2005 (Qld).*

⁵⁴³ Submission No.22, Crime and Misconduct Commission, p. 123.

⁵⁴⁴ *Witness Protection Act 2000 (Qld)*, Schedule 2 – definition of 'law enforcement agency'; *Witness Protection Regulation 2001 (Qld)*, s. 5.

⁵⁴⁵ *Witness Protection Amendment Regulation (No. 1) 2007 (Qld)*

⁵⁴⁶ Or being associated with a person who has helped one of these agencies.

⁵⁴⁷ *Witness Protection Act 2000 (Qld)*, Schedule 2 – definition of 'complementary witness protection law'; *Witness Protection Regulation 2001 (Qld)*, s. 4.

⁵⁴⁸ *Witness Protection Act 2000 (Qld)*, Schedule 2 - definition of 'approved authority'

⁵⁴⁹ *ibid.*, s. 40.

⁵⁵⁰ *Witness Protection Act 1994 (Cth)*, s. 3.

The CMC reported in its 2007-08 Annual Report.⁵⁵¹

We ... progressed the establishing of memorandums of understanding with other agencies, including Victoria Police, Western Australia Police, Tasmania Police and the New South Wales Police Integrity Commission. Formalised relations with these and other agencies will further develop our capacity to meet cross-jurisdictional threats.

A national approach is also important given the challenges presented by rapidly changing criminal practices and advancing technologies as it enables Australasian witness protection agencies to share information, methodologies and techniques.

9.5 Staffing and training

Witness protection is a highly specialist function requiring highly trained and skilled staff. The Fitzgerald Report, which recommended the establishment of a formal witness protection program in Queensland, acknowledged that witness protection was ‘*extraordinarily psychologically demanding*’ and that ‘*the strains of witness protection on those who provide it must be recognized in training and duty programmes designed both to reinforce skills and discipline, and to relieve the monotony.*’ The Report also stressed that ‘*although training Witness Protection police will be costly, their length of service in that role should be limited because of the extraordinary strains of the type of duty.*’⁵⁵²

The CMC has responded to these challenges by developing courses to meet the specialised training needs.

The CMC developed the first witness protection course in Australasia, the Advanced Diploma in Public Safety (Police – Witness Protection), which is registered with the Queensland Department of Education and Training. The course includes practical and theoretical training in skills and techniques needed for the effective protection of witnesses including: operations and court security management; firearms operation and tactics; advanced driving; and physical fitness. The four week course has been conducted five times since 2002.⁵⁵³

- In 2004 and 2006 participants from international and interstate policing agencies as well as the QPS completed the course;
- In May 2008 the course was hosted by the Australian Federal Police in Canberra with three WPU officers attending;
- In June 2008 the WPU delivered the course to 12 QPS officers who successfully completed the qualification.

The WPU has also developed a Close Personal Protection course based on selected competencies of the Advanced Diploma which provide participants with the skills to perform security duties. This course was delivered in January and March 2008 to 12 participants from the CMC Operations Support area in order to provide a degree of operational flexibility between Operations Support and the WPU.⁵⁵⁴

An organisational climate survey conducted within the CMC in 2007 found that staff in Witness Protection and Operations Support reported lower job satisfaction, much lower levels of reward, lower role clarity, much higher levels of distress and higher workload compared to the CMC average.⁵⁵⁵ The Commission has made the Committee aware of the steps that have been taken to address these problems and the Committee is satisfied that the Commission’s response was prompt, appropriate and adequate.

⁵⁵¹ Crime and Misconduct Commission, *Annual Report 2007-08*, p. 37.

⁵⁵² *Report of a Commission of Inquiry Pursuant to Orders in Council* (Fitzgerald Report), 1989, p. 320.

⁵⁵³ Submission No.22, Crime and Misconduct Commission, p. 122.

⁵⁵⁴ *ibid.*

⁵⁵⁵ See also: Lion, P. ‘*The enmity within crime body*’ Courier Mail, 5 January 2008, p. 14.

9.6 Marketing the Witness Protection Unit

As the only source of witness protection services in Queensland, the CMC actively markets these services by providing information and training to client groups including QPS prosecutors, detectives, criminal investigators and regional police commands.⁵⁵⁶ Generating awareness has become particularly important in light of a decline in the number of requests for witness protection services.⁵⁵⁷

The CMC's 2007-08 Annual Report notes:⁵⁵⁸

Throughout the year we worked with client law enforcement agencies throughout Queensland to promote awareness of our witness protection capability and services, and the potential benefits for both law enforcement agencies and the criminal justice system. We delivered training in accessing and utilising protection services to QPS detectives and police prosecutors, and marketing presentations to criminal investigators and regional police commands.

9.7 Accountability

As decisions made under the *Witness Protection Act 2000* are specifically excluded from judicial review,⁵⁵⁹ the Committee plays an important role in monitoring how the CMC performs its witness protection function.

This was recently affirmed by the Supreme Court when a prisoner applied to the Court for a declaration that his ex-wife, who was receiving protection under the Witness Protection Program, did not qualify for such protection and that the CMC's actions in accepting her into the Program were an abuse of process. The Court found that, because the complaints involved the Chairperson and officers of the CMC they would be '*more appropriately dealt with by the PCMC, which might refer them to the Parliamentary Commissioner for investigation*'.⁵⁶⁰ The Court dismissed the application.⁵⁶¹

From time to time the Committee receives complaints about the CMC's witness protection function. These are handled in the same way as other complaints, by examining information provided by the complainant and the CMC. If it considered it to be necessary the Committee could utilise the investigative powers of the Parliamentary Crime and Misconduct Commissioner in order to fully inform itself about a witness protection complaint.

⁵⁵⁶ Crime and Misconduct Commission, *Annual Report 2006-07*, p. 45.

⁵⁵⁷ Crime and Misconduct Commission, *Annual Report 2007-08*, p. 34.

⁵⁵⁸ *ibid.*, p. 37.

⁵⁵⁹ *Judicial Review Act 1991* (Qld) s. 18(2)(b) and Schedule 1, Part 2.

⁵⁶⁰ *KSC v Crime and Misconduct Commission* [2009] QSC 23 at [18].

⁵⁶¹ *KSC v Crime and Misconduct Commission* [2009] QSC 23.

10. WHISTLEBLOWER SUPPORT

10.1 Introduction

Creating an environment that encourages people to come forward and disclose information about serious maladministration and misconduct without fear of reprisal is vital to the integrity of the Queensland public sector. To this end, Queensland was one of the first jurisdictions in Australia to introduce legislation to protect whistleblowers.

In 1989 the Fitzgerald Report acknowledged an ‘urgent need’ for legislation which ‘*prohibits any person from penalizing any other person for making accurate public statements about misconduct, inefficiency or other problems within public instrumentalities.*’⁵⁶² The Report recommended that the Electoral and Administrative Review Commission (EARC) implement and supervise the ‘*preparation of legislation for protecting any person making public statements bona fide about misconduct, inefficiency or other problems within public instrumentalities, and providing penalties against knowingly making false public statements.*’⁵⁶³

Legislation was enacted in 1990 to provide a level of protection to certain whistleblowers prior to EARC finalising its inquiry into the need for whistleblowers legislation in Queensland.⁵⁶⁴ When EARC reported in 1991 it concluded that a more comprehensive legislative scheme was required.⁵⁶⁵ EARC summed up the benefits of such legislation as follows:⁵⁶⁶

While acknowledging the limitations of a whistleblower protection scheme, the Commission nevertheless believes that such a scheme can not only offer protection against retaliation or victimisation to individuals who disclose information in the public interest, but also make a significant contribution to improving the quality of government administration in Queensland, particularly in the field of law enforcement, and to maintaining public confidence in government and the integrity of the institutions of government.

The *Whistleblowers Protection Act 1994* was subsequently enacted to provide a comprehensive scheme of whistleblower protection in the public sector. The principal object of the Act is to promote the public interest by protecting people who disclose:⁵⁶⁷

- Unlawful, negligent or improper conduct affecting the public sector.
- Danger to public health or safety.
- Danger to the environment.

The *Whistleblowers Protection Act 1994* is administered by the Public Service Commission. The CMC, together with a number of other agencies including the Ombudsman’s office, provide advice and assistance to whistleblowers and may receive public interest disclosures about official misconduct.

10.2 *Whistleblowers Protection Act 1994*

10.2.1 Overview

The whistleblower protection scheme only protects ‘public interest disclosures’ which are particular types of disclosures defined by reference to: the person who makes the disclosure; the type of information

⁵⁶² *Report of a Commission of Inquiry Pursuant to Orders in Council* (Fitzgerald Report), 1989, p. 134.

⁵⁶³ *ibid.*, p. 370.

⁵⁶⁴ *Whistleblowers (Interim Protection) and Miscellaneous Amendments Act 1990* (Qld).

⁵⁶⁵ Electoral and Administrative Review Commission (Qld), *Report on Protection of Whistleblowers*, October 1991, p. 224.

⁵⁶⁶ *ibid.*, p. 24.

⁵⁶⁷ *Whistleblowers Protection Act 1994* (Qld), s. 3.

disclosed and the entity to which the disclosure is made.⁵⁶⁸

Public officers⁵⁶⁹ may make public interest disclosures about:

- official misconduct;⁵⁷⁰
- maladministration that adversely affects anybody's interests in a substantial and specific way;⁵⁷¹
- negligent or improper management by a public officer, a public sector entity or a public sector contractor that directly or indirectly results, or is likely to result, in a substantial waste of public funds;⁵⁷² or
- a substantial and specific danger to public health or safety or to the environment.⁵⁷³

Anybody, irrespective of whether or not they are a public officer, may make public interest disclosures about:

- a substantial and specific danger to the health or safety of a person with a disability as defined in the *Disability Services Act 2006* (Qld);⁵⁷⁴
- a substantial and specific danger to the environment resulting from the commission of an offence under legislation listed in schedule 2 of the Act, or from the contravention of a condition imposed by that legislation;⁵⁷⁵ and
- a reprisal taken against a person because of a belief that someone has made, or may make, a public interest disclosure.⁵⁷⁶

To be treated as a public interest disclosure for which protection is available under the Act, a disclosure:

- must be made with an honest belief based on reasonable grounds that the information tends to show the conduct or danger;⁵⁷⁷ and
- must be made to an appropriate entity.⁵⁷⁸ Any public sector entity⁵⁷⁹ is an appropriate entity to receive a public interest disclosure about its own conduct or that of its officers or a public interest disclosure made to it about anything it has a power to investigate or remedy.⁵⁸⁰ A member of the Legislative Assembly is an appropriate entity to receive any public interest disclosure.⁵⁸¹

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.⁵⁸² The Act also prohibits reprisals against a person because they have made, or may make, a public interest disclosure.⁵⁸³

⁵⁶⁸ *Whistleblowers Protection Act 1994* (Qld), s. 7(3).

⁵⁶⁹ 'Public officer' is defined in Schedule 6 of the *Whistleblowers Protection Act 1994* (Qld).

⁵⁷⁰ *Whistleblowers Protection Act 1994* (Qld), s. 15. 'Official misconduct' is defined in Schedule 6 as having the same meaning as in the *Crime and Misconduct Act 2001* (Qld).

⁵⁷¹ *ibid.*, s. 16. 'Maladministration' is defined in Schedule 6 as 'administrative action that is unlawful, arbitrary, unjust, oppressive, improperly discriminatory or taken for an improper purpose.'

⁵⁷² *ibid.*, s. 17. The disclosure cannot be based on a mere disagreement over policy that may properly be adopted about amounts, purposes and priorities of expenditure.

⁵⁷³ *ibid.*, s. 18.

⁵⁷⁴ *ibid.*, s. 19(1)(a).

⁵⁷⁵ *ibid.*, s. 19(1)(b) and (c).

⁵⁷⁶ *ibid.*, s. 20. 'Reprisal' is defined in Schedule 6 by reference to s. 41.

⁵⁷⁷ *ibid.*, s. 14(2).

⁵⁷⁸ *ibid.*, s. 25(3).

⁵⁷⁹ 'Public sector entity' is defined in Schedule 5, section 2 of the *Whistleblowers Protection Act 1994* (Qld).

⁵⁸⁰ *Whistleblowers Protection Act 1994* (Qld), s. 26(1) This includes public interest disclosures made by anybody who honestly believes the entity is an appropriate entity for these reasons.

⁵⁸¹ *Whistleblowers Protection Act 1994* (Qld), s. 26(1A).

⁵⁸² *ibid.*, s. 39.

⁵⁸³ *ibid.*, s. 41.

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.⁵⁸⁴ A person who is suffering, or may suffer a reprisal, may apply to the Industrial Commission or Supreme Court for an injunction.⁵⁸⁵ The CMC may apply for an injunction acting in an employee's interests with the employee's consent if the employee is a public officer and the reprisal involves or may involve an act or omission that the CMC may investigate.⁵⁸⁶

10.2.2 Recent amendments

The *Whistleblower Protection Act 1994* was amended by the *Whistleblowers (Disclosure to Member of Parliament) Amendment Act 2007* to allow public interest disclosures to be made to members of the Legislative Assembly and to extend protection to people engaged by public sector entities on individual contracts of service. This followed recommendations of the Queensland Public Hospitals Commission of Inquiry (Davies Report) and the report of a review of the *Whistleblowers Protection Act 1994* conducted by the Office of the Public Service Commissioner in 2006⁵⁸⁷ following a recommendation of the 5th PCMC.⁵⁸⁸

10.3 The CMC's role

10.3.1 Overview

Rather than create a centralised system with one agency responsible for protecting whistleblowers in Queensland, the *Whistleblowers Protection Act 1994* makes each public sector agency responsible for receiving public interest disclosures about the conduct of its officers, managing the disclosure process and taking steps to protect its officers from reprisals.

The CMC is one of a number of agencies that provides advice and support to whistleblowers and in addition to the provisions in the *Whistleblowers Protection Act 1994*, the CMA also contains a number of provisions designed to protect whistleblowers. The CMC explained these provisions in its publication *Exposing Wrongdoing: A CMC Guide to Whistleblowing in Queensland* as follows:⁵⁸⁹

The Crime and Misconduct Act 2001 applies to the work of the CMC. The Act:

- *provides a defence of absolute privilege in proceedings for defamation in relation to information provided by any person to the CMC for the purpose of assisting it to perform its functions and responsibilities (A person does not breach any statutory or other duty to maintain confidentiality by providing information to the CMC for the purpose of assisting it to perform its responsibilities and therefore is not liable in any criminal, civil or disciplinary proceedings for doing so.)*
- *makes it an offence to engage in prejudicial conduct, injure or cause detriment to a person, or threaten to do so, because they assisted the CMC*
- *empowers the CMC to apply to the Supreme Court for an injunction to restrain a person or organisation that has engaged, or is proposing to engage, in such prejudicial conduct*
- *empowers the CMC to offer witness protection to people who require such protection because they have assisted the CMC to perform its functions and responsibilities*
- *protects innocent people from being the subject of false complaints by making it an offence with a maximum penalty of one year's imprisonment to lodge a trivial or wilfully false complaint with the CMC.*

⁵⁸⁴ *ibid.*, s. 44.

⁵⁸⁵ *ibid.*, ss. 47 and 48.

⁵⁸⁶ *ibid.*, ss. 47(2)(c) and 48(2)(b).

⁵⁸⁷ Explanatory Notes issued with the Whistleblowers (Disclosure to Member of Parliament) Amendment Bill 2006, p. 1.

⁵⁸⁸ 5th PCMC, Report No. 64, Three Year Review of the Crime and Misconduct Commission, recommendation 43, p. 100.

⁵⁸⁹ Crime and Misconduct Commission, *Exposing Wrongdoing: A CMC guide to whistleblowing in Queensland*, February 2008, pp. 9-10.

As an appropriate entity to receive public interest disclosures about official misconduct, the CMC received the following disclosures in 2006-07 and 2007-08.⁵⁹⁰

Analysis of public interest disclosures received by the CMC 2006-07

Section of <i>Whistleblowers Protection Act</i>	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		48	177*	11	91	27	354
16: Public officer complaining of maladministration			1*				1
17: Public officer complaining of improper management		3	3*	4	2		12
18: Public officer complaining about health/environment matter		1					1
19: Any person complaining about public health or safety matter			5*				5
20: Any person complaining about reprisal		9	30*		6		45
TOTALS		61	216*	15	99	27	418

Note: There were 110 complaints received that comprised 418 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 2007-08

Section of <i>Whistleblowers Protection Act</i>	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	5	141	411*	3	120	62	742
16: Public officer complaining of maladministration		3	1*		4		8
17: Public officer complaining of improper management		1	8*				9
18: Public officer complaining of health/environment matter			6*		4	3	13
19: Any person complaining of public health or safety matter							Nil
20: Any person complaining of reprisal		15	38*		13	4	70
TOTALS	5	160	464*	3	141	69	842

Note: There were 251 complaints received that consisted of 842 allegations. This table details the status of the allegations.

* The outcomes of the allegations in this category may not be known at this stage.

10.3.2 Capacity building and research

The CMC plays a significant role in researching issues associated with the protection of whistleblowers and building the capacity of other agencies in the area of whistleblower protection. The Commission has been a partner in *Whistling While They Work*, a three year collaborative research project funded by the Australian Research Council and 14 partners, including the Commonwealth Ombudsman, Australian Public Service Commission and public integrity bodies from New South Wales, Queensland, Western Australia, the ACT and the Northern Territory.⁵⁹¹ The project focussed on the practical aspects of managing public interest whistleblowing. Data was collected from 304 Federal, State and local government agencies and surveys of 7,600 public servants across 118 agencies.⁵⁹²

⁵⁹⁰ Crime and Misconduct Commission, *Annual Report 2006-07*, p. 78; Crime and Misconduct Commission, *Annual Report 2007-08*, p. 66.

⁵⁹¹ 'World-leading whistleblowing study reveals better protection needed' *Griffith University Media Release*, 9 September 2008.

⁵⁹² *ibid.*

In its submission to the current review the CMC advises that, following the release of initial findings of the project, the Commission focussed attention on building the capacity of public sector organisations to properly manage whistleblowing. In February 2008 an updated version of the advisory guide, *Exposing Wrongdoing: A CMC guide to whistleblowing in Queensland*, was issued. The CMC also collaborated with the Queensland Ombudsman's Office and the former Office of the Public Service Commissioner to produce a good practice checklist for the public sector when managing internal witnesses.⁵⁹³ These partnerships are continuing, with work underway on developing a suite of advisory resources that draw on the research findings of the *Whistling While They Work* project.⁵⁹⁴

10.4 Adequacy of the Queensland whistleblower protection system

Issues associated with the oversight and coordination of whistleblower support across the Queensland public sector have been identified as significant by previous Committees.⁵⁹⁵

In its three yearly review the previous PCMC made five recommendations to improve protection for Queensland whistleblowers⁵⁹⁶ none of which have been fully implemented. The Government's response can be found in full at <http://www.parliament.qld.gov.au/view/committees/documents/PCMC/responses/Report71.pdf>

Previous Committees also recommended a full review of whistleblower protection in Queensland.⁵⁹⁷ The review, which was underway at the time of the PCMC's last three year review of the CMC, was finalised in October 2006.⁵⁹⁸ It highlighted a range of complexities associated with the roles and interdependencies of the existing investigatory bodies. The review recommended:⁵⁹⁹

1. *Entities covered by the Whistleblowers Protection Act 1994 are to review their complaints handling procedures and, wherever practicable, establish a central point of expertise that will:*
 - *apply consistent and appropriate assessment procedures to determine which complaints meet the requirements established by the Whistleblowers Protection Act 1994 for treatment as public interest disclosures;*
 - *monitor, and manage as necessary, the investigation and resolution of public interest disclosures;*
 - *collect and report data about the public interest disclosures they receive; and*
 - *provide clear guidance for staff about how to make a public interest disclosure.*
2. *The Whistleblowers Protection Act 1994 should be amended to extend its coverage to people engaged by entities individually on a contract basis.*
3. *An interagency reference group convened by the Office of the Public Service Commissioner, and comprising the Crime and Misconduct Commission, and the Ombudsman's Office should:*
 - *coordinate advice on policy matters relating to administration of the Whistleblowers Protection Act 1994;*
 - *develop guidelines to assist entities covered by the Whistleblowers Protection Act 1994;*
 - *provide advice and guidance to entities covered by the Whistleblowers Protection Act 1994 on trends associated with the identification, investigation and resolution of public interest disclosures*
4. *Disclosures made to the media should not be protected under the Whistleblowers Protection Act 1994.*
5. *The Whistleblowers Protection Act 1994 should be amended to allow public interest*

⁵⁹³ CMC, *Managing internal witnesses: A good practice checklist for the public sector*, May 2008.

⁵⁹⁴ Submission No.22, Crime and Misconduct Commission, pp. 109-110; Submission No.12, Queensland Ombudsman, p. 3.

⁵⁹⁵ 4th PCJC Three Yearly Review, 2001, p. 150; 5th PCMC Three Year Review, 2004, p. 100; 6th PCMC Three Year Review, 2006, p. 95.

⁵⁹⁶ 6th PCMC Three Year Review, 2006, p. 96.

⁵⁹⁷ 4th PCJC Three Yearly Review, 2001, p. 151; 5th PCMC Three Year Review, 2004, p. 100.

⁵⁹⁸ Office of Public Service Commissioner, *Review of the Whistleblowers Protection Act 1994*, October 2006.

⁵⁹⁹ *ibid.*, p. iv.

disclosures to be made to Members of Parliament ...

6. *The Office of Public Service Commissioner should take a more active role in assisting entities covered by the Whistleblowers Protection Act 1994 to achieve a more consistent approach to the administration of the Whistleblowers Protection Act 1994.*
7. *The Crime and Misconduct Commission and the Ombudsman's Office should continue to provide research support, training and practical assistance to agencies in the management and investigation of public interest disclosures as a sub-set of their work in improving the general complaints handling capacity of agencies.*

In November 2006 the Queensland Ombudsman, together with the Commonwealth Ombudsman and NSW Ombudsman, called for Australian governments to consider a '*coherent, national approach to the revision of whistleblower protection laws.*'⁶⁰⁰ The NSW Ombudsman said that the preparedness of officials and employees to make public interest disclosures about wrongdoing is critically important to ensuring integrity and accountability in the public sector, but conceded that it would not happen without a sound legislative framework to facilitate and protect public interest disclosures.⁶⁰¹

The first report of the *Whistling While They Work* project was released in February 2009.⁶⁰² A media statement issued with the report indicated that '*less than two percent of public interest whistleblowers receive organised support from their government agency, even though their value to public integrity is widely acknowledged.*'⁶⁰³ The statement also stated:

With more than half of all public interest whistleblowers estimated as suffering a stressful experience, including around a quarter reporting reprisals or mistreatment, there is a huge gap to be filled in the more effective provision of support.

Overall, implementation of whistleblowing legislation – where it exists – is currently very patchy and frequently quite weak.

Seventy per cent of the agencies surveyed had no procedures in place for assessing the risks of reprisal when officials in their agency blew the whistle.

Only three per cent of agencies surveyed were rated as having reasonably strong whistleblowing procedures, assessed against the relevant Australian Standard.

The project team's findings call for major reform of the operational systems used to manage whistleblowing, expansion of support programs, new oversight and coordination arrangements across the public sector, and legislative reform including new rules to recognise the role of public whistleblowing.

The report identified 13 key principles that form the basis for best-practice whistleblowing legislation.⁶⁰⁴ It also outlined the priority areas for action in all jurisdictions and most public agencies, namely:⁶⁰⁵

1. *more comprehensive agency systems for recording and tracking employee reports of wrongdoing*
2. *agency procedures for assessing and monitoring the risk of reprisals or other conflict for those who report*
3. *clearer and better advice for employees on the range of avenues available for reporting wrongdoing*

⁶⁰⁰ 'Whistleblower protection laws need national revision: new issues paper' Media Release by the NSW Ombudsman, Commonwealth Ombudsman and Queensland Ombudsman, 2 November 2006.

⁶⁰¹ *ibid.*

⁶⁰² Brown, A.J. (ed.) *Whistleblowing in the Australian Public Sector: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations*, ANU E Press, 2008.

⁶⁰³ 'World-leading whistleblowing study reveals better protection needed' *Griffith University Media Release*, 9 September 2008.

⁶⁰⁴ Brown, A.J. (ed.) *Whistleblowing in the Australian Public Sector: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations*, ANU E Press, 2008, chapter 11.

⁶⁰⁵ *ibid.*, chapter 12, and summary at p. xxxviii.

4. *basic training for public sector managers in how to recognise and respond to possible public interest disclosures*
5. *a program of training for internal investigators in basic techniques, with special attention to issues of internal witness management*
6. *adoption and expansion of structured support programs for employees who report wrongdoing*
7. *improved mechanisms for monitoring the welfare of employees who report wrongdoing, from the point of first report*
8. *more detailed and flexible agency procedures for the investigation and remediation of reprisals and breaches of duty of care*
9. *a dedicated oversight agency or unit for the coordination of responses to employee-reported wrongdoing*
10. *legislative action to provide more effective organisational systems and realistic compensation mechanisms, and to recognise public whistleblowing.*

According to the CMC's submission to the current review, involvement with the *Whistling While They Work* project has:⁶⁰⁶

... provided us with an up-to-date, representative picture of the prevalence of whistleblowing in Queensland, as well as shed light on the ways in which managers handle internal disclosures, the institutional supports used by agencies to manage whistleblowing-related conflicts and opportunities for law reform. The comprehensiveness of the whistleblowing policies and procedures of Queensland public sector agencies, and employees' confidence in legislation, was assessed as the lowest among the jurisdictions surveyed. This suggests a need for clearer statutory requirements and oversight, which is especially timely given the anticipated changes in whistleblower protection at a Commonwealth level.

The Committee recognises the opportunity presented by the findings of the *Whistling While They Work* project to improve the protection provided to Queensland whistleblowers and consequently boost public confidence. As the Queensland Ombudsman said in his submission to the current review:⁶⁰⁷

The work already done during the project also provides a considerable volume of research that would be relevant for consideration in any review of the Whistleblowers Protection Act. I am aware that the Committee recommended in report number 64 on its 2004 review of the CMC that this Act be reviewed. I support that recommendation.

Recommendation 24

The Committee recommends that the Government review Queensland's current whistleblower protection regime in light of the findings of the *Whistling While They Work* project, including the key principles that were identified by the project as providing the basis for best practice whistleblowing legislation.

⁶⁰⁶ Submission No.22, Crime and Misconduct Commission, p. 109.

⁶⁰⁷ Submission No.12, Queensland Ombudsman, p. 3.

11. CORPORATE SUPPORT AND GOVERNANCE

11.1 Introduction

This function, carried out by Corporate Services, the Office of the Commission and the Office of General Counsel, maintains the CMC's internal and external accountability systems and provides services in the areas of legal advice, corporate governance, finance, human resources, administration, communications and media liaison.

11.2 Corporate governance

The CMC corporate governance infrastructure comprises:

- internal accountability structures;
- external accountability and reporting structures;
- legislative compliance structures;
- financial and performance management structures; and
- resource management practices and structures.

11.2.1 Strategic directions review

In June 2008 the Commission began a Strategic Directions Review to ensure the CMC's strategy reflects priorities and effectively addresses current and future challenges. An independent consulting firm was engaged to facilitate the review and help the Commission develop appropriate strategies and performance measures. The review is intended to provide the basis of the CMC's Strategic Plan for 2009-13.⁶⁰⁸

11.2.2 Commission secretariat

The CMC has advised that the CMC Commissioners completed a review of the Commission's governance framework in November 2007.⁶⁰⁹

A former part-time Commissioner of the CMC, Ms Julie Cork, made the following observations regarding the CMC's corporate governance during the course of hearings for the review:⁶¹⁰

I think the kind of work that occurred when my colleagues and I were looking at corporate governance initially is well known to the committee. I think that is of absolutely critical importance. The idea that the corporate governance and accountability mechanisms need to be first-rate the more independence an organisation has from government is fundamental. Unless we get roles and accountabilities correct for the parliamentary committee, the commission itself and then the CMC—when I say 'the commission itself' I mean the board of management—then I think we run a risk of exposing the sector and the CMC staff to situations they would rather not be exposed to.

The governance issue has been plagued by a lack of clarity around who is responsible for what. I think it is terrific that the governance framework that we worked on has now been adopted but that is only the start of the journey. There are lots of things that now need to change in terms of reporting arrangements—and they may well have changed.

One other critical point is that the commission itself—the board of management—needs a secretariat that is independent of the CMC. At the moment, that secretariat support is provided

⁶⁰⁸ Submission No.22, Crime and Misconduct Commission, p.144

⁶⁰⁹ *ibid.*

⁶¹⁰ 7th PCMC, Transcript of Proceedings, Three Year Review of the Crime and Misconduct Commission, 20 November 2008, pp. 16-17.

out of the corporate services area. That places that corporate services area in what I think is an irreconcilable conflict of interest situation. It assumes that the interests of the CMC and the interests of the commission coincide. While they overlap greatly, there is a difference. The role of the CMC and the role of the commission are different.

... As long as the secretariat service is provided out of corporate services then the Commission itself cannot adequately function. The boss of the secretariat service is the executive director who answers to the chair. That means that the role of the Commission cannot be fully explored, in my view. I think it is critical that that secretariat role be reinstated.

Recommendation 25

The Committee recommends that successor committees monitor the relationship between the Commission and CMC Corporate Services in order to determine the continued appropriateness of secretariat services being provided to the Commission by CMC Corporate Services.

11.3 Internal accountability

11.3.1 The Commission

The CMC is headed by a five-member Commission, its most important internal accountability mechanism. The Commission comprises the Chairperson who is also the chief executive officer, and four part-time Commissioners who represent the community.

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 issues affecting the CMC as a whole. The Assistant Commissioner, Crime, and the Assistant Commissioner, Misconduct and the Executive Director also attend meetings, although they have no voting rights. Since November 2007, the Director, Witness Protection and Operations Support has participated in Commission meetings.⁶¹¹

Issues addressed at meetings primarily concern the strategic direction of the CMC, together with financial, staffing and managerial issues; specific crime and misconduct operations; research and intelligence projects; and capacity development and misconduct prevention activities. Decisions made by the Commission are put into effect by the Executive Committee.

In its submission to the three yearly review, the CMC advised that a typical agenda would include:⁶¹²

- strategic examination of the work of the various functional areas;
- discussion about the status and progressive outcomes of key projects;
- consideration of whether matters should be referred for prosecution or disciplinary action;
- consideration of any managerial or risk 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 Court⁶¹³. In addition one of the Commissioners must be a lawyer with a demonstrated interest in civil 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.⁶¹⁴

⁶¹¹ Crime and Misconduct Commission, *Annual Report 2007-08*, p. 44.

⁶¹² Submission No.22, Crime and Misconduct Commission, p. 135.

⁶¹³ *Crime and Misconduct Act 2001* (Qld), s. 224.

⁶¹⁴ *ibid.*, s. 225.

The Commissioners are appointed by the Governor-in-Council for a period of not more than five years.⁶¹⁵

Nomination for appointment as a Commissioner must have the bipartisan support of the PCMC.⁶¹⁶

The current Commissioners of the CMC are: Mr Robert Needham (Chairperson), Dr David Gow, Ms Ann Gummow, Mrs Judith Bell and Mr Philip Nase.

11.3.2 *Internal committees*

The CMC has a wide ranging committee structure to monitor and review the work of its respective functional areas.

The most significant committee is the Executive Committee (EC), formerly known as the Strategic Management Group. The EC, which consists of the Chairperson and 11 other members representing various areas within the CMC, selects and oversees the major operational and administrative projects undertaken by the CMC in line with its corporate objectives, priorities and statutory responsibilities.

The Commission's management committees are⁶¹⁷:

- **Audit Committee.** Provides independent advice to the Commission on determining potential risks to the CMC and where the main audit focus should be directed.
- **Commission Consultative Committee.** Provides a discussion 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.
- **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 in place.
- **Information Steering Committee.** Provides advice concerning the development of the CMC's information systems strategy and infrastructure.
- **Risk Management Committee.** Ensures the CMC maintains appropriate risk minimisation strategies through monitoring and advice.
- **Workplace Health and Safety Committee.** Monitors the CMC's performance in providing a safe and healthy environment for its employees.
- **Workforce Management Committee.** Ensures the strategic human resource management needs of the CMC are effectively addressed.

In addition there are a number of committees which deal specifically with operational matters.

These are:⁶¹⁸

- Misconduct Operations Review Committee;
- Misconduct Assessment Committee;
- Misconduct Activities and Projects Committee;
- Crime Operational Review Committee;

⁶¹⁵ *ibid.*, s. 231.

⁶¹⁶ *ibid.*, s. 228.

⁶¹⁷ Submission No.22, Crime and Misconduct Commission, pp. 137–138.

⁶¹⁸ *ibid.*, p. 138.

- Crime Intelligence Research Review Committee; and
- Witness Protection Advisory 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. The role of the auditor is to conduct regular independent audits and in so doing, to help management achieve sound managerial control.

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 internal auditor is independent of the Audit Committee but has a standing invitation to attend Audit Committee meetings.

11.4 External accountability and reporting

The CMC is independent of the Government, but is oversighted by the Parliamentary Crime and Misconduct Committee assisted by the Parliamentary Crime and Misconduct Commissioner. Through the Committee, the CMC is accountable to the Parliament and to the people of Queensland.

In addition, 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 Industrial Relations, the Honourable Cameron Dick MP. The CMC periodically reports to the Minister on its efficiency, effectiveness, economy and timeliness.⁶¹⁹

External accountability and the role of the PCMC are discussed in more detail in Chapter 12.

11.5 Legislative compliance

The Legal Services Unit, consisting of General Counsel, the official solicitor, the FOI coordinator and a legal officer, provides independent legal advice to the Commission and operational areas of the CMC.

The role of General Counsel involves⁶²⁰:

- 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 intergovernmental and interdepartmental committees and working groups; and
- liaising with State government departments about legislative amendments to ensure the continued effective operations of the CMC.

The role of the Legal Services Unit includes⁶²¹:

- representing the Commission in litigation before any court or tribunal;
- engaging external counsel and/or solicitors to represent the Commission;
- providing independent objective legal advice to the Commission and its officers;

⁶¹⁹ *Crime and Misconduct Act 2001* (Qld), s. 260.

⁶²⁰ Submission No.22, Crime and Misconduct Commission, p. 139.

⁶²¹ *ibid.*

- determining applications for access to Commission documents under the *Freedom of Information Act 1992*;
- administering the privacy regime;
- maintaining a legal advice database and overseeing continuing legal education programs for Commission lawyers.

11.6 Financial management and performance management

The CMC operates in an accrual output-based financial management framework, where senior managers are responsible and accountable for the achievement of corporate goals and objectives within approved budget allocations.

The Finance Committee ensures that the CMC's financial management practices are both appropriate and effective.

The CMC reports through⁶²²:

- the annual Service Delivery Statements (SDS);
- financial statements published in the annual report;
- an internal budget reporting regime;
- fortnightly Commission meetings;
- regular meetings with the PCMC; and
- six-monthly reports to the Minister pursuant to section 260 of the CMA.

11.7 Resource management practices

11.7.1 Human resources

The CMC, in its *2007-08 Annual Report*, states that it is.⁶²³

... dedicated to providing the best working environment it can for its diverse staff of lawyers, police, accountants, investigators, intelligence analysts, social scientists, computing specialists, support officers and administrators.

We offer working conditions that are comparable to the Queensland public service, including enterprise bargaining, and we adhere to government policies on equal employment opportunity and workplace health and safety. In addition, we provide an employee support program, training opportunities, avenues for regular internal communication, and a mechanism for staff to have their concerns heard by senior management.

...

The CMC continues to offer flexible working arrangements aimed at supporting employees in balancing their work and family and other responsibilities. Towards the end of 2007-08 we commenced a comprehensive review of our current working hours arrangements, with a view to seeing whether further flexibility can be introduced. We are also looking into teleworking arrangements and at developing ways to keep older workers in the workforce.

The Committee notes the efforts of the CMC to provide a high quality working environment, as outlined above. However, the Committee also notes that in 2007 an *Organisational Climate Survey* was undertaken, which revealed a level of dissatisfaction amongst some staff. The Committee has considered

⁶²² *ibid.*, p.138

⁶²³ Crime and Misconduct Commission, *Annual Report 2007-08*, p. 51.

that document and noted that staff dissatisfaction was highest in the area of Witness Protection and Operations Support.

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 PCMC⁶²⁴:

- Complaints Services was restructured following a significant internal review of the effectiveness of complaints management procedures and the adequacy of resources assigned to those activities. The revised structure became effective on 1 July 2006.
- Research and Prevention was restructured following recommendations of an independent review conducted by the Mercer Group in late 2006. The revised structure became effective on 1 July 2007.

11.7.3 Workforce Management Planning

The *Workforce Management Plan 2007–2009* sets out the framework for a range of strategies focused on attracting and retaining experienced staff, managing a multi-generational workforce, and strengthening management and supervisory practices throughout the organisation.

In its submission to the PCMC, the CMC indicated that the following strategies were completed during 2008⁶²⁵:

- Implementation of a mentoring program;
- Structured work unit induction programs;
- Review of recruitment and selection procedures;
- Review of study assistance arrangements;
- Introduction of an organisational contribution to membership fees of professional organisations;
- Review of recognition and reward practices;
- Implementation of an enhanced performance management process;
- Review of the employee assistance program.

Development of the following strategies has commenced:

- Review of working hours arrangements;
- Staff rotation and enhanced mobility processes;
- Leadership and management development programs;
- Phased retirement framework.

Major strategies still to commence include:

- Succession planning;
- Talent identification and management;
- Development of effective career paths;
- Further development programs aimed at staff within specific disciplines;
- Corporate health/well-being program.

⁶²⁴ Submission No.22, Crime and Misconduct Commission, p. 141.

⁶²⁵ *ibid.*, pp. 142–143.

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 accountability mechanisms, the principal one being the Parliamentary Crime and Misconduct Committee (PCMC).

The Fitzgerald Report recommended that the Commission involved in the administration of criminal justice should be accountable to a parliamentary committee.⁶²⁶ In accordance with this recommendation, the *Criminal Justice Act 1989* provided for the creation of the Parliamentary Criminal Justice Committee (PCJC) to oversee the Criminal Justice Commission.⁶²⁷

The PCMC is, in effect, a continuation of the PCJC.⁶²⁸ Its core functions are:

- to monitor and review the performance of the functions of the CMC;
- to report to Parliament on matters relevant to the CMC; and
- to participate in the selection of Commissioners of the CMC.

The Committee is appointed by the Legislative Assembly. It consists of seven members, four of whom are nominated by the Leader of the House and the remaining three by the Leader of the Opposition.⁶²⁹ The chairperson is to be nominated by the Leader of the House and thus in practice will be a government member.⁶³⁰ Traditionally, 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:⁶³¹

- (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
- (g) to issue guidelines and give directions to the commission as provided under this Act.

⁶²⁶ *Report of a Commission of Inquiry Pursuant to Orders in Council* (Fitzgerald Report), 1989, p. 309.

⁶²⁷ *Criminal Justice Act 1989* (Qld), Part 4.

⁶²⁸ The PCMC is established under s. 291 of the *Crime and Misconduct Act 2001* (Qld).

⁶²⁹ *Crime and Misconduct Act 2001* (Qld), s. 300(1).

⁶³⁰ *ibid.*, s. 300(2).

⁶³¹ *ibid.*, s. 292.

12.1.3 *Monitoring and reviewing the performance of the functions of the CMC*

Successive committees have developed procedures to assist in monitoring the CMC. These include:

- receiving and considering complaints against the CMC;
- reviewing CMC guidelines and making suggestions for improvement;
- reviewing CMC reports;
- requesting reports from the CMC on matters which have come to the Committee's attention, for example from complainants or through the media; and
- considering various issues concerning the CMC as they arise.

The Committee also holds regular formal meetings with the Chairperson, other Commissioners and senior officers of the CMC. In preparation for these meetings the CMC provides the Committee with a detailed report of the Commission's activities since the last meeting. This enables the Committee to question members of the Commission about relevant issues and new developments.

12.1.4 *Reporting to the Parliament*

The Committee reports to the Parliament on the operations and activities of the CMC so the Commission is accountable to the Parliament and the people of Queensland. The Committee is able to, at its discretion, 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.⁶³²

The Committee also has a statutory obligation to review the activities of the Commission and report about any action that should be taken in relation to the *Crime and Misconduct Act 2001* or the functions, powers and operations of the Commission.⁶³³ The review is to occur at a time near to the end of three years from the appointment of the committee's members, effectively resulting in a review each parliamentary term.

The Committee notes that the timing of the two most recent general elections has resulted in three reviews of the CMC being undertaken within five years.⁶³⁴ Given the time taken to conduct a review, the Committee does not consider that this allows sufficient time between one review ending and the next beginning to effectively evaluate developments. The review process also puts considerable strain on the resources of both the CMC and the PCMC. The Committee therefore considers it appropriate that reviews be undertaken at five yearly intervals.

Recommendation 26

The Committee recommends that section 292(f) of the *Crime and Misconduct Act 2001* be amended to require the Parliamentary Crime and Misconduct Committee to conduct a comprehensive review of the Act and the functions, powers and operations of the Crime and Misconduct Commission every five years, rather than at the end of each parliamentary term.

12.1.5 *Participating in the appointment of the Chairperson and part-time Commissioners of the Crime and Misconduct Commission*

The CMC consists of a full-time Chairperson and four part-time Commissioners who are community representatives.

⁶³² *Crime and Misconduct Act 2001* (Qld), s. 292(b), (c) and (d).

⁶³³ *Crime and Misconduct Act 2001* (Qld), s. 292(f).

⁶³⁴ 5th Three Yearly Review tabled 15 March 2004; 6th Three Year Review tabled 9 October 2006.

The Committee is involved in the selection of the Commissioners.

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. 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.⁶³⁵ 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 party or parties in government.⁶³⁶

12.1.6 *Complaints against the Crime and Misconduct Commission and its officers*

The Committee receives and considers complaints against the CMC and its officers. As well as providing an avenue for persons to pursue complaints against the Commission, the complaints process often provides the Committee with additional insight into the operation of the Commission.

The CMA reinforces 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—*
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.*

The CMA was amended in 2006 to clarify that this section applies not only to former CMC officers but also former officers of the Criminal Justice Commission and the Queensland Crime Commission.⁶³⁷

Section 295(2) of the CMA sets out the options available to the Committee where it decides to take action on a complaint, concern or notification.

With bipartisan support, the Committee may:

- (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.*

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. The Minister (currently the Attorney-General) can not nominate a

⁶³⁵ *ibid.*, s. 228.

⁶³⁶ *Crime and Misconduct Act 2001* (Qld), schedule 2 - definition of 'bipartisan support'

⁶³⁷ *Crime and Misconduct and Other Legislation Amendment Act 2006* (Qld), ss. 31 and 34.

person for appointment to the panel unless the Minister has obtained bipartisan support of the PCMC for the nomination.⁶³⁸

The Committee may also conduct a review of the misconduct tribunals when it reviews the activities of the CMC⁶³⁹ and the PCMC must be given a copy of the tribunals' annual report.⁶⁴⁰

The Committee notes that the Government proposes to include the misconduct tribunals in the Queensland Civil and Administrative Tribunal (QCAT), as discussed in more detail in 5.11 of this report.

12.1.8 Parliamentary oversight - analysis and comment

Like its predecessors, the Committee is of the view that a Parliamentary Committee provides the appropriate means for primary oversight of the CMC. The Committee does not see any need for change to its present functions or powers.

Bodies such as the CMC, with critically important functions of fighting crime and preventing public sector misconduct must be independent, but at the same time need to be accountable. 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, particularly regarding any issues that arise in respect of its conduct or performance.

12.2 Office of the Parliamentary Crime and Misconduct Commissioner

12.2.1 Introduction

The PCMC is assisted in its role of monitoring and reviewing the CMC by the Parliamentary Crime and Misconduct Commissioner (the Parliamentary Commissioner).

The Parliamentary Commissioner was established in 1997⁶⁴¹ in response to concerns expressed by the PCJC about the accountability of the CJC to the Committee. The PCJC was particularly concerned about the limited powers and resources available to the Committee in performing its statutory responsibilities.⁶⁴²

The CMA now provides for the appointment of the Parliamentary Crime and Misconduct Commissioner to assist the PCMC in enhancing the accountability of the CMC by undertaking a range of important functions on behalf of, and reporting back to, the PCMC.⁶⁴³

The Parliamentary Commissioner is a part-time appointment (for an average of two days per week).⁶⁴⁴ 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.⁶⁴⁵ 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.⁶⁴⁶ The Parliamentary Commissioner is assisted by an experienced legal officer.

⁶³⁸ *Misconduct Tribunals Act 1997* (Qld), s. 7(1)(c). Section 7(3) of the *Misconduct Tribunals Act 1997* (Qld) defines 'bi-partisan support' in the same terms as the *Crime and Misconduct Act 2001* (Qld).

⁶³⁹ *ibid.*, s. 38.

⁶⁴⁰ *ibid.*, s. 39.

⁶⁴¹ *Criminal Justice Legislation Amendment Act 1997* (Qld).

⁶⁴² PCJC, Report No. 38, *A Report on the Accountability of the CJC to the PCJC*, May 1997

⁶⁴³ *Crime and Misconduct Act 2001* (Qld), s. 303

⁶⁴⁴ *ibid.*, s. 310(1).

⁶⁴⁵ *ibid.*, s. 309.

⁶⁴⁶ *ibid.*, s. 304.

12.2.2 Functions of the Parliamentary Crime and Misconduct Commissioner

The Parliamentary Commissioner has the functions, as required by the PCMC, to do the following⁶⁴⁷:

- audit the records, operational files and other material kept by the CMC;
- investigate complaints made against, or concerns expressed about, the conduct or activities of the Commission or a commission officer;
- independently investigate allegations of possible unauthorised disclosure of confidential information;
- inspect the register of confidential information kept by the CMC to verify the Commission's reasons for withholding information from the PCMC; and
- review reports by the CMC to the PCMC to verify their accuracy and completeness, particularly in relation to an operational matter.

The Commissioner has further responsibilities under the *Crime and Misconduct Act 2001* and the *Police Powers and Responsibilities Act 2000* including the conduct of an annual review of intelligence data in the possession of the CMC and the QPS;⁶⁴⁸ regular inspections of the records of the CMC to determine the extent of compliance with the legislative requirements relating to surveillance device warrants and controlled operations; and regular audits of the CMC's records relating to assumed identities.

The Committee notes that section 146ZQ of the *Crime and Misconduct Act 2001* requires the Chairperson of the CMC to give the Parliamentary Commissioner a report about authorities for assumed identities used in relation to misconduct offences at the end of each financial year. The report must include a statement about whether any fraud or other unlawful activity was identified by an audit of records conducted by the Parliamentary Commissioner.⁶⁴⁹ The Parliamentary Commissioner must table a copy of the report in the Legislative Assembly.

The Committee considers it more appropriate for the Commission Chairperson to give the report to the PCMC for tabling as is the case with the equivalent provision in the *Police Powers and Responsibilities Act 2000* in relation to assumed identities in crime investigations.⁶⁵⁰

Recommendation 27

The Committee recommends that section 146ZQ of the *Crime and Misconduct Act 2001* be amended to require the Chairperson of the Crime and Misconduct Commission to give the report about authorities for assumed identities to the Parliamentary Crime and Misconduct Committee and require the Parliamentary Crime and Misconduct Committee to table the report in the Legislative Assembly.

The Committee also notes that section 146ZS of the *Crime and Misconduct Act 2001* requires the Parliamentary Commissioner to audit the records of the Commission relating to the use of assumed identities in misconduct investigations and provide the audit results to the CMC Chairperson rather than the PCMC.⁶⁵¹ The Committee considers it would be appropriate for the Parliamentary Commissioner to provide a copy of the results of the audit to the PCMC as the relevant oversight body for the CMC. The Committee has made similar comments and recommendations in relation to the equivalent provision of the *Police Powers and Responsibilities Act 2000* dealing with crime investigations.⁶⁵²

⁶⁴⁷ *ibid.*, s. 314(2).

⁶⁴⁸ *ibid.*, s. 320.

⁶⁴⁹ *ibid.*, ss. 146ZQ(1)(d) and 146ZS.

⁶⁵⁰ *Police Powers and Responsibilities Act 2000* (Qld), s. 314.

⁶⁵¹ *Crime and Misconduct Act 2001* (Qld), s. 146ZS.

⁶⁵² See recommendation 18 of the current report.

Recommendation 28

The Committee recommends that the Government amend the *Crime and Misconduct Act 2001* to require the Parliamentary Commissioner to provide the Parliamentary Crime and Misconduct Committee with a copy of the report on the results of each audit conducted under section 146ZS of that Act in relation to assumed identities.

12.2.3 Annual intelligence review

As outlined above, one of the functions of the Parliamentary Commissioner is to conduct an annual review of the intelligence data held by the CMC, and also that held by the Queensland Police Service.⁶⁵³ This function is prescribed by the CMA but 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 Parliamentary Commissioner possesses extensive powers, as set out in the CMA, including the power to conduct hearings in limited circumstances.

The Parliamentary Commissioner can conduct a hearing if:⁶⁵⁴

- the Parliamentary Commissioner has used all reasonable means to obtain information about the matter, without success; and
- the Parliamentary Committee authorises the Parliamentary Commissioner to hold a hearing to obtain the information. The PCMC may only give the authorisation if it receives the bipartisan support of the Committee.

Importantly, 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.⁶⁵⁵

12.2.5 Extent of power to call for witnesses

Previous Committees have expressed concerns about limiting witnesses who can be compelled to give evidence to the Parliamentary Commissioner to Commission officers or persons who hold, or held, an appointment in a unit of public administration.⁶⁵⁶ Previous Committees, including the 6th PCMC, have recommended that there be no restriction on the persons that can be required to give evidence at a hearing by the Parliamentary Commissioner.⁶⁵⁷

In its response to this recommendation of the 6th Committee, the Government stated that this recommendation was ‘not supported at this time’.⁶⁵⁸

...the Parliamentary Committee in Report No 71 does not give any examples of actual injustices or problems resulting from the limitations.

⁶⁵³ *Crime and Misconduct Act 2001* (Qld), s.320.

⁶⁵⁴ *ibid.*, s. 318(4).

⁶⁵⁵ ‘Unit of public administration’ is defined in s. 20 of the *Crime and Misconduct Act 2001* (Qld).

⁶⁵⁶ 5th PCMC *Three Year Review of the Crime and Misconduct Commission*, p. 112; 6th PCMC *Three Year Review of the Crime and Misconduct Commission*, pp.110-111.

⁶⁵⁷ 5th PCMC *Three Year Review of the Crime and Misconduct Commission*, p. 112, recommendation 49; 6th PCMC *Three Year Review of the Crime and Misconduct Commission*, p. 111 recommendation 27.

⁶⁵⁸ Government response to PCMC Report No. 71, *Three Year Review of the Crime and Misconduct Commission*, pp. 11–12.

The current Committee endorses the view of the previous Committee that there ought be no limit on the persons that may be called before a hearing by the Parliamentary Crime and Misconduct Commissioner, and shares its concern 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 considerable injustice to the Commission or a Commission officer and might impede the Parliamentary Commissioner in ascertaining the legitimacy of an allegation.

In its response to the previous Committee, the Government stated that it did not support this recommendation, in part because the 6th PCMC did not provide examples of actual injustices or problems resulting from the limitations. The present Committee is similarly unable to provide examples, as the situation contemplated has not yet occurred in practice. Nonetheless, the current Committee is of the view that this bare fact does not discount the desirability of an amendment in view of the potential injustice which might arise where, for example, a vexatious complainant were able to make damaging allegations in the absence of supporting evidence.

Recommendation 29

The Committee recommends that the restriction on the persons that can be required to give evidence at a hearing by the Parliamentary Crime and Misconduct Commissioner be removed.

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 very useful, 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.

At an operational level, the relationship between the CMC and the Parliamentary Commissioner is one of mutual cooperation. Both Mr MacSporran and his predecessor have reported receiving the CMC's full assistance when conducting audits or when investigating complaints. In turn, the Commission has reacted positively to concerns raised, where necessary adopting recommendations or making other suggested changes. The Committee is satisfied that the relationship is working well.

12.3 Audits by the Parliamentary Crime and Misconduct Commissioner

One of the key advantages of the office of Parliamentary Commissioner is the power 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.

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 are now the subject of inspection and report by the Parliamentary Commissioner, as part of the legislative scheme. Further details are provided at 6.7 of this report.

12.5 The Public Interest Monitor

The Public Interest Monitor also oversees certain functions of the CMC. The CMC describes the PIM's functions in relation to surveillance warrants and covert search warrants as follows:⁶⁵⁹

⁶⁵⁹ Submission No.22, Crime and Misconduct Commission, p.134

- *to monitor compliance by the CMC in relation to matters concerning applications for surveillance warrants and covert search warrants;*
- *to appear at any hearing of an application to a Supreme Court judge or magistrate for a surveillance warrant or covert search warrant, or to test the validity of the application;*
- *to gather statistical information about the use and effectiveness of surveillance warrants and covert search warrants;*
- *whenever it is considered appropriate, to give to the Commission a report on non-compliance by the CMC.*

12.6 The Minister

The Minister, namely the Attorney-General, is responsible for ensuring the Commission operates to best practice standards. To assist the Minister in this regard, the CMC reports on the efficiency, effectiveness and timeliness of its operations every six months through a written report under section 260 of the *Crime and Misconduct Act 2001*.⁶⁶⁰

⁶⁶⁰ *ibid.*

Appendix One – Previous Three Yearly 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(I)(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.*
- 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 first PCMC of the 50th Parliament

- Report No. 64, tabled on 15 March 2004, titled *Three Year Review of the Crime and Misconduct Commission.*

The second PCMC of the 51st Parliament

- Report No. 71, tabled on 9 October 2006, titled *Three Year Review of the Crime and Misconduct Commission.*

Appendix Two – List of Submissions to the Three Yearly Review

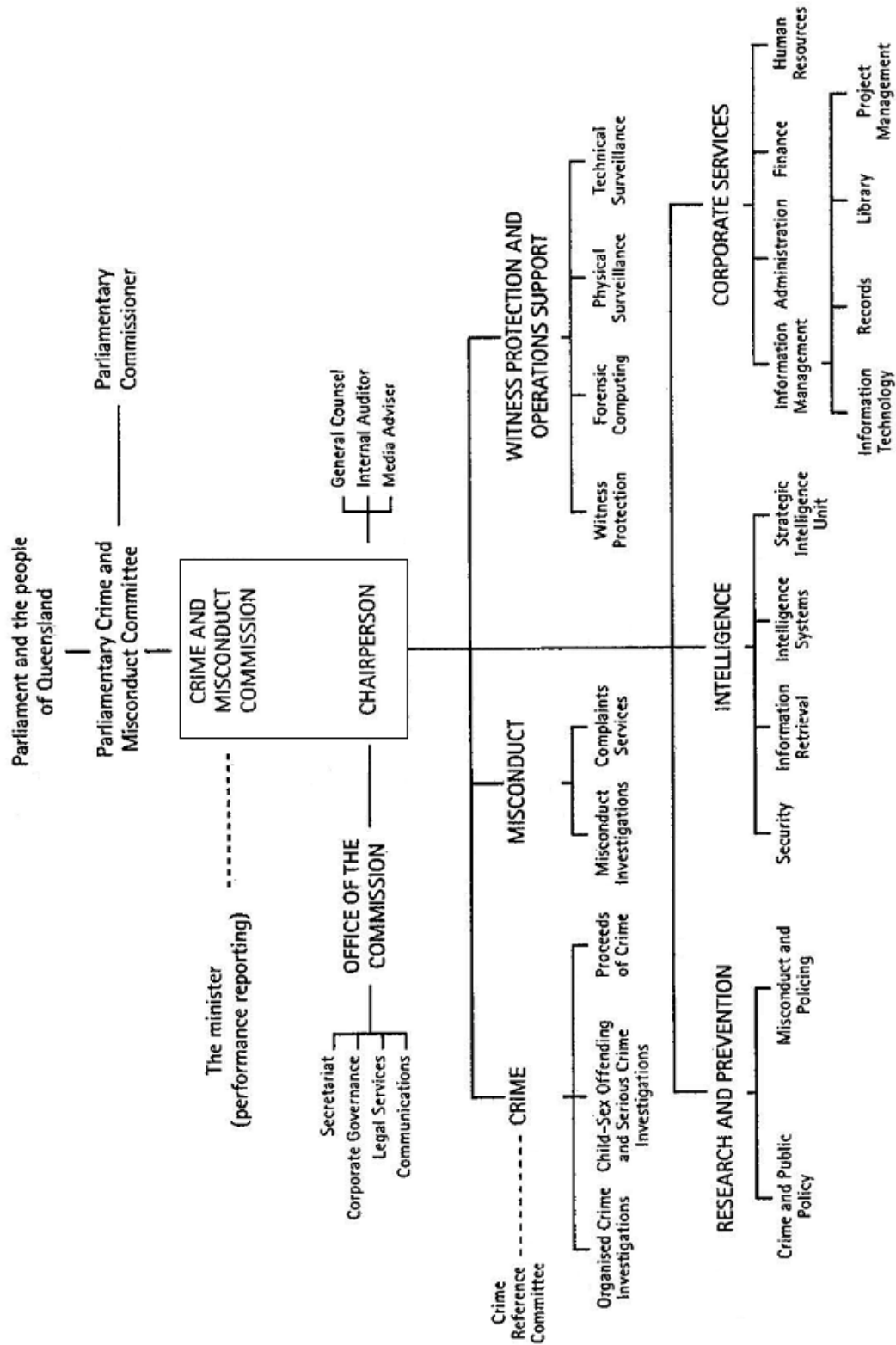
No.	Submitter
1.	<i>Ms Rosa Lee Long MP – Member for Tablelands</i>
2.	<i>South Bank Corporation (Mr Malcolm Snow – Chief Executive Officer)</i>
3.	<i>Mr Tim Nicholls MP – Member for Clayfield</i>
4.	<i>Queensland Transport (Mr David Stewart – A/Director General)</i>
4a.	<i>Mr John Mickel MP – Minister for Transport</i>
5.	<i>Mr Warren Pitt MP – Minister for Main Roads</i>
6.	<i>Department of Main Roads (Mr Alan Tesch – Director-General)</i>
7.	<i>Department of Employment and Industrial Relations (Mr Barry Leahy – A/Director-General)</i>
8.	<i>Queensland Audit Office (Mr Glenn Poole – Auditor-General)</i>
9.	<i>Health Quality and Complaints Commission (Professor Michael Ward – Commissioner)</i>
10.	<i>Mr John Mickel MP – Minister for Employment and Industrial Relations</i>
11.	<i>Emergency Services (Mr Jim McGowan – Director-General)</i>
12.	<i>QLD Ombudsman (Mr David Bevan)</i>
13.	<i>Not tabled</i>
14.	<i>Department of Local Government, Sport and Recreation (Mr Phil Clarke – A/Director-General)</i>
15.	<i>Not tabled</i>
16.	<i>Dr Tamara Walsh – Senior Law Lecturer – The University of Queensland</i>
17.	<i>The Queensland Police Commissioned Officers’ Union of Employees (Mr Peter Savage – President)</i>
18.	<i>Ms Betty Kiernan MP – Member for Mt Isa</i>
19.	<i>Not tabled</i>
20.	<i>Not tabled</i>
21.	<i>Not tabled</i>
22.	<i>Mr Robert Needham – CMC</i>
23.	<i>Department of Primary Industries and Fisheries (Mr Robert Setter – A/Director-General)</i>
24.	<i>Department of Corrective Services (Mr Neil Whittaker – A/Director-General)</i>
25.	<i>INCorrections Network (Ms Matilda Alexander – Coordinator; Prisoners Legal Service)</i>
26.	<i>Queensland Health (Mr Michael Kalimnios – Corporate Services)</i>
27.	<i>Hon Margaret Keech – Minister for Child Safety and Minister for Women</i>
28.	<i>Queensland Police Service (Mr Robert Atkinson; Commissioner)</i>
29.	<i>Not tabled</i>
30.	<i>Mr Robert Needham – CMC (supplementary submission)</i>
31.	<i>Mr Robert Needham – CMC (addendum submission)</i>
32.	<i>Mr Alan MacSporran SC – Parliamentary Crime and Misconduct Commissioner</i>

Appendix Three – Witnesses at the Public Hearings

Wednesday 19 November 2008	
Crime and Misconduct Commission	Mr Robert Needham (Chairperson) Dr David Gow, part-time Commissioner Mr John Callanan – Assistant Commissioner, Crime Mr Stephen Lambrides – Assistant Commissioner, Misconduct Mr Peter Scanlan, Executive Director Ms Helen Couper, Director, Complaints Services
Queensland Police Service	Commissioner Robert Atkinson Assistant Commissioner Peter Martin – Ethical Standards Command
The Queensland Police Commissioned Officers' Union of Employees	Mr Peter Savage – President
Queensland Health	Mr Stephen Hardy; Director – Ethical Standards Unit Ms Yvonne Li – Assistant Director – HR Policy and Recruitment

Thursday 20 November 2008	
Department of Emergency Services	Ms Yolande Yorke, Director – Strategic Policy and Planning Services Mr Mark Champion; Acting Executive Manager – Ethical Standards Unit
INCorrections	Mr Greg Mackay; Director – UnitingCare Centre for Social Justice Ms Marg O'Donnell; Chairperson of the Legal Aid Queensland Board
Department of Main Roads	Mr Trevor Chippindall; Director – Ethical and Governance Services
Former part-time Commissioner of the CMC	Ms Julie Cork
Crime and Misconduct Commission	Mr Robert Needham (Chairperson)

Appendix Four – Structure of the CMC



Appendix Five – 7th Parliamentary Crime and Misconduct Committee Reports

Report No.	Report Name	Date Tabled
71	Three Year Review of the Crime and Misconduct Commission	9 October 2006
72	Annual Report 2005/2006	8 November 2006
73	A report on complaints against the Crime and Misconduct Commission made by Cr David Power	18 October 2007
74	Annual Report 2006/2007	18 October 2007
75	A report on the Parliamentary Crime and Misconduct Commissioner's report on his inspection, pursuant to Section 362 of the <i>Police Powers and Responsibilities Act 2000</i> , of the CMC's records regarding surveillance device warrants for the period 1 July 2006 to 30 April 2007	17 October 2007
76	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 complaints made by Mr Terry Sullivan and others	1 November 2007
77	A report advising of the Parliamentary Crime and Misconduct Commissioner's report on his inspection, pursuant to Section 362 of the <i>Police Powers and Responsibilities Act 2000</i> , of the CMC's records regarding surveillance device warrants for the period 1 March 2007 to 30 November 2007	17 April 2008
78	Annual Report 2007/2008	9 October 2008