

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

Report No 86, May 2012

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. 86

Membership of the PCMC

To 16 June 2011

CHAIRPERSON:	Mr Paul Hoolihan MP	Member for Keppel
DEPUTY CHAIRPERSON:	Mr Jack Dempsey MP	Member for Bundaberg
MEMBERS:	Mr Steven Dickson MP	Member for Buderim
	Mr Scott Emerson MP	Member for Indooroopilly
	Mrs Betty Kiernan MP*	Member for Mt Isa
	Ms Lillian van Litsenburg MP*	Member for Redcliffe
	Mr Mark Ryan MP	Member for Morayfield
	Mr Stephen Wettenhall MP	Member for Barron River

From 16 June 2011

CHAIRPERSON:	Dr Alexander Douglas MP	Member for Gaven
DEPUTY CHAIRPERSON:	Mr Evan Moorhead MP	Member for Waterford
MEMBERS:	Ms Grace Grace MP	Member for Brisbane Central
	Mr Andrew Powell MP**	Member for Glass House
	Mr Vaughan Johnson MP**	Member for Gregory
	Mr Mark Ryan MP	Member for Morayfield
	Mr Peter Wellington MP	Member for Nicklin
	Mr Stephen Wettenhall MP	Member for Barron River

*Ms Lillian van Litsenburg MP replaced Mrs Betty Kiernan MP as a member of the PCMC on 9 February 2010

** Mr Vaughan Johnson MP replaced Mr Andrew Powell MP as a member of the PCMC on 4 August 2011

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CHAIRPERSON'S FOREWORD

I am pleased to present to the Legislative Assembly the report of the 8th Parliamentary Crime and Misconduct Committee (PCMC or Committee) of the 53rd Parliament on its Three Yearly Review of the operations of the Crime and Misconduct Commission.

The review has been carried out as required by section 292(f) of the *Crime and Misconduct Act 2001*. The Act envisages the review is to be conducted at a time near to the end of 3 years from the appointment of the Committee's members, however due to the reforms to the Queensland Parliamentary Committee system in June 2011, there were a number of changes to the membership of the PCMC which resulted in most members of the 8th PCMC only performing their role on the Committee for a period just over 2 years.

Due to the proximity to the 2012 election, and the probability that new members appointed to the Committee (in June 2011), would not be remaining on the Committee for a full period of three years, the Committee took the view that the review should be continued throughout the second half of 2011 with a view to tabling this report at a time near to 3 years from the appointment of the initial members of the 8th PCMC.

This report therefore follows the review process commenced in May 2011, when the former Chairperson of the Committee, Mr Paul Hoolihan MP called for submissions from the public and from various stakeholder organisations. Further details of the process are set out in the next section of this report.

A total of 20 submissions were received, and most of those submissions have been published by the Committee on its website. In its review, the Committee has had regard to all submissions received, regardless of whether or not they were considered appropriate for public release.

The Committee took further oral submissions from invited participants at public hearings on 3 and 4 November 2011. The Committee invited further written submissions at the public hearings from any interested parties; however no new submissions were received. The Committee did receive some additional information from various participants at the public hearings.

This review is the fourth 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 Crime and Misconduct Commission 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 Paul Favell and his Principal Legal Officer, Mr Mitchell Kunde.

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.

A handwritten signature in blue ink, appearing to read 'A Douglas', with a stylized flourish at the end.

Dr Alex Douglas MP
Chairperson

NOTES

References to public hearings refer to the hearings held by the PCMC as part of its Three Yearly Review process on 3 and 4 November 2011. Transcripts of those hearings are available on the internet at www.parliament.qld.gov.au/Committees/

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

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During the term of the 8th PCMC, Committee staff included:

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Mr Michael Gorringe, Acting Principal Research Officer

Mrs Jennifer North, Executive Assistant

Ms Tanja Dullemond, Acting Executive Assistant

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ABBREVIATIONS AND TERMS USED IN THIS REPORT

ACC	Australian Crime Commission
AFP	Australian Federal Police
AIC	Australian Institute of Criminology
CJ Act	<i>Criminal Justice Act 1989</i>
CJC	Criminal Justice Commission
C&M Act	<i>Crime and Misconduct Act 2001</i>
CMC	Crime and Misconduct Commission
CPCA	<i>Criminal Proceeds Confiscation Act 2002</i>
CRC	Crime Reference Committee
ESC	Ethical Standards Command of the Queensland Police Service
EC	Executive Committee
Fitzgerald Report	The Report on the 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
LGAQ	Local Government Association of Queensland
ODPP	Office of the Director of Public Prosecutions
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
PPRA	<i>Police Powers and Responsibilities Act 2000</i>
QCAT	Queensland Civil and Administration Tribunal
QCC	Queensland Crime Commission
QPS	Queensland Police Service
SIU	Strategic Intelligence Unit
TI	Telecommunications Interception
UPA	Unit of public administration
WPA	<i>Witness Protection Act 2000</i>
WPU	Witness Protection Unit

RECOMMENDATIONS

RECOMMENDATION 1	7
<p>The Committee recommends the Government consider amending section 230 of the C&M Act – Appointment of part-time Commissioners to ensure that when appointing new part-time Commissioners, consideration is given to the skills and experience held by standing commissioners to maintain a broad range of experience and qualifications mentioned in section 225(b) between commissioners.</p>	
RECOMMENDATION 2	14
<p>The Committee recommends the Government retain sections 247(1), (2) & (3) of the <i>Crime and Misconduct Act 2001</i> in their present form to limit the duration of employment of senior officers and assistant commissioner to a maximum of 10 years (subject to section 247(3A)).</p>	
RECOMMENDATION 3	14
<p>The Committee recommends the Government amend 247(3A) of the <i>Crime and Misconduct Act 2001</i> to allow a reappointment of a senior officer (for a period of five years) and exceed the ten year limit, if the senior officer:</p> <p>(a) has been successful in being appointed to an Assistant Commissioner position or an alternative senior officer position within the CMC; and</p> <p>(b) the duration of the appointment would otherwise be limited to a period of less than five years due to the operation of section 247(3).</p>	
RECOMMENDATION 4	16
<p>The Committee recommends that the CMC retains its current structure and considers that there is no benefit gained in separating its crime area and misconduct areas into separate organisations.</p>	
RECOMMENDATION 5	27
<p>The Committee recommends that the government consider the allocation of additional resources to the CMC’s forensic computing unit in order to better support investigations of paedophilia and child exploitation material.</p>	
RECOMMENDATION 6	40
<p>The Committee recommends that the Government consider removing the requirement in the <i>Criminal Proceeds Confiscation Act 2001</i> that the Attorney-General be briefed before proceedings in relation to money laundering can be commenced.</p>	
RECOMMENDATION 7	41
<p>The Committee recommends that as a priority the Government allocate greater resources to the Crime and Misconduct Commission’s proceeds of crime function in order to assist the CMC in retaining existing staff and attracting new staff while also meeting the demand for new civil confiscation actions.</p>	
RECOMMENDATION 8	46
<p>The Committee recommends that its successor committee monitors the changes to the misconduct area of operations to evaluate the ongoing effectiveness of the CMC’s internal restructure embedding prevention officers within investigation teams.</p>	
RECOMMENDATION 9	49
<p>The Committee recommends that both the Government and the CMC take a more active approach in promoting the process of devolution in any communication strategies relating to government departments complaints or disciplinary processes in order to assist participants involved in misconduct complaints processes to become aware of, and understand how, their complaints will be managed.</p>	
RECOMMENDATION 10	52
<p>The Committee recommends that the CMC continue to work with the Department of Communities and the Commissioner for Children and Young People and Child Guardian to closely monitor complaints received by young</p>	

people in detention centres to identify whether there are any trends in complaints received or systemic issues that require further attention.

RECOMMENDATION 1152

The Committee recommends that the CMC consider commencing an awareness program with Legal Aid Queensland and the Aboriginal and Torres Strait Islander Legal Service, about the role and functions of the CMC, to assist with young people in detention centres understand complaints processes and their rights within those processes.

RECOMMENDATION 1255

The Committee recommends the CMC continue its focus on closely monitoring the performance of devolved agencies when dealing with and preventing misconduct, including taking a more active involvement, if required, in matters that have been referred back to agencies to deal with.

RECOMMENDATION 1356

The Committee recommends the CMC reviews its complaint handling processes (including its processes for monitoring devolved complaints) and associated publications to ensure –

- (a) there is clear guidance on the assessment and categorisation of matters;
- (b) the assessment and categorisation of matters is communicated clearly to devolved agencies;
- (c) the requirements of a devolved agency, in dealing with matters, are able to be clearly understood; and
- (d) the level of monitoring by the CMC of devolved matters is clearly understood by all parties.

RECOMMENDATION 1457

The Committee recommends that the Department of Premier and Cabinet, as the lead public sector agency in Queensland, take an active role in ensuring all public sector agencies –

- (a) have adequate resourcing to deal with and prevent misconduct within their agency; and
- (b) have appropriate representation on the Queensland Public Sector Ethics Network to actively participate in ethics and integrity strategies that are implemented by Integrity agencies.

RECOMMENDATION 1560

The Committee recommends the Attorney-General review the current methods under which reports are provided by the CMC under section 260 of the *Crime and Misconduct Act 2001*, to enable him to fulfil his own responsibilities under the Act in ensuring the CMC operates to best practice standards, in areas such as timeliness.

RECOMMENDATION 1661

The Committee recommends after reviewing the methods under which the CMC reports that the Attorney-General takes appropriate steps, as and when required, to ensure the CMC is provided with the necessary resources to carry out its investigative functions.

RECOMMENDATION 1763

The Committee recommends that the CMC review its benchmark timeframes for conducting both misconduct investigations and reviews of matters, against the benchmarks being implemented under the new Police Complaints, Discipline and Misconduct System to try and achieve consistency across its operations and report to the Attorney-General on this matter under its section 260 report.

RECOMMENDATION 1865

The Committee recommends that the CMC review its communication processes with agencies, complainants and persons under investigation and puts in place a process whereby the CMC provides stakeholders with an estimated timeframe for its investigations at the outset and regular updates throughout the conduct of the investigation.

RECOMMENDATION 1966

The Committee recommends that the CMC continue its assessment of agencies' ability to understand and deal with official misconduct and provide section 40 directions, as appropriate, to assist with timeliness in the complaints handling processes.

RECOMMENDATION 2068

The Committee recommends that the Government gives a high priority to advancing the legislative amendments required to support the enhancements to the Police Complaints, Discipline and Misconduct System and should aim to introduce the amendments into Parliament for passage by the end of 2012. This includes recommendations from both *Setting the Standard* and *Simple, Effective, Transparent, Strong*.

RECOMMENDATION 2169

The Committee recommends that future Committees closely monitor the operations of the CMC under the new Police Complaints, Discipline and Misconduct System in order to identify any implementation problems and make recommendations to the Government for any changes as required.

RECOMMENDATION 2269

The Committee recommends the Attorney-General and Minister for Justice as responsible minister ensures the CMC has adequate resources to operate effectively under the new Police Complaints, Discipline and Misconduct System, as envisaged by the Independent Panel’s report.

RECOMMENDATION 2373

The Committee recommends that the Government support the CMC in resolving any inter-jurisdictional issues in the application of the jurisdiction of the CMC to GOCs as quickly as possible, including making amendments to the relevant legislation, in order to provide certainty to the processes and procedures being implemented by both the CMC and the GOCs to comply with the new arrangements.

RECOMMENDATION 2473

The Committee recommends that successor committees closely monitor the CMC’s supervision of Government Owned Corporations over the next reporting period to assess the effectiveness of the new arrangements

RECOMMENDATION 2579

The Committee recommends that the CMC review its current media policies, including its *Communication* policy and its policy on *Releasing Information to the Media* in order to establish whether any amendments are required to enhance the public confidence in the conduct of its operations.

RECOMMENDATION 2679

The Committee recommends that the CMC consider developing a specific, publicly available policy on dealing with matters referred to it about serving public officers or candidates for public office during an election campaign.

RECOMMENDATION 2782

The Committee recommends that no amendment is required to the Crime and Misconduct Act 2001 in relation to the publication of CMC reports.

RECOMMENDATION 2885

The Committee recommends that in developing the legislative changes required for implementation of the new Police Complaints, Discipline and Misconduct System, the Government reviews all relevant time periods to ensure there is consistency across legislation and the time periods provided are reasonable.

RECOMMENDATION 29100

The Committee recommends the Government gives a high priority to completing the review of Chapters 3 and 4 of the *Crime and Misconduct Act 2001* as previously recommended by the CMC and the previous PCMC and supported by the former Government in 2009 – in order to develop uniform provisions with generic application to CMC functions where appropriate.

RECOMMENDATION 30111

The Committee recommends the Government gives a high priority to completing the review of the provisions of the *Crime and Misconduct Act 2001* to ensure the Act clearly sets out which privileges are abrogated or unaffected by the relevant provisions of the Act and provide certainty to the operations of the CMC.

RECOMMENDATION 31 137

The Committee notes the excellent record of the CMC in the area of witness protection and recommends that the CMC continue to have responsibility for the witness protection function.

RECOMMENDATION 32 147

The Committee recommends that future PCMCs monitor the operation of the *Public Interest Disclosure Act 2010* and the CMC’s role within that Act to assess the ongoing adequacy of the Queensland whistleblower protection system.

RECOMMENDATION 33 157

The Committee recommends that section 213 of the *Crime and Misconduct Act 2001* be amended to clarify the protection given extends to a range of information, including but not limited to the following examples: staff security vetting information, staff and external participants’ research surveys, the records of internal committees, and internal investigations of CMC Staff. The Act should also clearly state where reports are provided to the PCMC at the Committee’s direction, they are subject to parliamentary privilege.

RECOMMENDATION 34 162

The Committee recommends that section 300(2) of the *Crime and Misconduct Act 2001* be amended to provide that the chair of the Parliamentary Crime and Misconduct Committee must be a member nominated as chairperson by the Leader of the Opposition.

RECOMMENDATION 35 167

The Committee recommends that section 292(f) of the *Crime and Misconduct Act 2001* be amended to fix the timeframe for the review of activities of the Crime and Misconduct Commission to every five years.

RECOMMENDATION 36 170

The Committee recommends that the Attorney-General and Minister for Justice review the recruitment and selection processes for Commissioners to ensure that sufficient time is allocated to allow a process to run in its course, including factoring in an appropriate timeframe for seeking the bipartisan support of the Committee.

RECOMMENDATION 37 170

The Committee recommends the Government take a more active role in promoting the importance of CMC Commissioners to ensure that the highest quality candidates are attracted to applying for the positions without the need for the Government to seek out or head-hunt applicants to apply.

RECOMMENDATION 38 177

The Committee recommends that section 317(7) of the *Crime and Misconduct Act 2001* (the Act) be amended to allow the Parliamentary Commissioner to delegate his powers under chapter 12 of the PPRA to a legal practitioner engaged by the Speaker under section 315(2) of the Act.

1. INTRODUCTION

1.1 Background

The Parliamentary Crime and Misconduct Committee (PCMC or Committee) is an all-party committee of the Queensland Legislative Assembly established under the *Crime and Misconduct Act 2001* (C&M Act).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 fulfill its monitoring and review obligations. The C&M Act specifically provides that a function of the PCMC is:

*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.*³

The review is not a clause by clause review of the C&M Act. As the relevant section of that Act provides, it is a review of the activities of the CMC over the previous three years and may result with recommendations to amend the C&M Act being included in the Committee's report to the Legislative Assembly. Any such recommendations will be subject to the scrutiny of the government of the day and if adopted, may be subject to further consultation as part of the legislative process.

This report presents the results of the three year review conducted by the PCMC of the 53rd Parliament.⁴ It is the eighth such report. Details of the reviews undertaken by earlier Committees, including the Parliamentary Criminal Justice Committee (PCJC) are set out in Appendix 1 of this report.

1.2 The review process

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.

The review process began in May 2011 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 15 July 2011.

¹ C&M Act, section 291.

² C&M Act, section 292.

³ C&M Act, section 292 (f).

⁴ The 8th PCMC was appointed on 23 April 2009, however as a result of reforms to the Queensland parliamentary committee system, on 16 June 2011, there were a number of changes to the membership of the PCMC, including the appointment of the first non-Government chairperson, Dr Alex Douglas MP.

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. Twenty written submissions were received by the Committee, most of which were published on the Committee's website in the second half of 2011.⁵ A list of submissions is provided in Appendix 2 of this report.

The Committee also received evidence through public hearings conducted on 3 and 4 November 2011. These hearings enabled the Committee to hear directly from key organisations 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 3. Transcripts of the hearings are also available on the Committee's website.

The Committee notes that the process for the review was queried by the Queensland Police Union of Employees in its submission⁶ and at the public hearing on 3 November 2011. The Committee has addressed this issue in *Chapter 12 – Oversight of the CMC* of this report.

1.3 Contemporaneous reviews during the review period

The Committee notes that throughout the period which is the subject of this review, the following reviews, which may have an impact on the activities of the CMC, were also underway –

- *Simple Effective Transparent Strong* – An independent review of the Queensland Police Complaints, Discipline and Misconduct System;⁷
- The Queensland Government's review of chapters 3 & 4 of the C&M Act (arising out of the 7th PCMC's three year review);⁸ and
- Department of Justice and Attorney-General consideration of the recommendations in the Committee System Review Committee's report on the parliamentary committee system.⁹

To avoid any duplication of effort, the Committee has attempted to not address matters through this review that are currently being considered by those review processes, although throughout this report references have been made, where appropriate, to those other reviews.

⁵ www.parliament.qld.gov.au/pcmc.

⁶ Submission No. 12 – QPUE.

⁷ Report tabled 13 May 2011; Government response tabled 31 August 2011.

⁸ Report tabled 20 April 2009; Government response tabled 20 October 2009.

⁹ Report tabled 15 December 2010; Government response tabled 9 March 2011.

2. OVERVIEW OF THE FUNCTIONS AND STRUCTURE OF THE CMC

2.1 The Crime and Misconduct Commission

The CMC is an independent statutory body created to combat and reduce the incidence of major crime and continuously improve the integrity of, and to reduce the incidence of misconduct in the public sector in Queensland.¹⁰

The CMC came into existence on 1 January 2002 by the merger of the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC).¹¹ As at 30 June 2011, the CMC has a total budget of \$48.56 million dollars and has approximately 325 employees.¹²

2.2 Overview of the CMC's functions

The *Crime and Misconduct Act 2001* (C&M Act) sets out the functions of the CMC as:

- Prevention – helping prevent major crime and misconduct;¹³
- Major crime – investigating major crime referred to it by the Crime Reference Committee;¹⁴
- Misconduct – raising the standards of integrity and conduct in units of public administration and ensuring complaints about misconduct are dealt with in an appropriate way;¹⁵
- 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 functions;¹⁶
- Intelligence – gathering and analysing intelligence to support the proper performance of its functions;¹⁷
- Witness protection – operating a witness protection program;¹⁸
- Civil confiscation – undertaking civil proceedings to recover the proceeds of crime regardless of whether the owner has been convicted of a criminal offence;¹⁹ and
- Any function conferred on it under another Act.²⁰

¹⁰ C&M Act, section 4.

¹¹ *Ibid.*, section 220.

¹² *CMC Annual Report 2010-11*, page 3.

¹³ C&M Act, section 23.

¹⁴ *Ibid.*, section 25.

¹⁵ *Ibid.*, section 33.

¹⁶ *Ibid.*, section 52.

¹⁷ *Ibid.*, section 53.

¹⁸ C&M Act, section 56(a) and *Witness Protection Act 2000*.

¹⁹ C&M Act, section 56(b) and *Criminal Proceeds Confiscation Act 2002*.

²⁰ C&M Act, section 56(c). For example, the *Police Powers and Responsibilities Act 2000* has required the CMC to review the operations of police move-on powers, powers to deal with people affected by potentially harmful things, powers to deal with drivers evading police officers, and powers to deal with excessively noisy motorbikes.

This report examines the way the CMC has performed its functions since the previous review in 2009.

It has been submitted to the Committee that the functions of the CMC should be revisited, in particular that the CMC's crime and witness protections functions should be removed from the CMC and vested with the Queensland Police Service.²¹ These matters will be dealt with in the relevant chapters of this report which deal with those particular functions.

2.3 The Commission

Chairperson and part-time commissioners

The membership of the Commission itself consists of five Commissioners, one full-time Commissioner who is also the Chairperson and chief executive officer of the CMC, and four part-time Commissioners who are community representatives.²² Further details on the Commission and its operations can be found in *Chapter 11 – Corporate Support and Governance*.

Current members of the Commission are:

Chairperson:	Mr Ross Martin SC
Part-time Commissioners:	Mrs Judith Bell Hon Philip Nase Professor Marilyn McMeniman AM Mr George Fox (civil liberties Commissioner)

Appointment of Commissioners

The process for the appointment of Commissioners is contained within the C&M Act. The Act requires that Commissioners are appointed by the Governor in Council²³ and that they must not hold office for a period of more than five years in total.²⁴

The appointment process requires the Minister (the Attorney-General) to advertise nationally for applications for the Chairperson and throughout the State for applications for part-time commissioners (except for the civil liberties Commissioner).²⁵ The appointment process for the civil liberties commissioner requires the Minister to seek two nominations each from the Bar Association of Queensland and the Queensland Law Society.²⁶

Before nominating a person for appointment, the C&M Act provides that the Minister must first consult with the PCMC and may only nominate a person who has the bipartisan support of the Committee.²⁷

²¹ Submission No. 12 – QPUE, pages 2-4.

²² C&M Act, section 223.

²³ Ibid., sections 229 and 230.

²⁴ Ibid., section 231.

²⁵ Ibid., sections 227(1) & (2).

²⁶ Ibid., section 227(3).

²⁷ Ibid., section 228.

For appointments of part-time Commissioners, the Minister must also consult with the Chairperson of the CMC. The Committee's usual practice over recent years has been to interview the Attorney's nominee prior to providing its bipartisan support or otherwise, to ensure the Committee is satisfied with the proposed nominee.

Appointments and reappointments made by the 8th PCMC during the term of the 53rd Parliament include:

Appointments

- The Hon Martin Moynihan AO QC, who was appointed as Chairperson on 8 February 2010 for a period of two years to replace Mr Robert Needham whose maximum term of five years ended on 31 December 2009.
- Professor Marilyn McMeniman AM, who was appointed on 8 April 2011 for a period of three years to replace Dr David Gow whose maximum five year term finished on 30 September 2010.
- Mr George Fox who was appointed as the civil liberties commissioner on 23 September 2011 for a period of three years to replace Ms Ann Gummow whose maximum five year term finished on 20 August 2011.
- Mr Ross Martin SC, who was appointed as Chairperson on 5 March 2012 to replace the Hon Martin Moynihan AO QC, who resigned as Chairperson effective 18 November 2011.

Reappointments

- Ms Ann Gummow was reappointed as the civil liberties Commissioner on 21 August 2009 for a further period of 2 years.
- Mrs Judith Bell was reappointed as a part-time Commissioner on 3 June 2011 for a further period of 2 years.
- Mr Philip Nase was reappointed on 6 November 2011 as a part-time Commissioner for a further period of 2 years.

Further commentary on the appointment process of the CMC Commissioners is detailed at *Chapter 12 – Oversight of the CMC*.

Qualifications of Commissioners

The C&M Act sets out the qualifications required for appointment as the CMC Chairperson and part-time commissioners.²⁸

Chairperson

The only mandatory requirement for Chairperson of the Commission is that the person must have served as, or is qualified for appointment as, a judge of either the Supreme Court of any State or the

²⁸ Ibid., sections 224 & 225.

High Court or the Federal Court.²⁹ This has been a statutory requirement since the inception of the CJC arising out the Fitzgerald Report where it was stated:

It will be necessary to attract persons of the highest calibre and expertise to membership [sic] of the CJC. Conditions of such membership must be attractive. That is particularly so for the Chairman. Flexibility will be required to attract the best available talent. The Chairman's position should be widely advertised and filled only after evaluation of and report upon all applicants by independent consultants. The Government should consult the Criminal Justice Committee about the appointment.

*The Chairman of the CJC should be qualified for appointment as a judge of, or has been formerly a judge of, the High Court of Australia, the Federal Court of Australia or a Supreme Court in Australia. Legal considerations will be a significant part of many, if not most, of the multitude of problems and issues with which the CJC will have to deal. The Chairman may also have to preside over hearings.*³⁰

The Chairperson is also the CMC's chief executive officer and as such is responsible for the administration of the CMC and the proper performance of the CMC's functions.³¹

Part-time Commissioners

The qualifications for the part-time Commissioners, whose positions on the Commission are as community representatives fall under two categories:

- (1) the civil liberties Commissioner – who must be an Australian lawyer with at least five years experience and with a demonstrated interest in civil liberties;³² and
- (2) the remaining part-time Commissioners – who must have qualifications or expertise in one or more of the areas of: public sector management and review; criminology; sociology; crime research or crime prevention; or community service experience or experience relating to public sector officials and public sector administration.³³

It is also required that at least one of the part-time Commissioners must be a woman.³⁴

It has been submitted to the Committee that as the CMC is a significant public sector agency requiring both legal and management expertise, there should to be an emphasis on management experience as a consideration for the appointment of the Chairperson.³⁵

²⁹ Ibid., section 224.

³⁰ Fitzgerald Report, page 309.

³¹ C&M Act, section 251.

³² Ibid., section 230(2).

³³ Ibid., section 230(3).

³⁴ Ibid., section 230(4).

³⁵ Submission No. 15, page 4.

The Committee considers that there is some merit in this argument as the Chairperson performs the dual role of chief executive officer of what could be considered the equivalent of a small to mid-sized government department. However, the Committee notes there have been some significant changes to the corporate governance of the CMC over the past three years (which are detailed in *Chapter 11 – Corporate Support and Governance*) to enhance the management of the Commission. This includes the appointment of a permanent Executive General Manager (EGM) and the establishment of an Executive Leadership Group (ELG). The Committee considers that the primary consideration for the appointment of Chairperson should be that they are an expert legal practitioner and this should not be sacrificed for management skills or experience.

In addition to the expert support provided to the Commission by the EGM and the ELG – as stated above, the ability also exists for part-time Commissioners to have expertise in the area of public sector management and or administration. While the Committee considers that management experience held by the Chairperson is an obvious advantage, the Committee does not consider that any mandatory requirement in this regard should be added to the qualification requirements in the C&M Act.

The Committee recognises that in relation to the provisions in the C&M Act on the appointment of part-time Commissioners, it is possible for the remaining part-time Commissioners to all hold qualifications or expertise in the same area. The relevant section only requires commissioners to hold one or more of the relevant qualifications.³⁶ The Committee considers that at all times, the part-time Commissioners should hold a broad cross-section of skills and expertise between them and it would not be productive for the Commission to consist, for example, entirely of lawyers. The Committee considers that when appointing a part-time Commissioner, consideration must be given to the skill base or expertise currently held by the standing Commissioners to ensure a broad range of skills and experience is held by the part-time Commissioners.

Recommendation 1

The Committee recommends the Government consider amending section 230 of the C&M Act – Appointment of part-time Commissioners to ensure that when appointing new part-time Commissioners, consideration is given to the skills and experience held by standing commissioners to maintain a broad range of experience and qualifications mentioned in section 225(b) between commissioners.

The above recommendation on qualifications of the commissioners should be read together with the Committee’s further recommendations in Chapter 12 on the appointment process for Commissioners.

Assistant Commissioners and senior officers

The C&M Act also provides specific provisions for the appointment of other senior members of the CMC, in particular, the appointment of the Assistant Commissioner, Crime and the Assistant

³⁶ C&M Act, section 230; public sector management and review; criminology; sociology; crime research or crime prevention; or community service experience or experience relating to public sector officials and public sector administration.

Commissioner, Misconduct.³⁷ The assistant commissioners are directly responsible to the Chairperson of the CMC for the proper performance of the CMC's crime and misconduct functions.³⁸

The qualifications required for the assistant commissioner positions are the same as those of the Chairperson, i.e. an assistant commissioner must have served as, or is qualified for appointment as, a judge of either the Supreme Court of any State or the High Court or the Federal Court.³⁹ Given the importance of these positions, the C&M Act provides that the Minister must advertise nationally for applications⁴⁰ and before nominating a person for appointment by the Governor in Council, the Minister must consult with both the Leader of the Opposition and the Chairperson of the CMC.⁴¹ The Committee does not have a role in the appointment of the Assistant Commissioners, however previously the Minister has advised the Committee of proposed nominations as a courtesy to the Committee.

The CMC may employ other senior officers necessary to enable the CMC to perform its functions.⁴²

2.4 Tenure of Assistant Commissioners and senior officers

Background

In response to concerns raised by the CMC during the 6th PCMC's term, that committee considered what should be an appropriate tenure for Assistant Commissioners and senior officers of the CMC.

The CMC felt that the restriction in the C&M Act on tenure which had been there from the Act's inception was causing difficulties in recruiting and retaining suitable staff. The C&M Act provided at that time, that Assistant Commissioners and certain other senior officers of the CMC must not hold office in the CMC as an Assistant Commissioner or senior officer for more than eight years in total.⁴³

The 6th PCMC stated in its report that while it understood the concerns raised by the CMC, it was also eager to ensure there was healthy renewal in the senior ranks of the Commission. The 6th PCMC's report states:

The Committee expressed the view that it was paramount that the Commission engage in thorough and effective succession planning, and that any specific mechanism limiting tenure, and any debate regarding such a mechanism, should not detract from the need for the Commission to investigate and implement appropriate recruitment, training and retention strategies. The Committee and the Commission had a number of discussions regarding appropriate succession planning strategies.⁴⁴

³⁷ Ibid., section 239.

³⁸ Ibid., sections 252 and 253.

³⁹ Ibid., section 240.

⁴⁰ Ibid., section 242.

⁴¹ Ibid., section 243.

⁴² Ibid., section 245.

⁴³ C&M Act (reprint 2F), section 247(3).

⁴⁴ 6th PCMC, Report No. 71 – Three Yearly Review of the Crime and Misconduct Commission, page 7.

After consultation with the Premier and the Attorney-General, this resulted with the Crime and Misconduct and Other Legislation Amendment Bill being introduced in April 2006 and passed in August 2006. That Bill amended the tenure provision, extending the limit from eight to 10 years. It also included an ability for the period of employment to be extended in certain circumstances, that is, an Assistant Commissioner or senior officer who has held office in the Commission as an Assistant Commissioner or senior officer for 10 years in total is able to be reappointed for a further term if the reappointment is necessary for the efficient operation of the Commission, provided it does not result in the person holding office for more than 15 years in total.⁴⁵ Notice of any such extension must be provided to the PCMC.⁴⁶

The 6th PCMC recommended future PCMCs monitor the issues of succession planning and senior staff retention and renewal at the CMC.⁴⁷ The 7th PCMC did not make substantive comment on the matter in its three year review but noted the advice from the CMC that succession planning was a major strategy yet to commence.⁴⁸

Recent events

This matter was recently touched upon by the Independent Expert Panel reviewing the Queensland Police Complaints, Discipline and Misconduct System.⁴⁹ That review noted the 6th PCMC's examination of the matter as outlined above and noted further, that the preservation of rights contained in the C&M Act applying to assistant commissioners and senior officers and the position of the CMC that its recruitment difficulties were still relevant.

The Expert Panel (in the context of the misconduct area) recommended that:

...in the interim, the concept of a rotational tenure in and out of the CMC's Misconduct area would support exchange of experiences and perspectives between the broader public service and the oversight agency for misconduct. Towards that objective, and without affecting existing rights in terms of appointment at the CMC, this Review recommends development of a dedicated workforce management strategy, in consultation with the broader public sector (through the Public Service Commission in the first instance) that identifies and facilitates suitable secondment opportunities, or staff exchange programs, for officers of the CMC Misconduct area (including 'senior officers') into the Queensland public service and for officers of public sector agencies into the CMC. Any current legislative or employment arrangement disincentive for officers employed under the Public Service Act 2008 to undertake a term of service with the CMC should be remedied. This Review supports a statutory preservation of rights provision for officers below senior officer level, similar to section 249 of the Crime and Misconduct Act 2001 (in favour of the Assistant Commissioners and senior officers). The positive effect of such provision should include a natural turnover of staff after reasonable periods in the CMC as the source public service agencies manage their

⁴⁵ C&M Act, section 247(3A).

⁴⁶ Ibid., section 247A.

⁴⁷ 6th PCMC, Report No. 71 – Three Yearly Review of the Crime and Misconduct Commission, page 7.

⁴⁸ 7th PCMC, Report No. 79 – Three Yearly Review of the Crime and Misconduct Commission, page 110.

⁴⁹ *Simple, Effective, Transparent, Strong – An independent review of the Queensland police complaints, discipline and misconduct system*, May 2011, pages 42-44.

outside secondments in the normal course; as well as the removal of the current employment security disincentive for officers below 'senior officer' level to undertake service at the CMC, thereby addressing a current obstacle for the CMC in filling some of its positions.

The secondment and staff exchange strategy is not intended to disaffect any current employment entitlements for officers of the CMC or of public sector agencies. The tenure entitlements for 'senior officers' participating in this initiative should be preserved such that the duration of the secondment outside the CMC does not form part of the duration of appointment counted in the maximum term.

The human resource management areas in both the CMC and the QPS should prepare workforce management plans that will implement these strategies appropriately and transparently.⁵⁰

The Expert Panel recommended that the issue of tenure should be examined further by this committee in the conduct of this review.⁵¹ The Government, in its response to the Expert Panel's review supported that recommendation and asked the Committee to consider the tenure issues in the course of this review.

Throughout the term of the 8th PCMC, the Committee has had many discussions with the CMC at its regular meetings in relation to staffing within the CMC. The Committee has taken a particular interest in staffing developments across several areas of the CMC such as the Research division, Proceeds of Crime area and also within the Misconduct area.

The Committee notes that in relation to workforce management issues in general, the CMC accepts that it continues to have issues bearing on:

- attracting, engaging and retaining experienced staff;
- organisational capability and improvement;
- managing a multi-generational workforce; and
- strengthening management and supervisory practice at all levels of the organisation.⁵²

The CMC is continuing to develop programs, policies and strategies to build its capacity in the above areas and the Committee considers that it is of vital importance that the Commission does all that it can to ensure the CMC remains a supportive, challenging and satisfying workplace so that it attracts and retains high quality and effective staff. The Committee notes the recommendations arising out of the Expert Panel's report on the police disciplinary system will have a significant impact on staffing arrangements within the CMC, however the Committee supports the changes and recommends the next PCMC monitors how the CMC achieves the intended outcomes over the year or years ahead.

These types of matters, without doubt, have an impact on the role of senior officers and managers in dealing with organisational change in addition to effectively contributing to the organisation's core role

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Submission No. 14 – CMC, page 84.

and functions. The value of effective, well experienced staff in an organisation cannot be discounted when there are periods of staff turnover and organisational change in functions and roles.

Setting aside the Chairperson and part-time Commissioners, whose tenure is covered under separate provisions, there are approximately 10 senior positions within the CMC (including the Assistant Commissioners) with specified tenure covered by the provisions of section 247 of the C&M Act. In relation to the direct issue of tenure for senior officers of the Commission, the CMC submitted to this review that it considers:

*the current tenure provisions for senior officers strike a reasonable balance between the competing needs of making these positions attractive to potential candidates; retaining a sufficient bank of experience in the organisation; and achieving a satisfactory level of turnover and 'new thinking' among the executive leaders of the CMC.*⁵³

The Committee discussed this matter further with the CMC at the public hearing on 3 November 2011. At that time, it was submitted to the PCMC by the CMC Executive General Manager, Ms Edith Mendelle, that the tenure provisions are:

*...working quite well. Although there have been no section 247(3) appointments that have exceeded that maximum threshold, we find it actually quite useful to retain that capacity should we require it.*⁵⁴

Ms Mendelle, in commenting on succession planning initiatives within the CMC, stated in relation to the tenure provisions went on to say:

*...In addition, we monitor tenure positions to see where we can extend where there is an organisational need. We have just recently introduced a transition-to-retirement policy, which seeks to I guess have a corporate knowledge transfer to other staff. This particular policy is targeted at our more mature staff—that is, 55 and over—and trying to sort of capture that corporate knowledge and transfer that corporate knowledge to other staff, and this is possible in that environment of mobility. In addition, we have quite aggressive recruitment strategies in place and we are quite pleased that at a recent recruitment drive in our research area we have received a large number of high-calibre applicants. I think that demonstrates that we are regarded as a progressive employer—someone that is well regarded, especially in our research area.*⁵⁵

The Acting Chairperson summed up the point reinforcing the CMC's written submission that the Commission thought the current provisions provided an appropriate balance between the accepted need for renewal at a senior level within the CMC and appropriate level of stability. The Assistant Commissioner, Crime – Mr John Callanan, whose appointment in that role was within the last month of its statutory time limit, provided the Committee with his view. Mr Callanan stated:

...The way the act is framed, the potential for a senior officer to go past the 10 years depends on the organisational necessity or operational necessity. It is always going to be a call for

⁵³ Ibid., page 86.

⁵⁴ Transcript – Public Hearing, 3 November 2011, page 15.

⁵⁵ Ibid.

the commission whether it is time for renewal or there is such an array of circumstances that an individual becomes kind of indispensable. If you go the statutory example offered in legislation, it talks about the situation where you have someone appointed to a senior officer level – that is an SES level position and then appointed assistant commissioner. You are not going to get the true value of that officer unless there is potential for that officer to sit in the chair as assistant commissioner for longer than the 10 years. You may have a very competent director who is there for seven years. You want to put him in for five years, and that cannot happen if the 10 years cuts out.⁵⁶

Mr Callanan also further highlighted what he considered were additional challenges in this area:

...if you were to put your hand up, in a sense, and say ‘Look, I’m operationally necessary’, you are kind of ignoring your own endeavours to put proper succession planning in place over the time of your tenure. The other thing with succession planning is that it does not matter how much succession planning you do; ultimately you have to engage in a proper merit based selection process. So you may have been bringing someone along thinking, ‘This is the way of the future,’ but it is a competitive world out there and often better people emerge.”

This Committee, like its predecessor committees, believes that it is appropriate for limited tenure provisions to be in place for its senior officers and Assistant Commissioners to ensure there is (as described by the 6th PCMC), a healthy renewal in the senior ranks of the Commission. In addition to bringing fresh, talented officers into these senior roles, it is hoped that officers finishing their statutory terms with the Commission won’t all be ending their careers at the CMC. A by-product of this process of renewal is that the senior officers who leave the Commission will take the skills and experiences they have gained from working in the State’s top integrity organisation with them to future workplaces, be it the public service or the private sector. This ongoing sharing of knowledge then brings positive influences to other workplaces which is valuable for the ongoing improvement of the integrity and accountability framework across the State.

The Committee has considered comparable organisations across the country and notes that the Western Australian Corruption and Crime Commission (CCC) makes no differentiation between its senior officers and other staff. All staff of the CCC may be appointed for a term not exceeding five years and are eligible for reappointment.⁵⁷ Assistant Commissioners of the New South Wales Independent Commission Against Corruption (ICAC) may be appointed for a term not exceeding seven years and may be reappointed (if that term is less) provided the total of the combined terms does not exceed seven years in total.⁵⁸

The Committee has also considered the effect of succession management processes and what actions the CMC has put in place as part as a succession management strategy. After an examination of the Australian Public Service Commission research paper on managing succession⁵⁹ the Committee notes that there is indeed, no simple ‘one size fits all’ model for all organisations. The CMC faces similar

⁵⁶ Ibid., page 16.

⁵⁷ *Corruption And Crime Commission Act 2003 (WA)* – section 179.

⁵⁸ *Independent Commission against Corruption Act 1998 (NSW)* – Schedule 1.

⁵⁹ *Managing Succession in the Australian Public Service*, Australian Public Service Commission, February 2003.

challenges to other organisations in retaining staff, yet due to the unique nature of the work it carries out, faces its own challenges in this area.

The Committee understands that succession management processes cannot provide an organisation with an automatic replacement capability for retiring staff. Open, merit based selection processes must be run which may (and if appropriate, ought to) result with external candidates being successful in the appointment to vacant positions. Succession planning strategies must focus on developmental outcomes and not directly at individual selection or promotional outcomes for specific positions.

From discussions with the CMC on staffing matters at the Committee's joint meetings on the initiatives the CMC is putting in place in the human resources area,⁶⁰ the Committee is satisfied that the CMC is heading in the right direction and taking positive steps to establish the CMC as a workplace of choice. The Committee considers among those initiatives, appropriate strategies for succession management are being implemented.

With respect to the actual duration of appointments of Assistant Commissioners or senior officers, the Committee does not see any need to shorten the length of appointment from the maximum 10 years in total. The Committee is satisfied that it is appropriate for the initial appointment to be for no longer than five years and further that it is appropriate to extend an appointment to the 10 year mark based on the subject officer's performance having been of the highest standard and likelihood of contributing at a high standard to the Commission's performance.

The Committee is not satisfied however that there is a need to continue the operation of the reappointment clause in section 247(3A) of the C&M Act, as it currently stands. The Committee considers that if there is adequate succession planning and other workplace strategies in place to entice quality external applicants – there should not be a need to extend any appointment out to 15 years.

However the Committee does consider that there is some merit in being able to extend the employment of a commission officer beyond 10 years if:

- (a) a senior officer within the Commission has been successful in being appointed to an Assistant Commissioner role or another senior officer role; and
- (b) the duration of the appointment would be otherwise limited to less than 5 years due to the operation of limited tenure provisions.

In this instance the Committee considers that the successful appointee should be afforded the ability to hold office in the new position for at least 5 years being the base initial term for appointments of senior officers and Commissioners. The Committee considers that this continues to strike an appropriate balance between renewal and achieving stability, but limits the occasions when appointments will exceed the duration of 10 years.

⁶⁰ Submission No. 14 – CMC, pages 84 & 85.

Recommendation 2

The Committee recommends the Government retain sections 247(1), (2) & (3) of the *Crime and Misconduct Act 2001* in their present form to limit the duration of employment of senior officers and assistant commissioner to a maximum of 10 years (subject to section 247(3A)).

Recommendation 3

The Committee recommends the Government amend 247(3A) of the *Crime and Misconduct Act 2001* to allow a reappointment of a senior officer (for a period of five years) and exceed the ten year limit, if the senior officer:

- (a) has been successful in being appointed to an Assistant Commissioner position or an alternative senior officer position within the CMC; and
- (b) the duration of the appointment would otherwise be limited to a period of less than five years due to the operation of section 247(3).

2.5 Current structure of the CMC

The structure of the CMC has undergone some minor changes in the last three years however the CMC continues to focus on three main areas of activity:

- Combating major crime;
- Reducing misconduct and improving public sector integrity; and
- Protecting witnesses.⁶¹

As set out in the CMC's submission, the structure of the CMC is designed to carry out these primary activities and is broken down into 6 chief work areas.⁶²

The **Crime Area** works with the QPS and other law enforcement agencies to combat and prevent major crime, including organised crime, criminal paedophilia, serious crime and terrorism. The Crime area has special powers to assist it in its functions such as telephone interception and an ability to hold coercive hearings. The Proceeds of Crime unit is located within the Crime Area and is responsible for the civil confiscation scheme, designed to remove the financial incentive from engaging in serious crime.

The **Misconduct Area** deals with matters to ensure that public money and resources are used to the benefit of the people of Queensland and not for private gain. The work of the Misconduct area involves identifying and enhancing the standards of integrity of the various units of public administration in Queensland and ensuring they are complied with. The Misconduct area does not simply investigate allegations of official misconduct referred to it, but also monitors other agencies in how they deal with matters referred to them. A recent change now has the Prevention team embedded within the Misconduct Area to provide a better alignment of misconduct and prevention activities.

⁶¹ Submission No. 14 – CMC, page 2.

⁶² Ibid.

The **Applied Research and Evaluation Area** carries out research into crime, misconduct, policing and policy and legislation, particularly in relation to criminal justice and public policy. Research into policy and legislation occurs through referrals by the relevant minister under section 52(1)(c) of the C&M Act or through specific requirements set out in legislation. The research area has also undergone some internal restructure in the past two years to ensure research projects focus on the CMC core roles and activities.

The **Witness protection and Operations Support area** is responsible for the protection of eligible people whose safety has been endangered as a result of assisting law enforcement agencies. The Queensland Witness Protection program operates under the *Witness Protection Act 2000* and the C&M Act and assesses all witness protection applicants from client agencies, assists protected persons to meet their court commitments and provides education and marketing sessions to referring agencies. Operations Support provides all of the CMC's specialist operational and investigative teams with physical surveillance, technical surveillance and forensic computing resources. The area is led by an Assistant Commissioner of Police attached to the CMC.

The **Intelligence area** collects, correlates and analyses information and intelligence relevant to the CMC's responsibilities. It monitors various crime markets in Queensland and shares relevant intelligence with other law enforcement and government agencies. Intelligence staff facilitate the exchange of information between the CMC's service areas and provides investigative teams with tactical information and intelligence support. The CMC's telecommunication interception activities are also managed within the Intelligence Area.

The **Strategy and Services area** provides support to all areas of the CMC to achieve their organisational goals. This includes providing services in the areas of financial, administrative, human resources, information management, communications and corporate governance services.

An organisational chart showing the basic structure and reporting responsibilities of the CMC is contained in Appendix 4 of this report.

Is the current Structure appropriate?

The Committee is aware that recent media commentary and discussion has focused on the notion of dividing the CMC into two new individual agencies, one to deal specifically with major crime and the other with misconduct, at two separate locations. This would effectively mean that the administration of major crime and misconduct would revert back to how it was dealt with previously before the establishment of the CMC when the CJC dealt with misconduct matters and major crime was overseen by the Queensland Crime Commission.

The former head of the Queensland Crime Commission (QCC), Tim Carmody SC, recently argued for this approach and was quoted in *The Courier-Mail*:

*There is a compelling case for a separate specialist agency with controlled access to necessary powers and dedicated solely to dealing with organised criminal activity in close partnership with the police service in a distinctly proactive and strategic way.*⁶³

⁶³ The war against organised crime is best waged by a dedicated organisation, *The Courier-Mail*, Tim Carmody SC, 2 March 2012.

In relation to the CMC's role in fighting major crime he says:

As the QCC (Queensland Crime Commission) did before it, the CMC should be value-adding to the police effort by identifying, assessing and targeting high-risk organised crime groups and activities and devising and implementing innovative intelligence-driven investigative strategies.⁶⁴

During the three year review hearings, Deputy Commissioner Ian Stewart of the QPS commented on how the CMC assists the QPS in the area of major crime:

In the crime function area, the QPS works closely with the CMC, including the regular provision of specialist QPS resources to assist in the investigation of serious, major and organised crime throughout the state. These collaborative efforts include engagement in joint agency multidisciplinary investigations targeting high level and recidivist targets who are involved in serious criminal activities including drug trafficking, outlaw motorcycle gangs, related crime, firearms trafficking, child exploitation and paedophilia activity. The conduct of CMC coercive examination greatly assists the QPS in advancing investigations through the collection of further collaborative evidence against persons suspected of committing serious crimes, including murder, extortion, serious assaults, armed robbery and also the identifications of proceeds of crime.⁶⁵

The Committee's view, confirmed by Deputy Commissioner Stewart, is that the CMC undertakes a crucial role in assisting the QPS in investigating major crime, through the use of investigative tools such as coercive powers and as discussed later in this report, its new telecommunications power.

As detailed in the following Chapter, the CMC's crime area continues to achieve excellent results whilst maintaining a strict separation from the misconduct area.

The Committee does not believe that dividing the CMC into two separate entities, whereby each unit would continue to perform its current function, and the considerable costs involved to do so, would enhance the CMC's abilities in its key areas of crime and misconduct. As such the Committee does not recommend any change to the CMC's current structure.

Recommendation 4

The Committee recommends that the CMC retains its current structure and considers that there is no benefit gained in separating its crime area and misconduct areas into separate organisations.

⁶⁴ Ibid.

⁶⁵ Transcript – Public Hearing, 3 November 2011, page 29.

2.6 Current resources and staffing

The CMC is a mid-sized organisation and is required to effectively focus its diverse range of staff to meet its corporate objectives. Taking into account the role of the CMC, and its broad areas of operation, the CMC is required to employ many highly specialised employees including lawyers, police officers, accountants, investigators, social researchers, Indigenous liaison officers, intelligence analysts, computing specialists, administrators and of expert support staff.

The staffing establishment for the CMC since the last three year review is set out in the following table:

	As at 30 June 2009 ⁶⁶		As at 30 June 2010 ⁶⁷		As at 30 June 2011 ⁶⁸	
	Approved establishment	Actual staff	Approved establishment	Actual staff	Approved establishment	Actual staff
Crime	49	50	49	49.4	50	47.8
Misconduct	90	74	90	81.3	95	97.2
Witness Protection and Operations Support	55	50	55	51.9	53	53
Research and Prevention	30	29.8	30	24.1	27	21.1
Intelligence	24	21.1	32	30.4	35	31.8
Corporate Services (including Executive and office of the Commission)	71	68.6	75	76.4	77	73.85
Total	319	293.5	331	313.5	337	324.75

It can be seen that the size of the CMC continues to grow commensurate with the additional roles bestowed upon it. The bulk of the increase in staff between 2009 and 2010 was due to additional positions being created for the Electronic Collections Unit and related legal support to deal with the introduction of telecommunication interception powers granted on the CMC.⁶⁹ Similarly, from 2010 to 2011 the number of permanent positions increased by 6 due to organisational restructures of several functional areas (outlined earlier this chapter) within the CMC.

The Committee notes that the CMC is still short of its full complement of staff (due to the various staffing issues outlined earlier) however the gap between the approved establishment and actual staff is closing year by year as these recruitment and retention strategies improve.

⁶⁶ CMC Annual Report 2008-09, page 56.

⁶⁷ CMC Annual Report 2009-10, page 46.

⁶⁸ CMC Annual Report 2010-11, page 62.

⁶⁹ CMC Annual Report 2009-10, page 46.

3. COMBATING MAJOR CRIME

3.1 Jurisdiction – Major Crime

One of the primary objectives of the CMC is to investigate and combat major crime. The Australian Crime Commission (ACC) in its report, *Organised Crime in Australia 2011*, estimates that serious and organised crime costs Australia between 10 and 15 billion dollars every year.⁷⁰ The monies used to combat these major crimes could otherwise be redirected to other areas of the Australian economy.

The CMC's power in relation to major crime is derived from Part 2 of the C&M Act. The definition of *major crime*, in the Act is:

- criminal activity that involves an indictable offence punishable on conviction by a term of imprisonment not less than 14 years; or
- criminal paedophilia; or
- organised crime; or
- terrorism; or
- something that is – (i) preparatory to the commission of criminal paedophilia, organised crime or terrorism; or (ii) undertaken to avoid detection of, or prosecution for, criminal paedophilia, organised crime or terrorism.⁷¹

The CMC's power to investigate major crime is based on a system of general and specific referrals from the Crime Reference Committee (CRC), a statutory committee established pursuant to section 274 of the C&M Act comprising six members, being the CMC Chairperson; the CMC Assistant Commissioner, Crime; the Queensland Commissioner of Police; the Commissioner for Children and Young People; and two community representatives.

A general referral or 'umbrella' referral to the CMC allows it to rapidly target areas of major crime without a specific referral from the CRC; however there is a requirement to notify the CRC as soon as practicable after an investigation begins. A general referral can be in areas such as suspected terrorism or criminal activity related to established criminal networks.

In July 2011, the CRC granted a new general approval for investigations by the CMC into suspected weapons related offences, including suspected organised criminal activity involving unlawful possession, use, supply, trafficking in, manufacture and modification of weapons. This new referral was in response to an apparent increase in violent crime involving guns.

The CRC grants specific referrals to the Commission which specify the particular activity being investigated and/or persons suspected of being involved in criminal activity. A specific referral is usually exercised when the CRC believes it is in the public interest and usually where the matter will not be effectively investigated using the powers ordinarily available to police.

⁷⁰ *Organised Crime in Australia 2011*, Australian Crime Commission, page 3.

⁷¹ Schedule 2 of the C&M Act.

The CMC has unique powers in the way it investigates major crime (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.

3.2 2009 Legislative change – *Scott v Witness C*

The Supreme Court decision of 2009 in the matter of *Scott v Witness C*,⁷² changed the CRC's referral process. In this matter the general referral given by the CRC was held by the court not to be a valid referral in accordance with the provisions of the C&M Act. Essentially, the decision meant that all past general referrals by the CRC were invalid and limited the matters referred by the CRC to specific matters only. In the course of its three year review in 2009, the 7th PCMC recommended that the Government consider the implications of the decision in *Scott v Witness C* to clarify the CMC's referral process.⁷³

As a consequence of the decision by the Supreme Court, Parliament urgently amended the C&M Act to retrospectively confirm all past general referrals in relation to major crime and all investigations conducted pursuant to these past general referrals. Pursuant to section 27(5) of the C&M Act, a general referral must identify the major crime to be investigated by the Commission and identify either or both of the persons involved, or suspected of being involved in the major crime and the activities constituting or suspected of constituting the major crime.

The CMC has also refined its procedures in relation to the commencement of particular investigations under a general referral.⁷⁴

3.3 Performing the crime function

Section 26 of the C&M Act sets out how the CMC performs its crime function, by:

- investigating major crime referred to it by the CRC;
- 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, including agencies and authorities outside the State or Australia, about major crime.

The CMC is reliant upon assistance from other law enforcement agencies when conducting complex investigations. Accordingly, the C&M Act provides for the establishment of police task forces to enable the CMC to carry out its crime investigations.⁷⁵

⁷² *Scott v Witness C* [2009] QSC 35.

⁷³ Report No.79 April 2009, Three Yearly Review of the Crime and Misconduct Commission, page 8.

⁷⁴ Submission No. 14 – CMC, page 23.

⁷⁵ C&M Act, section 32(1).

3.4 Major Crime

As outlined above, section 25 of the C&M Act prescribes the CMC's 'crime function' as the investigation of major crime referred to it by the CRC, with 'major crime' encompassing organised crime, paedophilia and serious crime.

The CMC's Annual Report for 2010-11 notes that 28 tactical operations were conducted, 96% of which resulted in charges, restraints or seizures. There were 12 concluded criminal paedophilia investigations resulting in 122 charges.⁷⁶ A major investigation of a south-east Queensland network suspected of selling methamphetamine and 'fantasy' during 'Schoolies Week' led to four people being charged.

Organised crime

Organised crime is defined in the C&M Act to mean two or more persons engaged in criminal activity that involves indictable offences punishable by at least seven years imprisonment; and substantial planning and organisation or systematic and continuing activity, done with a purpose of obtaining profit, gain, power or influence.⁷⁷

In preventing and investigating organised crime the CMC draws upon a broad range of internal and external expertise resources to achieve a high probability of tactical success. It investigates organised crime in conjunction with police and other agencies by setting up multidisciplinary taskforces comprising police officers, financial investigators, legal officers and intelligence analysts⁷⁸. The CMC's organised crime investigations are usually conducted in partnership with other State and Commonwealth law enforcement agencies and sometimes international agencies.

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 level of risk they pose. The CMC's objective is to prevent further crime by identifying crime markets that pose the greatest risk to the Queensland community and by dismantling organised crime networks.

Attacking organised crime networks – new telecommunications interception capability

The CMC's fight against organised crime has been enhanced by the advent of the CMC's own telecommunications interception (TI) capability.⁷⁹ The availability of TI has changed the way that the CMC conducts investigations and has allowed it to quickly identify the various roles played by individuals within criminal syndicates and the level of criminal activity these individuals carry out.

The success of the CMC's TI capability was best illustrated in its priority investigation, Operation Warrior, where the evidence obtained as a result of TI was of such a high quality that a large percentage of those arrested during the course of the operation entered guilty pleas. The CMC found that one of the advantages of TI was its preventative capacity.

⁷⁶ CMC Annual Report, 2010-2011, page 8.

⁷⁷ C&M Act, Schedule 2.

⁷⁸ Submission No. 14 - CMC, page 25.

⁷⁹ Ibid., page 26.

Usually when a drug operation is being conducted the seizure of drugs and money occurs at the end or during the operation where small amounts are purchased by covert investigators. The accuracy of the information obtained through TI allowed investigators to seize large amounts of cash and drugs that would have otherwise been distributed amongst the wider community.⁸⁰

Trends in organised crime in Queensland

At the three year review hearing before the Committee, the CMC's Assistant Commissioner Crime, Mr John Callanan, commented on the trends in organised crime in Queensland:

*In relation to organised crime, I think the trends are well identified by organisations like the Australian Crime Commission. We have problems with the so called outlaw motorcycle gangs; that is why we have our Hydra referral in place. There are issues around money laundering; that is why we have our gatekeeper referral. The trend towards the use of firearms is recognised, as I say, by our putting in place the weapons related organised crime referral. I think that is an emerging issue, whether it is going to continue to be a trend – that is, the use of firearms in organised criminal activity and the commission of firearms related offences, like trafficking in firearms itself as a form of organised crime.*⁸¹

In 2011, in response to the increased trend towards the use of firearms by organised crime groups, a stand alone general referral was provided by the CRC allowing the CMC, in partnership with the QPS, the ability to investigate organised criminal activity involving offences against the *Weapons Act 1990*. This allows the CMC to elevate its readiness to act on suspected criminal activity involving unlawful possession, use, supply, trafficking in, manufacture and modification of weapons.⁸²

Another major area of focus for the CMC's organised crime operations has been identifying and disrupting the importation, manufacture and distribution of illegal drugs by groups and syndicates.⁸³

Since the last three year review, the CMC's research unit has carried out a strategic assessment of the illicit drug market in Queensland.⁸⁴ It found that the Australian market for illicit substances continues to be one of the most expensive in the world with the result being substantial potential profit margins for organised crime groups, particularly those with strong international connections.⁸⁵

The strategic assessment also found that there had been a broadening of the supply base for illicit drugs in Queensland, in particular ecstasy, resulting in a number of persons being charged with supply type offences for the first time. This has also seen the market for ecstasy increase significantly as well as the expansion of the market for cocaine. However, the market for methamphetamine, which as noted by 7th PCMC's three year review in 2009 had increased significantly in the previous 15 years, would appear to have peaked and is in the initial phase of a period of contraction.

⁸⁰ Ibid.

⁸¹ Transcript – Public Hearing, 3 November 2011, page 14.

⁸² CMC Media Release, 8 August 2011.

⁸³ CMC Annual Report, 2010-2011, page 20.

⁸⁴ Illicit drug markets in Queensland, Crime Bulletin Series, Number 12, February 2010, page 79.

⁸⁵ Ibid.

The CMC also warned recently of an influx of the 'club' drug GHB (gamma-hydroxybutyrate) during 'Schoolies Week' (2011) noting that the drug had evolved from a drug used experimentally to a popular party drug within particular social sets. As a result of an investigation into a criminal network supplying GBH and methamphetamine ('speed' or 'ice'), a prosecution action was commenced against four persons on 49 drug and property related offences.

In order to assist police and law enforcement officers involved in drug investigations, in 2010-11 the CMC produced a guide to reflect drug commodities and prices. The guide will be updated annually to reflect trends and changes in the drug market and any new substances which would cause concern.⁸⁶

Combating organised crime networks

The CMC has conducted a number of operations since the last three year review to successfully target and disrupt organised criminal activity including Operation Warrior, one of the biggest and most significant operations in its history.

Operation Warrior

As a result of information provided by the Australian Crime Commission (ACC) and the CMC's Proceeds of Crime Unit, Operation Warrior commenced in March 2009 into the activities of a well established criminal organisation.⁸⁷ The investigation spread from Cairns to Melbourne and developed into the largest and most complex investigation ever conducted by the CMC.

Because of the scope of the investigation which had interstate and international connections, the CMC cooperated with a number of other agencies such as the ACC, NSW Police, Victorian Police, and the Australian Federal Police to target the criminal syndicate in question. A key tool used in the investigation was telecommunications interceptions (TI) which allowed investigators to identify quickly the various roles played by individuals within the syndicate and also secure high quality evidence. In the course of carrying out the investigation, the CMC discovered that one of the major advantages of TI was its preventative capacity. The accuracy of the information provided by TI allowed the CMC to quickly seize large amounts of cash and drugs that would otherwise have been distributed amongst the community.⁸⁸

Operation Warrior resulted in the following:

- 67 persons were arrested on 343 drug related charges, including 46 charges of drug trafficking in various dangerous drugs;
- the seizure of approximately 2.5 kg of methamphetamine, 91 kg of cannabis, 2.2 kg of ecstasy, 1.3 litres of GHB, steroids and cocaine. The estimated value of these drugs is approximately \$5 million; and
- the seizure or restraint of assets of a total value of \$7 million including cash of approximately \$1.2 million.

⁸⁶ CMC Annual Report, 2010-11, page 20.

⁸⁷ Submission No. 14 - CMC, page 25.

⁸⁸ Submission No. 14 - CMC, page 26.

After the closure of Operation Warrior the resources of the CMC's organised crime team were extensively occupied in preparing matters for court proceedings. A total of 42 briefs of evidence were produced along with hundreds of witness statements and thousands of hours of physical and electronic surveillance data. To date, eight people have been convicted for serious drug offences, 14 have been committed to trial in the Supreme Court and 13 listed for committal hearings. Further charges of trafficking in dangerous drugs are intended to be laid against five people in Queensland and other states.⁸⁹

Operation Golf Agitate

Pursuant to the C&M Act⁹⁰ the CMC has role in helping to prevent major crime. An example of this was Operation Golf Agitate, a joint operation with the QPS to prevent sexual crimes by targeting 54 sex offenders released into the community under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA). The operation was designed to address increased public concerns in relation to convicted sex offenders breaching the conditions of their release and actively associating with other known or suspected child sex offenders.⁹¹

The investigation focused on prisoners who were assessed as being potentially high risk re-offenders and who had the propensity to be involved in paedophile networks.

The result of the investigation was the arrest of two DPSOA prisoners for having unsupervised contact with children in Brisbane, in addition to the overall preventive outcomes achieved by the operation.

Paedophilia

The CMC may investigate criminal paedophilia, defined in the C&M Act as:

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.*⁹²

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.⁹³

In its submission to the Committee, the CMC recognises that in undertaking its work relating to criminal paedophilia it must ensure that it is simply not duplicating work already being done by the QPS and to direct resources towards areas that the QPS (for valid reasons) is not focusing on. In order to avoid this duplication the CMC works in close partnership with QPS Taskforce Argos and regional child protection investigation units.

⁸⁹ Ibid.

⁹⁰ C&M Act, section 23.

⁹¹ Submission No. 14 - CMC, page 31.

⁹² C&M Act, Schedule 2.

⁹³ Ibid.

The CMC does not independently investigate wide-ranging child sex offences throughout the state. Pursuant to the C&M Act, the CMC is only able to investigate matters involving criminal paedophilia where the matter is referred by the CRC, or if it falls within the terms of an existing 'umbrella' paedophilia reference which the CMC has for particular niche areas of offending. These niche areas are areas where the CMC believes it can best target criminal paedophilia, and include:

- offending by networked or recidivist extra-familial child sex workers;
- offending persons who use the internet to facilitate the commission of offences against children and/or in relation to child exploitation material; and
- conducting complex protracted criminal paedophilia investigations in partnership with other law enforcement agencies (including the use of the CMC's coercive hearings powers).⁹⁴

Targeting internet paedophiles

The CMC's paedophilia investigations are undertaken by the Cerberus Team which comprises three investigators, intelligence analysts and a lawyer and work closely with the QPS Taskforce Argos. The Cerberus Team and Taskforce Argos undergo constant training in the latest investigative software, also involving collaboration with international law enforcement agencies. In the three years up until September 2011, the Cerberus Team ran 37 operations and charged 39 people with 368 offences.⁹⁵

The Cerberus Team is supported by the CMC's specialist Forensic Computing Unit (FCU), which acts once offenders have been apprehended. The FCU audits the offender's computer device searching for evidence to substantiate charges and confirming information which may lead to the identification of potential victims or other paedophiles. The CMC's Assistant Commissioner, Crime, Mr John Callanan, advised the Committee at the hearings for this review that the CMC's forensic computer unit could be better resourced, as Taskforce Argos after the completion of an operation, had found there was insufficient capacity in the police forensics area to deal with huge amounts of child exploitation material.⁹⁶

The CMC's submission to this review reports that the ever-growing use of technology by offenders engaged in serious crime presents a constant challenge. The CMC is aware that the tactics used by networked or recidivist criminal paedophiles are constantly evolving, as their knowledge develops of the methods used by law enforcement to monitor their activities. For example, in the last three years there has been shift away from online chat room engagements, to tracking child exploitation material which is increasingly being distributed through the internet.⁹⁷

The CMC recognises that their investigative responses also have to evolve and they are constantly seeking to update and develop the knowledge of their investigators by having them attend interstate and international conferences. In the last three years the CMC Cerberus Team gained qualifications after training in systems developed by the United States Federal Bureau of Investigation (FBI) while also

⁹⁴ Submission No. 14 - CMC, page 27.

⁹⁵ CMC Media Release, 2 September 2011.

⁹⁶ Transcript – Public Hearing, 4 November 2011, page 25.

⁹⁷ Submission No. 14 - CMC, page 28.

attending the Crimes Against Children Conference in Dallas, Texas to obtain the latest information and strategies in criminal paedophilia.

Given that the distribution of child exploitation material through the internet is a global problem the CMC recognises that it is vitally important that the members of Team Cerberus seek opportunities to foster relationships and consolidate existing relationships with interstate and overseas agencies such as the Australian Federal Police (AFP), Queensland Corrective Services, the FBI and the United States Immigration and Customs Enforcement Agency.⁹⁸

Key achievements in targeting internet paedophilia

In the year 2010-2011 CMC investigations saw 12 persons charged with 122 offences relating to the possession, distribution and production of child exploitation material.⁹⁹ The Commission conducted several investigations including Probe Asia, which sought to identify Queensland residents suspected of engaging in child sex tourism, and Probe Agitate targeting high risk paedophiles released from correctional institutions.

In its Annual Report for 2010-2011 the CMC provided an example of how it conducts an internet paedophilia operation.¹⁰⁰ The operation used a software program that CMC investigators had recently obtained during a training conference in South Australia. Investigators identified a suspect using a free Wi-Fi connection in the Brisbane library precinct. The offender was immediately arrested and found to have a number of USB storage devices containing 15 GB of child exploitation material. The person in question had only recently been released from a correctional facility for child sex offences and admitted to grooming young girls in chat rooms by portraying himself as an 11 year old boy.

It was discovered that the offender's paedophile network and victims extended to other Australian states and internationally to countries including the United States, the United Kingdom and Namibia. The individual was remanded in custody and charged with possessing and distributing child exploitation material.

Submission by the Queensland Police Union

In their written submission to the Committee, the Queensland Police Union of Employees (QPUE) expressed the following view in relation to the CMC's effort to combat paedophilia:

I know in relation to paedophilia you will have sections of the state crime command who investigate exactly the same things as the CMC. I know people who have worked in both of those sections for both of those organisations. In fact, the CMC has more resources than the Police Service in relation to that. But primarily they are investigating paedophilia.

It is not looking at government employees or integrity issues; it is looking at the wider range of paedophilia that they are investigating. So I see it as duplication.¹⁰¹

⁹⁸ CMC Annual Report, 2010-2011, page 22.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Transcript – Public Hearing, 3 November 2011, page 38.

The CMC's Assistant Commissioner, Crime, Mr John Callanan, addressed the concerns of the QPUE when he also appeared before Committee at the public hearing:

I understood the union president, Mr Leavers, yesterday in his submission to say, in the context of duplication of resources and things of that kind, that the CMC has more resources than the Queensland Police Service for paedophilia. The reality is that our paedophilia investigation team – which I am sure you have heard referred to as Cerberus – consists of two senior sergeants, an intelligence analyst and an assistant intelligence analyst. The unit closest in function to Cerberus in the Queensland Police Service is Task Force Argos. It consists of 25 police investigators, five intelligence analysts and three administrative support people.

Our Cerberus team relies for administrative support on my area – the administrative area of the Office of the Assistant Commissioner, Crime. As well, the police response to paedophilia includes its State Crime Operations Command, which is where Argos is situated, and its child and sexual assault investigation unit, which consists of 47 investigators and again various intelligence analysts and administrative support. As well, the QPS response to paedophilia includes in each and every region at least – if not district – a child protection and investigation unit. So that emphasises that it is not about duplication; it is about the underpinning philosophy that I referred to a couple of times yesterday – namely, that we add value to the overall law enforcement response.¹⁰²

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 seeks to constantly update the skills of its investigators in order to identify individuals involved accessing child pornography and facilitating its distribution.

From the information provided by the CMC in response to the claim by the QPUE that there is a duplication of services in the area of criminal paedophilia, the Committee considers it is clear that the CMC and the QPS work together in this area through the CMC's Team Cerberus and the Taskforce Argos by working closely with each other to perform specific investigations in order to avoid duplication.

Recommendation 5

The Committee recommends that the government consider the allocation of additional resources to the CMC's forensic computing unit in order to better support investigations of paedophilia and child exploitation material.

¹⁰² Transcript – Public Hearing, 4 November 2011, page 25.

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 CMC's work in this area arises predominately from referrals from partner agencies such as the AFP and the ACC.¹⁰³

The CMC receives requests for assistance from partner agencies to use its special investigative powers in relation to serious crimes and in particular, its coercive hearings power in order to gather information and evidence. The CMC's coercive hearings power is an important tool in gathering information to combat organised crime networks. The number of hearing days as a result of these referrals has steadily increased from 81 days in 2006-07 to 151 days in 2007-2008; 157 days in 2008-2009; 162 days in 2009-2010. In the last year this number has decreased to 114 days, which is attributed to the natural disaster throughout Queensland at the beginning of 2011.¹⁰⁴

The reliance on the CMC's coercive hearings power by referral agencies including the QPS was addressed by Mr John Callanan at the hearings for this review:

What has emerged though more in the last couple of years is a tendency on the part of the police to come to us in respect of organised crime investigations. So they will have taken an investigation as far as they can using conventional powers and they will be interested in the full nature and extent of the network – where the money has gone, where the drugs have come from, who has been producing the drugs that have been trafficked by the network. That has become a significant part of what we do with hearings.¹⁰⁵

An example of the use of this power was a request from the QPS for the CMC to become involved in the investigation of a group responsible for the theft of copper wire from power stations in early 2010. Over a period of approximately two months more than two tonnes of copper wire was stolen at an estimated cost of \$500k. The hearings for the investigation saw information that led to seven persons being charged with a total of 82 offences in relation to the thefts.¹⁰⁶

The CMC conducted investigative hearings over 114 days in Brisbane, Maroochydore, Bundaberg, Gladstone and Cairns with 106 witnesses called to give evidence in relation 23 major crimes investigations.

The following are examples of the types of investigations referred to the CMC:

- the disappearance and suspected murder of a woman in Innisfail in 2010;
- a \$10m fraudulent investment scheme operating on the Gold Coast from 2006 to 2009;
- a major amphetamine trafficking network operating from the Gold Coast into New South Wales and Victoria;
- ongoing investigations in relation to organised paedophilia in North Queensland;

¹⁰³ CMC Annual Report, 2010-2011, page 23.

¹⁰⁴ Ibid., page 20.

¹⁰⁵ Transcript – Public Hearing, 3 November 2011, page 13.

¹⁰⁶ CMC Annual Report, 2010-2011, page 23.

- the suspected murder of a 15 year girl in Brisbane in 2006;
- the strangulation murder of a woman in Brisbane in 2010; and
- the murder of a Brisbane man in 2010.¹⁰⁷

The CMC also conducts investigations focusing on the financial aspects of trafficking networks. For example, at the request of the QPS and in conjunction with the ACC, the CMC conducted hearings in relation to the financial aspects of a major drug trafficking network operating in Bundaberg. The evidence gathered through the hearings provided information to initiate confiscation proceedings against the principal target and restraint of over \$1.7m in assets.¹⁰⁸

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.

Terrorism

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

Prior to this, in September 2002, the CRC approved an 'umbrella' organised crime reference to allow the CMC to use its coercive powers to assist in the investigation of terrorist threats and related activity in Queensland.

The CMC will continue to investigate terrorism, acts to prepare for the commission of terrorism and acts to avoid detection of terrorism, at the request of the QPS.

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

3.5 Law enforcement partnerships

The CMC recognises that its strategic partnerships with a wide range of government and non-government agencies, at both state and national levels, are crucial in obtaining positive outcomes in the area of major crime. The CMC's effectiveness is also reliant upon partnerships with other law enforcement agencies (particularly the QPS) as the CMC is not equipped to undertake major investigations by itself. By using these relationships the CMC seeks to maximise efficiency, avoid duplication and bring practical results to operations.

Major crime investigations typically involves cross-border criminal activities and therefore the CMC has formed strong partnerships with various state, federal and international law enforcement agencies, including other states' police services, the QPS, the Australian Crime Commission, the Australian Federal

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

Police and Europol. It is through these strategic partnerships and regular liaison with other agencies, that the CMC has been able to share intelligence and operational resources to address particular operational needs. Each agency is able to deploy its expertise and staff resources to address specific operational requirements, and share intelligence and operational resources to achieve significant results.

Partnerships between the CMC and other agencies can include:

- Participation in joint taskforces;
- Provision of intelligence products; and
- Use of coercive hearings powers in support of other agencies investigations.

The joint operation referred to above, Operation Warrior is a practical example of the CMC's work with partner agencies that resulted in a number arrests, drug seizures and asset restraints.

As expected, in the fight against crime in Queensland, 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 disrupt the criminal activities of organised crime groups and paedophiles. In relation to the CMC's crime function and its relationship with the QPS, Deputy Commissioner Ian Stewart of the QPS stated the following to the Committee at the public hearings for this review:

In the crime function area, the QPS works closely with the CMC, including the regular provision of specialist QPS resources to assist in the investigation of serious, major and organised crime throughout the state. These collaborative efforts include engagement in joint agency multidisciplinary investigations targeting high level and recidivist targets who are involved in serious criminal activities including drug trafficking, outlaw motorcycle gangs, related crime, firearms trafficking, child exploitation and paedophilia activity. The conduct of CMC coercive examination greatly assists the QPS in advancing investigations through the collection of further collaborative evidence against persons suspected of committing serious crimes, including murder, extortion, serious assaults, armed robbery and also the identifications of proceeds of crime.¹⁰⁹

In its submission to the Committee, the QPUE also commented on the CMC's crime function and its relationship with the QPS as follows:

The QPS is also responsible for the investigation of serious and organised criminal conduct, and, unlike the CMC, has the experience and expertise to conduct criminal investigations. This is demonstrated by the fact the QPS has seconded a large contingent of sworn police officers to the CMC in order to perform its crime function.

Interestingly, the CMC Act itself vests command of those officers jointly with the highest ranking police officer attached to the CMC and the Chairperson. The QPUE believes the

¹⁰⁹ Transcript – Public Hearing, 3 November 2011, page 29.

secondment of these officers for performance of the crime function is an inappropriate duplication of resources and a waste of public funding.

It is the QPUE's view the crime function should be transferred to the QPS, which is better experienced in the conduct of complex criminal investigations. The QPUE believes there is a need for a power to conduct compulsive hearings in relation to serious crime and paedophilia. The exercise of such power could be authorised by the Controlled Operations Committee, of which the CMC Chair is a member, in appropriate cases. This would reflect a better use of police resources and centralise the investigation of serious crime with the police.¹¹⁰

The CMC's Assistant Commissioner, Crime, Mr John Callanan, responded to the QPUE's submission at the public hearing:

Part of the notion of returning, as it were, all of the CMC's crime functions to the QPS depends on the argument about duplication. The written submission talks, again, about a significant presence of police officers at the CMC in the crime fighting area. Again, the police contingent across the board – across all our major crime work – amounts to a detective chief superintendent, an inspector, a detective inspector, three detective senior sergeants, and eight detective sergeants. That is a total of 13 sworn officers. I have already spoken about one small section of the State Crime Operations Command and, of course, police state wide. So one wonders if that amounts to a significant number – 13 – in the context of the overall police resources. You wonder why we are often entering into task force arrangements and joint operational agreements that allow us to work together with the QPS. As I often say, we fight above our weight. We have 13 police working in crime and it is only through engagement in multiagency and multidisciplinary investigations that the outstanding successes – if I can be modest for a while – have been achieved over the years.¹¹¹

The Committee receives regular updates on the CMC's crime operations in the confidential bi-monthly briefing papers provided by the CMC and is able to discuss the matters with the Commissioners at its bi-monthly meetings. The Committee has consistently been impressed with the results achieved by the Major Crime area and acknowledges that it is through positive partnerships, such as the partnership with the QPS that these results are achieved.

The Committee is acutely aware of the requirement for secrecy in the conduct of the CMC's crime operations and notes it is for that reason, that much of its operations cannot be publicised. The Committee however takes this opportunity to publicly express its support for the CMC's crime area and considers that it is an integral part of Queensland's law enforcement regime.

¹¹⁰ Submission No. 12 - QPUE, page 2.

¹¹¹ Transcript – Public Hearing, 4 November 2011, page 25.

3.6 Challenges for the future

The CMC has identified the following as being relevant to its efforts to strengthen the law enforcement impact on major crime:

- conduct multidisciplinary operations into serious and organised crime and criminal paedophilia;
- continue active partnerships with other law enforcement agencies;
- acquire evidence through the use of the special hearings power;
- use specialist research and intelligence capacity to support the major crime functions; and
- confiscate proceeds of crime through civil procedures.¹¹²

In the immediate future, as set out in its submission to this review, the CMC has identified the following key areas as a focus for the period 2011-2012:

- Further enhance the capacity to utilise telecommunications interception as an effective and efficient investigative tool across the range of criminal activity targeted;
- Adopt flexible work and resources allocation practices within the organisational structure to ensure the CMC is positioned to meet ongoing high demand for the exercise of investigative hearings and other unique powers;
- Undertake an assessment of the steroids market in Queensland and monitor the emergence of synthetic analogue stimulants;
- Collaborate with ENTOX, based at the University of Queensland, to conduct a 12 month research project that estimates illicit drug consumption through analysis of wastewater samples in south east Queensland; and
- Continue research into criminal paedophilia networks and strategies and publish 'The emergence of online paedophilia', the first of a series of papers addressing current issues.¹¹³

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

¹¹² CMC Strategic Plan, 2011-15, page 4.

¹¹³ Submission No. 14 – CMC, page 32.

4. PROCEEDS OF CRIME

4.1 Background

A key strategy in disrupting criminal activity, especially serious and organised crime, is the confiscation of the proceeds of crime such as property or monies obtained through criminal activity. In March 2011, Mr Tony Negus, Australian Federal Police Commissioner and Chair of the Australian Crime Commission said, '*by taking profit out of crime, we remove the benefit that criminals obtain from exploiting the community.*'¹¹⁴

By targeting the proceeds of crime, confiscation laws seek to remove funding for further criminal activity by individuals and criminal networks. In addition, confiscation schemes aim to reimburse the state for the costs incurred in fighting crime and compensating society for the adverse impacts of criminal activity. In Australia, there are two means by which proceeds of crime can be recovered: conviction based recovery, which enables the recovery of assets associated with a crime after a conviction for that crime has been secured; and non-conviction or civil based recovery, which allows the restraint and recovery of assets suspected of being the result of criminal activity without securing a criminal conviction.

Both the federal and state governments have introduced legislation targeting the proceeds of crime. The legislative process began in 1983 with an invitation to the Australian Police Ministers by the Standing Committee of Attorneys-General (SCAG) to develop legislation allowing for the forfeiture of criminally derived assets.¹¹⁵ The Commonwealth amended the *Customs Act 1901* (Cth) to allow the seizure and confiscation of the proceeds of drug related crimes as well as the drugs themselves. Subsequently the *Proceeds of Crime Act 1987* (Cth) (POC Act 1987) was introduced which allowed the restraint of assets that might be subject to confiscation. However, the Act allowed a final order for recovery only after a conviction was secured.

The Queensland Government introduced the *Crimes (Confiscation) Act 1989*, a conviction-based confiscation scheme in line with similar schemes that were introduced into all other Australian jurisdictions between 1985 and 1993. The *Crimes and (Confiscation) Act 1989* allowed for the restraint of assets to stop their dissipation until a court ruled otherwise whereby an order forfeiting the property could be obtained against a defendant only upon his or her conviction. However, it became evident across all states that conviction based schemes failed to fully deprive criminals of the assets they received from criminal activity because of the difficulties in establishing a sufficient link between a convicted criminal and a particular asset.

In light of these difficulties, in 1999 the Australian Law Reform Commission (ALRC) reviewed the legislation governing proceeds of crime. The ALRC confirmed the difficulties experienced across all jurisdictions finding that a significant limitation of the POC Act 1987 was that it did not allow for the confiscation of property, the acquisition of which could only be explained as the profits of continuing or serial criminal conduct, where there is insufficient evidence to prove the commission of a criminal offence beyond a reasonable doubt.

¹¹⁴ Australian Crime Commission Annual Report 2010-11, page 97.

¹¹⁵ Australian Law Reform Commission, Confiscation that Counts: A Review of the *Proceeds of Crime Act 1987*, page 2.

The Commission thought this especially the case when dealing with profits obtained in relation to drugs, fraud, and money laundering.¹¹⁶ The Customs Act was drawn too narrowly to overcome this inadequacy. It also noted that under the POC Act 1987 it was necessary to prove a link between a particular offence and the property to be confiscated in circumstances where the offence may be a continuing series of unlawful conduct. The recovery was therefore limited to the commission of that particular offence.

The ALRC recommended:

*A non-conviction based regime should be incorporated into the [Proceeds of Crime] Act to enable confiscation, on the basis of proof to the civil standard, of profits derived from engagement in prescribed unlawful conduct.*¹¹⁷

In response to the findings of the ALRC Report, Australian jurisdictions began to introduce non-conviction-based confiscation laws to either replace or complement their earlier conviction-based confiscation schemes. The Commonwealth introduced the *Proceeds of Crime Act 2002* (POC Act 2002) which came into effect on 1 January 2003.

Since the ALRC report, further reviews of the legislation governing proceeds of crime have taken place. In 2006 by Mr Tom Sherman AO conducted an independent review (The Sherman Report)¹¹⁸ of the POC Act 2002 as required by the Act.¹¹⁹ The Sherman Report found that the POC Act 2002 was more effective than its predecessor, the POC Act 1987, with recoveries amounting to 45% higher than under the previous regime. However, the report also recommended several changes to the POC Act 2002 aimed at strengthening the federal regime for seizing the proceeds of crime including that the Act provide for non-conviction based restraint and forfeiture of the instruments (as distinct from the proceeds) of non-terrorism offences.¹²⁰

In September 2007, the Parliamentary Joint Committee on the Australian Crime Commission recommended that where appropriate, the recommendations of the Sherman Report be implemented. In its 2009 report, the joint committee noted that the federal government had not yet responded to the Sherman Review, however in September 2009, the Federal Attorney-General introduced the Crimes Legislation Amendment (Serious and Organised Crime) Bill (No.2) 2009 (Cth), which sought to strengthen the Commonwealth criminal assets confiscation regime as a response to The Sherman Report. The legislation was passed in February 2010.

In recent times, both the federal government and the judiciary have considered proceeds of crime legislation. The High Court considered the proceeds of crime function in relation to various sections of the *Criminal Property Confiscation Act 2000* (WA) in the recent matter of *White v the Director of Public*

¹¹⁶ *Confiscation That Counts: A Review of the Proceeds of Crime Act 1987*, ALRC, Report No.87, June 1999, page 80.

¹¹⁷ *Ibid.*, page 84.

¹¹⁸ Mr Tom Sherman AO, *Report on the independent review of the operation of the Proceeds of Crime Act 2002* (Cth), July 2006.

¹¹⁹ See section 327(1) of the *Proceeds of Crime Act 2002* which required an independent review of the Act as soon as practicable after the third anniversary of the commencement of the Act.

¹²⁰ *Ibid.*, page 29.

*Prosecutions.*¹²¹ While the WA Act is different in terms of Queensland's legislative framework, in its decision the High Court effectively widened the definition of 'crime-used property substitution declarations' in the Western Australian jurisdiction. While the comparative provisions in the Queensland Act are somewhat narrower than those in the WA Act, the High Court's decision may have future implications in the Queensland provisions, should they be tested in court.

In 2011-2012 the federal government, through the Parliamentary Joint Committee on Law Enforcement, conducted an inquiry into unexplained wealth legislation and arrangements. In its discussion paper,¹²² the committee viewed the harmonisation of Commonwealth and state and territory laws as a key to dramatically improve the operation of proceeds of crime laws and remove the loopholes currently exploited by criminal organisations. In their submission to the inquiry, the CMC submitted that investigations into unexplained wealth are likely to be resource intensive and time consuming with uncertain outcomes. Given this the CMC submitted that the existing taxation laws provide an appropriate and effective mechanism for addressing the accumulation of unexplained wealth.¹²³

The ACC submitted that a key limitation of the POC Act 2002 was the necessity to provide detailed financial analysis and undertake extensive investigation before proceedings are commenced which has limited the ability of the CDPP and AFP to respond in a timely fashion to ensure that assets have not been disposed of. The ACC submitted that amendments were required to the *Australian Crime Commission Act* to allow the ACC to use coercive powers in relation to unexplained wealth, independent of a link to the relevant crime being established.¹²⁴

4.2 Queensland's legislative framework

A significant change in the law in Queensland occurred on 1 January 2003 with the advent of the *Criminal Proceeds Confiscation Act 2001* (CPCA) containing two separate schemes for the recovery of the proceeds of crime. Firstly, a conviction based scheme mirroring the *Crimes (Confiscation) Act 1989*, which was repealed by the CPCA¹²⁵ and is administered by the Office of the Director of Public Prosecutions (DPP). Secondly, the CPCA also introduced a civil confiscation scheme which is modeled on the *Criminal Assets Recovery Act 1990* (NSW) and administered by the CMC pursuant to the C&M Act.¹²⁶

The CMC has outlined the advantages of having two separate schemes as:

- proceeds of crime recovery is separated from the law enforcement investigation function, so that allegations of trade-offs between criminal charges and asset forfeiture do not arise;

¹²¹ *White v Director of Public Prosecution* (WA) (2011) 277 ALR 405.

¹²² www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ See Explanatory Notes for the Criminal Proceeds Confiscation Bill 2002 (Qld) at page 2.

¹²⁶ See sections 5(4) of the C&M Act giving the CMC particular powers for confiscation investigations and section 26(b)(ii) relating to the CMC's crime function and gathering evidence for the recovery of the proceeds of crime.

- asset confiscation is separated from the DPP's criminal prosecution function, removing the potential for plea bargaining to seek lesser sentences or charges in exchange for asset forfeiture; and
- various levels of accountability are achieved through the bodies that oversee the CMC's work, ensuring that powers are used and investigations conducted in an appropriate way.¹²⁷

The CPCA was amended through the *Criminal Proceeds Confiscation and Other Acts Amendment Act 2009* which came into effect on 22 June 2009 following a comprehensive legislative review of the Act which considered the recommendations of the previous three year review of the CMC in 2006.¹²⁸

These amendments created a reversal of the onus of proof such so that once the state establishes a person has engaged in serious criminal activity, then the onus falls on the respondent to rebut the presumption by satisfying the court that the wealth they have accumulated was not related to illegal activity.¹²⁹

Non-conviction-based (civil) confiscation

The civil confiscation scheme targets the recovery of proceeds derived from 'illegal activity'¹³⁰ and enables proceedings to be instigated to confiscate property derived from serious crime in circumstances where the person who engaged in the criminal activity has not been identified and where a criminal conviction has not been obtained. The State is therefore not required to first link the property in question to a criminal offence.

The CMC must suspect that a person, on the balance of probabilities, has engaged in serious crime related activity¹³¹ as a trigger to initiate a confiscation action.¹³² The State is then required to prove, to the civil standard, that the respondent engaged in serious crime related activity. If the Supreme Court is satisfied that there are reasonable grounds for that suspicion then it will grant a restraining order. An application for a forfeiture order can also be made by the State, however the court must be satisfied that on the balance of probabilities the person in question has engaged in a crime related activity.

The property confiscated is limited to the property derived from criminal activity but 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 previous six year period.

¹²⁷ <http://www.cmc.qld.gov.au/topics/crime-and-law-enforcement/proceeds-of-crime/proceeds-of-crime>.

¹²⁸ 6th PCMC, Report No.71, Three Year Review of the Crime and Misconduct Commission, pages. vii-ix.

¹²⁹ Bartels, Lorana, *A review of confiscation schemes in Australia*, AIC Reports Technical and Background Paper 36 at page 15.

¹³⁰ C&M Act, section 15 (definition of illegal activity).

¹³¹ *Ibid.*, section 16 (definition of serious crime related activity).

¹³² Bartels, Lorana, *A review of confiscation schemes in Australia*, AIC Reports Technical and Background Paper 36 at page 17.

In accordance with the CPCA, the CMC performs its role in relation to the civil confiscation scheme in the following manner:

- A matter regarded as a potential proceeds of crime matter is referred to the Proceeds of Crime Team by the QPS and other law enforcement agencies as well as from the CMC's own organised crime investigation unit. These referrals are assessed in two working days and a determination made as to whether the civil confiscation scheme will be used;
- If a matter is assessed as suitable, an application for a restraining order to the Supreme Court of Queensland may be made over all of the person's property if there is a reasonable suspicion that in the past 6 years the respondent has engaged in serious crime related activity, being activity involving an indictable offence carrying a maximum penalty of at least 5 years imprisonment. In some circumstances (for example, where there is property at risk of imminent dissipation) the application for a restraining order is made *ex parte*;
- The restraining order has a life of 28 days in which time a preliminary determination is made as to whether the State will make an application forfeiture order and/or an application for a proceeds assessment order within the 28 day period in order to keep the restraining order current; and
- Once an application for a forfeiture order and/or proceeds assessment order has been made, the CMC's financial investigations begin in order to gather evidence relevant to determining the means of acquisition of the restrained property and/or the calculation of the benefits alleged to have been derived from the respondent's illegal activity.

If property has been honestly acquired by a respondent or innocent third party they may seek to exclude this property from forfeiture by showing that it has been acquired legally.

4.3 Conviction-based confiscation scheme

The CPCA also contains a conviction-based scheme operating alongside the civil confiscation scheme. The conviction based scheme is administered by the Office of the Director of Public Prosecutions (DPP) and is similar to the conviction-based scheme first introduced in Queensland in 1989. This scheme allows for a forfeiture order to be obtained only where the defendant has been convicted of the confiscation offence. It therefore relies on a direct connection between the property and a criminal conviction where by contrast there is no requirement for the property to have any correlation with the criminal offence in the non-conviction based scheme.

The conviction based scheme is limited to tainted property used in or derived from an offence and a link to the confiscation offence must be established for an order to be successful. The court also takes into account a range of factors when considering whether to make an order such as likely hardship, the use ordinarily made of the property, the seriousness of the offence and anything else the court considers appropriate.

A distinguishing feature of the Queensland conviction based scheme is that it is the only State scheme under which the instruments of crime can be forfeited. Instruments of crime may include vehicles, boats, mobile phones and other property used in the commission of a confiscation offence.

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 scheme. 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 court order.

4.4 Strategic Framework

In order to effectively administer the civil confiscation scheme, the CMC relies on the cooperation of a range of agencies.

The key agencies involved in civil confiscation are:

- the QPS (and to a lesser extent other law enforcement agencies such as the Australian Crime Commission, Australian Federal Police and the CMC itself) whose primary role is the initial identification of matters and provision of investigative resources;
- the CMC itself 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 DPP, who makes the applications to court and acts as solicitor on the record. The DPP's 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 appointed by the court to take control of restrained property.¹³³

As noted above, the QPS is the primary agency in Queensland for initially identifying the proceeds of crime, although other state and federal law enforcement agencies may be the initial identification point. All QPS matters are channeled through a proceeds of crime unit within the Major Fraud Investigation Group of State Crime Operations Command of the QPS. It is here where they undergo a first assessment (initial financial inquiries and asset identification) and then potential civil confiscation matters are referred to the CMC and potential conviction-based matters are referred to the DPP.

4.5 Successful Confiscation

In the period from 1 January 2003 to 30 June 2011, the CMC has restrained property valued at more than \$125 million and has confiscated more than \$32 million of illegally derived property. At present more than 90% of proceeds of crime matters concern drug-related crime. By comparison, 73% of offences dealt with under the Commonwealth confiscation legislation are fraud related.

¹³³ Submission No. 14 – CMC, page 33.

The CMC's Annual Report for 2010-11¹³⁴ outlines the performance of its confiscation function. The report notes the following:

- the CMC's proceeds of crime team litigated 99 matters for the year up to 30 June 2011 and restrained property valued at \$53.19 million;
- a focus of the CMC from the previous year was to increase the number of matters finalised. As a result the CMC concluded 48 matters (above the target of 30 matters) with \$9.32 million forfeited (above the target of \$5 million). Further, the CMC obtained five proceeds assessment orders totalling \$4.96 million. This included \$4.2 million in relation to a former member of an outlaw motorcycle gang, Edward Charles Cannon, which has been the CMC's longest running confiscation matter, having begun in 2005 and being the first matter using the new powers afforded the CMC under the CPCA; and
- there were 44 restraining orders obtained with a net value of \$14.12 million.

In its submission to the Committee the CMC has advised that that the civil confiscation function was revenue positive in its first six months of operation and at present, \$53 million is restrained.¹³⁵

4.6 Money Laundering

Money laundering is undertaken by criminal organisations to legitimise the proceeds of crime which the Australian Transaction Reports and Analysis Centre (Austrac) estimates is between \$2.8 billion and \$6.3 billion in Australia annually. In 2010, the CMC released the report *Money laundering and organised crime in Queensland* which noted that there are many money laundering techniques used by criminal organisations ranging from gambling at a casino to complicated financial transactions involving international money transfers and complex business structures.

The report found that the one constant in money laundering techniques used by criminal organisations is the manner in which they change to counter efforts by law enforcement agencies by using sophisticated technologies to hide the financial gains from the proceeds of crime. This has especially been the case since the advent of the civil based confiscation laws contained in the CPCA¹³⁶.

In 2006 the Australian Government enacted the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* to more effectively target money laundering activity. In Queensland the CPCA deals with money laundering at sections 250, 251 and 252. At the three year review hearings, the then Member for Morayfield, Mr Mark Ryan MP, observed that recent prosecutions in Queensland have been made under the federal legislation rather than under the CPCA.¹³⁷ Mr Callanan, the CMC's Assistant Commissioner Crime, confirmed this view:

The reality does seem to be, as Mr Ryan suggested, that law enforcement in Queensland is opting to utilise the Commonwealth provisions. One of the reasons for that is plainly the

¹³⁴ CMC Annual Report, 2010-2011, page 24.

¹³⁵ Submission No. 14 – CMC, page 34.

¹³⁶ *Money laundering and organised crime in Queensland*, CMC Crime Bulletin Series No.11, December 2009, page 2.

¹³⁷ Transcript – Public Hearing, 3 November 2011, page 13.

requirement that, to commence a prosecution under the Queensland provisions, the consent of the Attorney-General must be obtained. The concern then is possible delay with that. The need perhaps to build a substantial brief to present to the Attorney-General in order to get the consent in order to get proceedings rolling¹³⁸. That is not required in any other jurisdiction in Australia including the Commonwealth under the Commonwealth legislation.¹³⁹

Mr Callanan noted that the provisions of the Commonwealth legislation deal with wilful, reckless or negligent money laundering while the Queensland provision includes both wilful and reckless but not negligent money laundering.¹⁴⁰

The Committee notes the advice of the CMC's Assistant Commissioner Crime, that in other jurisdictions the consent of the Attorney-General is not required before proceedings are initiated in relation to the money laundering of the proceeds of crime. The Committee is of the view that the harmonisation of state and federal proceeds of crime laws is desirable to create a consistent approach Australia wide to matters while also allowing the CMC and other law enforcement agencies to process matters in a timely fashion.

Recommendation 6

The Committee recommends that the Government consider removing the requirement in the *Criminal Proceeds Confiscation Act 2001* that the Attorney-General be briefed before proceedings in relation to money laundering can be commenced.

4.7 Resources and staffing

During 2010-11 the CMC's current Proceeds of Crime Unit consisted of 12 officers dropping from a peak of 18 officers in 2008-2009.¹⁴¹ At the three year review hearings the CMC's Commissioners were asked to nominate an outcome that they would like to see occur from the three year review process. The CMC's Assistant Commissioner Crime, Mr John Callanan, identified that a priority for him was the recruitment and retention of proceeds of crime staff.¹⁴²

In the last three year review of the CMC, the 7th PCMC recognised that the CMC experienced great difficulty in attracting and retaining suitably skilled staff at the salary levels on offer, in the proceeds of crime unit. The 7th PCMC also recognised that there would be growth in the proceeds of crime function and recommended that the Government consider allocating greater resources to the CMC's proceeds of crime function.¹⁴³

¹³⁸ See Section 251(2) of the CPCA which requires the Attorney-General's consent.

¹³⁹ Transcript – Public Hearing, 4 November 2011, page 27.

¹⁴⁰ Ibid.

¹⁴¹ Submission No. 14 – CMC, Figure 11, page 35.

¹⁴² Transcript – Public Hearing, 3 November 2011, page 26.

¹⁴³ 7th PCMC, Report No.79, Three yearly review of the CMC, April 2009, page 25.

The Government supported this recommendation in their response to the 7th PCMC's report noting the anticipated future growth in the civil confiscation scheme and the significant deterrent in attacking the profitability of criminal organisations through proceeds of crime.¹⁴⁴ In its submission to the three year review, the CMC identified that as a consequence of the difficulty in retaining staff, an increasing number of resources were being directed towards finalising matters rather than initiating new matters¹⁴⁵.

The Committee recognises the important work carried out by the CMC's Proceeds of Crime unit and supports the work of the CMC with respect to civil confiscation. The Committee also recognises that attacking the profitability of crime will serve as a deterrent to future criminal enterprises. The Committee believes that additional funding is necessary so as to offset the loss of skilled and experienced staff from the proceeds of crime unit and to allow the CMC to concentrate on new matters that fall within the civil confiscation function.

Recommendation 7

The Committee recommends that as a priority the Government allocate greater resources to the Crime and Misconduct Commission's proceeds of crime function in order to assist the CMC in retaining existing staff and attracting new staff while also meeting the demand for new civil confiscation actions.

4.8 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.¹⁴⁶

In their submission to the three year review, the CMC has also identified that as law enforcement agencies become more aware of the scope of the civil confiscation scheme it is anticipated that the CMC will receive a greater number of referrals in relation to a wide variety of criminal actions.¹⁴⁷

¹⁴⁴ Government response to the Three Yearly Review of the Crime and Misconduct Commission, 7th Parliamentary Crime and Misconduct Committee Report No.79, April 2009, page 2.

¹⁴⁵ Submission No. 14 – CMC, Figures 10 and 11 at page 33.

¹⁴⁶ *Strategic Plan 2008-12*, Crime and Misconduct Commission, page 4.

¹⁴⁷ Submission No. 14 – CMC, page 36.

5. THE MISCONDUCT FUNCTION

5.1 Introduction

In addition to combating major crime, the CMC's second significant area of operations is in the performance of its misconduct functions set out in Chapter 2, Part 3 of the C&M Act.

The CMC's misconduct functions are two-fold: firstly, the CMC is charged with raising the standards of integrity and conduct within units of public administration and secondly, the CMC must ensure that complaints received by it, about official misconduct (or police misconduct) are dealt with appropriately in accordance with the C&M Act.

This chapter looks briefly at the background of the CMC's misconduct functions and makes specific comment on the following issues which have been in focus over the past three years:

- devolution of responsibility for misconduct matters;
- dealing with matters relating to minors;
- the CMC's monitoring role for misconduct;
- timeliness;
- communication with participants in the complaints process;
- the CMC's ongoing role in the police complaints and discipline system;
- the CMC's jurisdiction over Government owned corporations;
- publication of matters under consideration by the CMC and CMC reports; and
- the operation of QCAT.

5.2 The Crime and Misconduct Commission's misconduct function

As the organisation's name suggests, dealing with misconduct in the public sector has been a principal focus of the CMC since its creation. While the CMC's predecessor organisation, the CJC, had a greater focus on the *investigation* of suspected police or official misconduct, towards the end of its existence an increased emphasis was placed on the *prevention* side of its misconduct role. At the same time, and with the goal of improving public sector accountability from within units of public administration themselves, the way in which matters involving misconduct were being dealt with shifted towards devolving responsibility for investigating and preventing misconduct to the relevant public sector agencies where the misconduct occurred. Included with this shift was the Queensland Police Service.

The 4th PCJC, in the conduct of its three year review of the then CJC in 2001, examined what was an appropriate balance between external oversight by the Commission and internal handling of misconduct matters by the Queensland Police Service itself.¹⁴⁸

¹⁴⁸ 4th PCJC, Report No. 55, Three Year Review of the Criminal Justice Commission, page 22.

That Committee also considered the effectiveness of a joint initiative, *Project Resolve* undertaken together by the Queensland Police Service and the CJC in 2000. Project Resolve trialed 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.

The 4th PCJC recommended that the CJC should retain the overall responsibility for investigation of complaints against police, however its policy of devolving responsibility to the Queensland Police Service should continue.¹⁴⁹ In its response to the 4th Committee's report, the government stated its support for this approach.¹⁵⁰

The C&M Act was introduced later that year containing provisions which supported the above approach.¹⁵¹ These embedded misconduct provisions have remained unchanged since their introduction.

Under the C&M Act, the CMC has the following functions for misconduct:

- (a) to raise standards of integrity and conduct in units of public administration; and
- (b) to ensure a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way, having regard to the principles set out in section 34.¹⁵²

The section 34 principles are:

Cooperation – being to the greatest extent practicable, the CMC and units of public administration should work co-operatively to prevent and to deal with misconduct.

Capacity building – the CMC has a lead role in building the capacity of units of public administration to prevent and deal with cases of misconduct effectively and appropriately.

Devolution – whereby, subject to the co-operation and public interest principles and the capacity of the unit of public administration, action to prevent and deal with misconduct in a unit of public administration should generally happen within the unit.

Public interest – the CMC has an overriding responsibility to promote public confidence:

- in the integrity of units of public administration; and
- if misconduct does happen within a unit of public administration, in the way it is dealt with.

¹⁴⁹ Ibid., page 37.

¹⁵⁰ Government response to Parliamentary Criminal Justice Committee report No 55, Three Yearly Review of the Criminal Justice Commission, tabled 30 October 2001, page 2.

¹⁵¹ The explanatory notes to the Crime and Misconduct Bill 2001 (at page 2) made it clear that one of the objectives of the Bill was to legislatively recognise these changes in approach.

¹⁵² C&M Act, section 33.

The CMC should exercise its power to deal with particular cases of misconduct when it is appropriate, having primary regard to the following—

- the capacity of, and the resources available to, a unit of public administration to effectively deal with the misconduct;
- the nature and seriousness of the misconduct, particularly if there is reason to believe that misconduct is prevalent or systemic within a unit of public administration; and
- any likely increase in public confidence in having the misconduct dealt with by the commission directly.

Under schedule 2 of the C&M Act, ‘misconduct’ is defined specifically to only include *official misconduct* or *police misconduct*. For conduct to be *official misconduct*, it must involve at least one of the following:

- dishonesty or lack of impartiality;
- a breach of the trust put in a person by virtue of their position; or
- a misuse of officially obtained information.¹⁵³

It must also be a criminal offence or a serious enough disciplinary breach to justify dismissal, if proven.¹⁵⁴

In recognition of the importance of integrity within the Police Service, the jurisdiction of the CMC also extends to the category of behaviour, specifically relating to police officers known as *police misconduct*.

For conduct to be *police misconduct*, it must be conduct that:

- is disgraceful, improper or unbecoming to an officer; or
- shows unfitness to be or continue as a police officer; or
- does not meet the standard of conduct the community reasonably expects of an officer,

and includes conduct of a police officer in a private capacity that reflects adversely on the QPS.¹⁵⁵

As an indication of the scale of complaints being dealt with by the CMC under its misconduct function, in 2010-11, the CMC received a total of 5124 complaints, which was an increase by approximately 10% of the previous year.

5.3 Performing the misconduct function

There are a number of ways in which the CMC performs its misconduct functions such as: assessing complaints received from the general public or from within units of public administration; conducting

¹⁵³ Ibid., section 14.

¹⁵⁴ Ibid., section 15.

¹⁵⁵ Ibid., Schedule 2 – Dictionary.

its own investigations into the more serious matters involving official misconduct; and monitoring how public sector agencies deal with and prevent misconduct from occurring within their own places of work. In 2011, following the CMC's governance review – the CMC restructured its misconduct area to ensure there was a better alignment with its strategic and operational goals.¹⁵⁶

The CMC is currently implementing these changes and states that it will:

- encourage more effective integration between the work units in the misconduct area;
- provide flexibility in moving resources to respond to changing priorities and to produce more timely outcomes;
- better respond to the needs of the CMC's partner agencies;
- strengthen the oversight, capacity building and misconduct prevention work; and
- make optimum use of the resources and skills of all the CMC's specialist disciplines – and will provide enhanced professional development and support to staff.¹⁵⁷

The Committee notes that as part of the CMC's restructure, the Prevention Team was relocated from the Research Area to the Misconduct Area of operations. Prevention officers while still undertaking specific prevention functions for the CMC, will now also be attached to the CMC's investigative teams providing them with a true interdisciplinary approach to misconduct investigations.¹⁵⁸

The Committee considers this to be a positive move and agrees with the CMC submission that the ability for prevention officers to work closer with investigation teams should allow complementary input to investigations and will ensure the prevention officers are able to provide relevant specialist advice directly to those agencies that are subject of the investigation. Agencies will be able to take remedial actions at earlier stages, rather than waiting for the outcomes of disciplinary or court actions, which may take some time. The outcome of the restructure will become apparent over time as prevention officers are able to fully contribute to investigations in their redefined role.

Recommendation 8

The Committee recommends that its successor committee monitors the changes to the misconduct area of operations to evaluate the ongoing effectiveness of the CMC's internal restructure embedding prevention officers within investigation teams.

5.4 Recent developments in the principles of dealing with misconduct

Since the last three year review of the CMC, there has been significant work undertaken in reviewing complaints processes and how instances of misconduct should be dealt with, particularly within the QPS.

¹⁵⁶ Submission No 14 - CMC, page 38.

¹⁵⁷ Ibid., pages 38 & 39.

¹⁵⁸ Ibid., page 53.

In August 2009, the Government released a discussion paper – *Integrity and Accountability in Queensland* which invited public comment on Queensland’s accountability framework. In response to concerns set out in submissions – in November 2009, the Attorney-General requested the CMC to conduct an independent review of the processes for the management of police discipline and misconduct matters. The CMC provided its review to the Attorney General in December 2010. The CMC’s report – *Setting the Standard* outlined a number of recommendations intended to strengthen the police discipline system and ensure the system is fair to all those who come in contact with it.¹⁵⁹

In March 2011, the Government, in considering the recommendations contained in *Setting the Standard*, appointed an Independent Expert Panel to continue the work carried out by the CMC and review the policies and procedures with the aim of proposing specific models for implementation. The Independent Panel reported back to the Government in May 2011 with specific recommendations to enhance the police complaints, discipline and misconduct system in Queensland.

While the Independent Panel specifically examined the police disciplinary and complaints processes and systems, much of its analysis and findings translate across all units of public administration. The Government published its response to the Independent Panel’s review in August 2011 and the implementation of the accepted recommendations is currently ongoing.

5.5 The Principle of devolution

Devolution generally

The principle of devolution continues to be the most controversial principle guiding the way in which the CMC performs its misconduct functions and has been explored in great depth by previous committees through their three yearly reviews.

The CMC and previous PCMC’s have expressed support for the focus on devolution.¹⁶⁰ In its submission to the 7th PCMC’s review, the CMC stated its support for devolution, and expressed the roles of the agencies and the Commission in the following terms:

*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.*¹⁶¹

While the principle of devolution is applicable across all areas of the public sector, it comes under the most scrutiny in its application to complaints received about the Queensland Police Service. As such, a detailed examination of devolution and how it applies in practice is contained in the Independent Panel’s report¹⁶² where the panel considers how best to deal with concerns about ‘police investigating police’.

¹⁵⁹ *Setting the Standard – A review of current processes for the management of police discipline and misconduct matters*, page v.

¹⁶⁰ See 5th PCMC, Three Year Review, page 26; CMC submission to the 6th PCMC, Three Year Review and 6th PCMC, Three Year Review, page 43; 7th PCMC, Three year Review, pages 29 & 30.

¹⁶¹ CMC submission to the 7th PCMC, page 82.

¹⁶² *Simple, Effective, Transparent, Strong – An independent review of the Queensland police complaints, discipline and misconduct system*, May 2011, pages 18 – 28.

The Independent Panel explored further the relationship between the principle of devolution and the principles of cooperation and public interest. Section 34 of the C&M Act specifically states that devolution should be – *“subject to the cooperation and public interest principles, and the capacity of the unit of public administration to prevent and deal with misconduct”*. Further, the public interest principle is stated as giving the CMC *“an overriding responsibility to promote public confidence in the dealing with instances of misconduct”*. [emphasis added]

In response to criticisms of the CMC in performing its role after the death in custody of Mulrunji on Palm Island in 2004, the Independent Panel made the observation that the Palm Island Case:

*...puts in sharp focus the triangulation of devolution, public interest and cooperation principles and how public confidence is compromised if the principles do not shape up in support of that ‘overriding’ priority.*¹⁶³

The 7th PCMC in its 2009 three yearly review, suggested amendments to section 34 of the C&M Act as follows:

...section 34(d) [Public Interest] 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.

The Government at that time was not satisfied that section 34 required amendment as it considered the public interest principle was already strongly stated in section 34(d), with the devolution principle clearly being stated as being subject to it. The Government considered the Committee’s concerns could be addressed administratively through the CMC performing its monitoring role; however did refer to the August 2009 discussion paper on *Integrity and Accountability in Queensland* and would note any further submissions on how devolution could be enhanced throughout that process.

In its analysis of how devolution has evolved with respect to the QPS, the Independent Panel recommended, in respect of the extent of investigations as provided for in the QPS Human Resources Manual, guidance on the relevant factors to take into account in determining the ‘public interest’ be included.¹⁶⁴

The Government subsequently supported this recommendation, however also took the step of agreeing to amend section 34 of the C&M Act to clarify that consideration of the ‘public interest’ becomes a pre-condition of devolution.¹⁶⁵ At the time of this report, the amendment has yet to be made.

The Committee notes that the Government’s proposed amendment to section 34 will have a broader effect and would not be limited to devolution of complaints by the CMC to the QPS only, but will apply to all units of public administration. Future Committees must monitor the operation of this amendment and how the practice of devolution continues to evolve.

¹⁶³ *Ibid.*, page 21.

¹⁶⁴ *Ibid.*, page 89.

¹⁶⁵ Government response to the independent review of the Queensland police complaints, discipline and misconduct system, (response to recommendation 22).

The experience of this Committee from receipt of complaints received by the 8th PCMC in relation to the performance of the CMC's misconduct function, particularly in relation to devolution is that there continues to be a general misconception in the community, the media [and even among some Members of Parliament] that the CMC's role in relation to misconduct is to investigate all matters that are referred to it.

It is apparent to the Committee that by enshrining the section 34 principles in the C&M Act in the manner that they were, it was not intent of the Parliament to set up a single one-stop body to *investigate* all occurrences of misconduct. Certainly, the CMC was established as the primary agency within Queensland to *deal* with instances of misconduct, but in *dealing* with matters that are referred to it, it must be recognised this does not mean the CMC will *investigate* every complaint it receives.

In the recent public perceptions survey about misconduct carried out by the CMC¹⁶⁶, it was found that while respondents were generally aware of the CMC's investigative role, most were unaware of its monitoring and prevention roles. There was limited awareness that the CMC referred less serious complaints to the relevant agency to investigate in accordance with the devolution principle. The Committee considers that if the process of devolution is going to continue to operate in Queensland as an effective strategy in dealing with misconduct complaints, more needs to be done to ensure the general public understand the framework within which their complaint is going to be dealt with.

Hand in hand with the legislative and administrative strengthening of the devolution process, the Committee considers that the concept of devolution and the reasons supporting the devolution principle must also be communicated effectively to those persons involved in the complaints process, in order for public confidence in the complaints process to be achieved.

Recommendation 9

The Committee recommends that both the Government and the CMC take a more active approach in promoting the process of devolution in any communication strategies relating to government departments complaints or disciplinary processes in order to assist participants involved in misconduct complaints processes to become aware of, and understand how, their complaints will be managed.

Particular aspects of devolution – Youth detention

The Commissioner for Children and Young People and Child Guardian, (the Children's Commissioner) submitted to this review that while she had no concerns with the CMC and was satisfied with the performance of its functions, an issue that she considered required examination was in the area of devolution as it relates to complaints made by young people in detention.¹⁶⁷

At the public hearing, the Children's Commissioner explained that she has a broad mandate to advocate for, and promote and protect, all young people within Queensland, with a particular remit for those who are most vulnerable.

¹⁶⁶ *Public perceptions of the public service: Findings from the 2010 public attitudes survey*, October 2011.

¹⁶⁷ Submission No 11 - Commission for Children and Young People and Child Guardian, page 2.

In addressing the issue of devolution as it relates to complaints made by young people in detention, the Commissioner stated:

In relation to official misconduct investigations, I acknowledge the importance of agencies in developing capacity to manage their own misconduct investigations. However, I believe that the youth detention environment is sufficiently unique to warrant, closer, in-depth involvement by the CMC in these investigations. I say this because I think there are a number of factors which are specific to youth detention centres that would suggest it would be more appropriate for the CMC to retain greater responsibility of the investigations and, specifically, that devolving responsibility to on-site detention centre management should not form part of that approach.

These factors, from my point of view, include the vulnerability of the young people concerned due to their ages and the social circumstances that lead to their detention; the power imbalances inherent in the detention centre environment; and the fact that detention centres would likely present to young people as closed systems, that they are shut off from the outside world. Young people in detention are also likely to have lower levels of education than the general population and are unlikely to have a full appreciation of their rights, including their right to complain or the circumstances in which it is appropriate to do so.¹⁶⁸

The Children's Commissioner had formed this view from her 2011 survey of young people held in detention. That survey found that only 52% of young people in detention believed that they would be taken seriously if they told staff they felt unsafe or worried about something.¹⁶⁹

The Children's Commissioner submitted to the Committee:

...I would suggest that close involvement of the CMC in any official misconduct investigations in youth detention centres would assist to improve the confidence levels of the young people in those centres – specifically, that concerns raised by them alleging official misconduct will be taken seriously and independently investigated.¹⁷⁰

In reply, the Acting Chairperson of the CMC submitted that there would be a difficulty in having a hard and fast rule that the CMC would investigate every allegation of official misconduct within juvenile detention centres as there is a wide-ranging spectrum within which complaints may fall. The CMC indicated that the type of complaint would need to still be considered in making a decision on how the CMC would *deal* with a complaint. The CMC advised that it had recently conducted a heavy program of engagement with youth detention centre staff through its prevention officers – focusing on ethical issues, reporting instances of misconduct and addressing misconduct within the workplace.¹⁷¹

The CMC confirmed, the fact that a complainant is a young person in detention is a very relevant consideration in weighing up how a complaint should be dealt with.

¹⁶⁸ Transcript – Public Hearing, 4 November 2011, page 15.

¹⁶⁹ Views of Young People in Detention Centres – Queensland 2011, Child Guardian, page 43

¹⁷⁰ Transcript – Public Hearing, 4 November 2011, page 16.

¹⁷¹ *Ibid.*, page 23.

The CMC considered that it would attach more weight and would see different public interest considerations applied if there was an allegation of an assault on a young person in a detention centre than perhaps an adult arrested by police.¹⁷² The CMC also confirmed that it does not refer complaints from detention centres to the centre itself, under the devolution principle, but if the complaint was the subject of devolution, it would be referred to the Department of Communities for action.¹⁷³

Previous consideration by the CMC

The Committee notes that independently of this review, the CMC had decided in 2010 to increase its monitoring for the increase in complaints dealt with by the Department of Communities – relating to alleged assaults against young people in detention. The CMC's own review identified various issues limiting the Department of Communities to appropriately deal with misconduct including:

- the effective participation of young people in investigation processes; and
- the group loyalty of staff working together to supervise young people in challenging circumstances.¹⁷⁴

The CMC considered that these issues impact on the timely and independent reporting of incidents involving physical contact between young people and staff in detention centres. In response, the CMC and the Department of Communities had started developing an integrity program targeted at youth detention centres designed to promote and develop supportive cultures within the detention centres for the timely and independent reporting and resolution of possible misconduct and other issues.¹⁷⁵

The Committee is pleased that the CMC has been involved with this issue along with the Commissioner for Children and Young People and has taken some steps towards working on a satisfactory resolution of the issue but agrees that further work must continue in this particular area.

While a simple fix could be that the CMC takes an active involvement in investigating all matters relating to youth detention centres, the Committee is acutely aware of the CMC's resources and its requirement to deal with matters in accordance with the principles for performing its misconduct functions.

The Committee considers that in addition to the recent training program being conducted by the CMC with staff of detention centres to raise awareness of their obligations about reporting misconduct and other matters, the CMC could take a more active role in its monitoring of matters relating to youth detention centres. The Committee also sees a benefit in the CMC following up on the suggestion by the Acting Chairperson at the hearing on 4 November 2011, to work closer with the lead agencies who represent young people in custody.

¹⁷² Ibid.

¹⁷³ Ibid., page 24.

¹⁷⁴ Submission No 14 - CMC, page 45.

¹⁷⁵ Ibid.

The Acting Chairperson acknowledged there is ongoing work that could be progressed with the legal representatives of young people in custody as around 60 per cent of children in detention were represented by either Legal Aid Queensland or the Aboriginal and Torres Strait Islander Legal Service. As youth detainees are often only in detention for short periods, it was considered the legal representatives could be a point of continuity that further education and liaison would benefit.¹⁷⁶ The Committee sees this as a practical way of raising awareness with young people and considers work in this area should commence.

Ultimately however, the Committee considers that (as acknowledged by the CMC), in relation to dealing with allegations of misconduct within youth detention centres, the CMC must ensure that it properly considers the public interest principle set out in section 34 of the C&M Act. If the principles for performing its misconduct functions are followed by the CMC in the correct manner as envisaged by the Act, the Committee is satisfied that those matters which ought to be investigated by the CMC – appropriately will be and the matters which ought to be the subject of devolution – will be similarly dealt with in an appropriate manner.

Recommendation 10

The Committee recommends that the CMC continue to work with the Department of Communities and the Commissioner for Children and Young People and Child Guardian to closely monitor complaints received by young people in detention centres to identify whether there are any trends in complaints received or systemic issues that require further attention.

Recommendation 11

The Committee recommends that the CMC consider commencing an awareness program with Legal Aid Queensland and the Aboriginal and Torres Strait Islander Legal Service, about the role and functions of the CMC, to assist with young people in detention centres understand complaints processes and their rights within those processes.

5.6 The CMC's monitoring role and capacity building

An essential part of the CMC's framework in dealing with instances of misconduct, is the exercise of its monitoring role for both police and official misconduct.¹⁷⁷ The CMC exercises its monitoring role in a number of ways, such as:

- overseeing an agency's investigation while it is taking place;
- reviewing interim reports as an investigation progresses;
- reviewing an agency's finalised investigation report before any disciplinary or other managerial action is taken;

¹⁷⁶ Transcript - Public Hearing, 4 November 2011, page 23.

¹⁷⁷ See sections 47 & 48 of the C&M Act.

- reviewing the outcomes of misconduct hearings conducted by the QPS, and exercising review rights where necessary;
- auditing the way in which an agency has dealt with a general class of complaints;
- evaluating the quality of an agency's overall integrity framework; and
- recording outcome data for all referred matters.¹⁷⁸

As highlighted earlier in this report, issues such as the trend in complaint matters relating to young persons in detention can be identified through the exercise of the CMC's monitoring function. Individual matters that are identified in the initial assessment phase of warranting close scrutiny by the CMC are also monitored by the CMC to maintain public confidence in how serious allegations of misconduct are being dealt with.¹⁷⁹ The CMC has taken an approach, of moving its monitoring focus to earlier, close monitoring to ensure that matters progress appropriately within agencies and enable the CMC to intervene, if necessary, in a timely way.

The CMC has also recently adopted a monitoring performance measure to review 15% of significant agency-managed complaints.¹⁸⁰ In the last three financial years (2008-09 through to 2010-11), the CMC reviewed a total of 881 matters, which includes monitoring of complaint in the QPS. In 2010-11, out of the 313 matters reviewed by the CMC, the CMC was dissatisfied to some extent with the way in which the matters were dealt with in 55 matters (14 in the public sector, 41 in the QPS).¹⁸¹

The CMC has established comprehensive procedures for assessing how complaints should be dealt with, by referring to the section 34 misconduct principles and examining the public interest considerations such as the seriousness and sensitivity of the matter, the ability for a devolved agency to effectively deal with a matter, including its capacity; and whether it has available resources to deal with it.

Capacity Building Programs and appropriate levels of monitoring

In addition to determining whether a complaint should be devolved to the relevant agency, the CMC must also determine what level of monitoring must be undertaken by the CMC over the devolved agency and what form that monitoring must take. As noted by the 7th PCMC in its report, for some time now, the CMC has been allocating more of its complaints services resources to monitoring other complaint handling agencies and to capacity building of other units to assist in the effectiveness of those agencies in dealing with complaints.¹⁸² This is continuing in the current day operations of the CMC most notably with the implementation of its Building Integrity Program.

¹⁷⁸ Submission No. 14 - CMC, page 43.

¹⁷⁹ Ibid., page 44.

¹⁸⁰ Ibid.

¹⁸¹ Ibid., pages 44 & 45.

¹⁸² 7th PCMC, Three year Review, page 31.

In relation to this program, the CMC stated in its submission:

Over the period 2010–2013 one of the CMC’s strategic priorities is to progressively build the capacity and accountability of public sector agencies in managing misconduct, subject to our oversight. (The program was previously named and reported on as the ‘Devolution Project’).

As part of this strategy, we are aiming by 30 June 2013 to implement improved integrity systems across all core public sector agencies — departments and other significant agencies, such as local governments.

In 2010 we successfully worked with Queensland Health, Brisbane City Council, the Department of Employment, Economic Development and Innovation (DEEDI), and the Department of Justice and Attorney-General to implement improved complaints management and integrity systems.

This year we continued to work with those agencies and also began working with the other departments.

In performing this work we use tools to examine the complaints management, misconduct prevention and institutional integrity of an agency. We also analyse the policies, procedures and practices that an agency has in place to assist it manage complaints and promote integrity in its officers. We survey agency staff about their knowledge and trust in these controls. Our monitoring and audit work also informs our assessments and allows us to form a judgment about the agency’s overall integrity profile.

Our trial evaluation of DEEDI assesses the agency as having an effective integrity framework and complaints handling process. We will report on the progress of the other agencies throughout this calendar year.

We will also begin implementing our Building Integrity program in the local government sector.¹⁸³

The Committee is very supportive of this program and takes comfort from the CMC’s advice that this will be expanded to the local government sector. The Brisbane City Council’s (BCC) submission to this review raised three issues which the Committee considers are related. The BCC raised issues relating to devolution; the CMC’s lack of developing capacity of regional local governments to deal with complaints; and the CMC’s referral of matters back to agencies to deal with them.¹⁸⁴

While the BCC declined an invitation from the Committee to attend the public hearing and expand on its issues, the Committee considers that the continuation of the Building Integrity Program in the local government sector will adequately address the issues raised by the BCC and provide staff in local government agencies the required information and tools to effectively deal with complaints. The Committee encourages both the CMC and regional councils to engage in open dialogue with each other, about how matters should be dealt with (i.e. the level of assessment and whether a comprehensive investigation is required for a matter) to ensure there is no uncertainty by any local government agency as to what role it is required to take in the complaints resolution process.

¹⁸³ Submission No. 14 - CMC, page 50.

¹⁸⁴ Submission No. 8 - Brisbane City Council, pages 1 & 2.

Queensland Rail submitted that in dealing with instances of misconduct, it would benefit from a more definitive application of what is, and what is not, official misconduct.¹⁸⁵ The Committee considers that matters such as this should be best addressed through regular training by CMC officers and through programs such as the Building Integrity Program.

The Committee considers however, that it is not acceptable for public sector agencies, of whatever size, to sit back and wait for direction or instruction from the CMC on the operation of the disciplinary and complaints framework. All public sector agencies must accept a greater level of responsibility for themselves in obtaining a thorough knowledge of how the complaints framework operates in Queensland and seek advice if and when required from the CMC as the lead integrity agency in Queensland. The Building Integrity Program will go some way to dealing with any uncertainties that are currently occurring.

While the Committee wholly supports the CMC's Building Integrity Program, it must be recognised that like all programs that are implemented, it too must be monitored and its effectiveness evaluated. The CMC must continue to regularly monitor the performance of all agencies, including those that have previously been given a greater devolved authority, to ensure such agencies do not 'drop the ball' after they have established they have a capacity to deal with certain devolved matters.

Recent events in Queensland Health (the examination of which have not been finalised at the time of this report and therefore should not be commented on in depth) highlight the fact that, in some cases, devolved agencies with established ethical standards units and numerous resources at their disposal may still fail to detect instances of misconduct. The Committee considers that it is through the close monitoring by the CMC of devolved matters that the instances of failing to detect misconduct are minimised.

Recommendation 12

The Committee recommends the CMC continue its focus on closely monitoring the performance of devolved agencies when dealing with and preventing misconduct, including taking a more active involvement, if required, in matters that have been referred back to agencies to deal with.

At the public hearing on 4 November 2011, Mr Tony Goode of the Local Government Association of Queensland (LGAQ) submitted to the Committee that he considered there was a perception that local government issues were considered as *second tier* business.¹⁸⁶ While the Committee does not consider there is any credence to this argument and considers the CMC treats all areas of its operations with appropriate weight, the LGAQ did raise valid concerns in relation to the ongoing liaison or monitoring by the CMC of devolved complaints:

...we have had a number of occasions on which complaints have been referred back to councils. When you actually read the nature of the complaint which has been assessed by the CMC—the substance of the complaint—and when you read the accompanying

¹⁸⁵ Submission No. 16 - Queensland Rail, page 1.

¹⁸⁶ Public Hearing - Transcript , 4 November 2011, page 5.

documentation, there is quite a bit of a disconnect between what the complaint is suggested to entail and asked to be investigated compared to what the supporting documents say.

That has led to, on a couple of occasions, the investigators having to go back to the CMC to check, to confer, to see whether or not there has been a disconnect, and most times we have found that, in fact, there has been a disconnect.

Alternatively, some investigators have gone ahead with it and they have run into some concerns, with the complainants challenging the integrity of the process—if, in fact, they are investigating something which is not the real nature of their complaint.¹⁸⁷

The Committee considers that the CMC's closer monitoring and further implementation of its capacity building programs are required to ensure examples such as that set out by the LGAQ do not continue.

Recommendation 13

The Committee recommends the CMC reviews its complaint handling processes (including its processes for monitoring devolved complaints) and associated publications to ensure –

- (a) there is clear guidance on the assessment and categorisation of matters;**
- (b) the assessment and categorisation of matters is communicated clearly to devolved agencies;**
- (c) the requirements of a devolved agency, in dealing with matters, are able to be clearly understood; and**
- (d) the level of monitoring by the CMC of devolved matters is clearly understood by all parties.**

Resourcing

The 5th PCMC, in its 2004 review, made a number of general recommendations regarding capacity building in agencies and the CMC's monitoring role, which included: seeking measures for agencies to be adequately resourced to fulfil their responsibilities to deal with and prevent misconduct; and under the direction of the Department of Premier and Cabinet (DPC), agencies take up the CMC capacity building initiatives in a timely and responsive manner.¹⁸⁸ Subsequent committees have observed an ongoing improvement in the extent to which agencies are able, and have the resolve, to deal with and prevent misconduct themselves.¹⁸⁹

This Committee has also observed an improvement in agencies' capabilities and considers that there has been a positive shift in culture which in part has arisen out of the recent Integrity and Accountability Reforms introduced in Queensland and the expanded role of the Queensland Public

¹⁸⁷ Ibid., pages 5 & 6.

¹⁸⁸ 5th PCMC, Three Year Review of the Crime and Misconduct Commission, page 27.

¹⁸⁹ 6th PCMC, Three Year Review of the Crime and Misconduct Commission, page 44.

Sector Ethics Network. The Committee has observed that some agencies have increased capacity to deal with matters that are devolved to them i.e. dedicated ethical standards units, but considers that this is not consistent across agencies. The Committee acknowledges that smaller agencies do not have the same requirements as larger agencies, but considers that for devolution to be a truly effective strategy in complaint resolution, all agencies must be appropriately resourced to meet their needs and provided with an ability to participate fully in the complaints process.

Further, the Committee accepts that there are budgetary processes in place to fund all aspects of operations within agencies, however echoes earlier committees concerns and considers that appropriate resources must be allocated to agencies to deal with and prevent instances of misconduct.

Recommendation 14

The Committee recommends that the Department of Premier and Cabinet, as the lead public sector agency in Queensland, take an active role in ensuring all public sector agencies –

- (a) have adequate resourcing to deal with and prevent misconduct within their agency; and**
- (b) have appropriate representation on the Queensland Public Sector Ethics Network to actively participate in ethics and integrity strategies that are implemented by Integrity agencies.**

5.7 Timeliness

Regardless of under what circumstances a complaint arises, and to which body it is referred for consideration – the resolution of a complaint in a timely manner is a key factor in achieving a satisfactory outcome for those participating in the complaints process.

A lack of timeliness can affect all parties in the complaints process, be it the complainant who brought the matter to the attention of the CMC – seeking answers to the matters they have raised; or the person or persons whose conduct is being investigated – being stood down from their place of work wanting to resolve the issues. It affects others in the workplace where the conduct occurred and in the case of some very serious matters, can impact on the effectiveness of the agency as a whole.

Timeliness (or lack thereof) has been a common theme in complaints received by this Committee in its complaint handling process under the C&M Act and the matter has been considered in depth by previous committees on many occasions. In relation to how delays can affect the resolution of complaints, the Department of Local Government and planning submitted to the Committee:

...concern does arise from time to time regarding the response times from the CMC in providing direction to the Department in relation to the progress of ongoing investigations. There have been instances of significant delay (up to six months) in the CMC reviewing Departmental investigation reports meaning that stakeholders, such as complainants and Councillors, are unable to have matters finalised in a timely manner. This has an impact on the relationship between the Department and Local Government stakeholders and from time to time, such stakeholders query the reason for such delay. The Department will continue to

*work with the CMC in an attempt to reduce these timeframes and ensure matters are dealt with in an efficient manner.*¹⁹⁰

The Department of Education and Training similarly submitted to the Committee:

*The period of time between the referral of the matter to the CMC and the Department's receipt of the CMC Matters Assessed Report is generally not less than two weeks and occasionally can extend up to six or seven weeks. These delays can impact on the Department's ability to commence timely investigations and manage its workforce, and is of increased significance where an employee is under suspension with pay.*¹⁹¹

How has the CMC performed?

In considering the CMC’s performance, the Committee is acutely aware of the volume of complaints received by the CMC (5124 in 2010-11) noting that in March 2011, a record of 562 complaints were received.¹⁹² The Committee also notes that in the 2010-11 financial year, there has been an increase of approximately 10% in complaints from the previous year.

The CMC states that the increase in complaint numbers does not in itself suggest there is a decline in the integrity standards across the Queensland public sector¹⁹³ and the Committee supports this position. The Committee is satisfied that one of the contributing factors in the increase of complaint numbers, is the rising awareness of public sector officials to report any matter that may involve official misconduct to the CMC in accordance with the obligations contained in the C&M Act.

A snapshot of the CMC’s performance over the past three years can be seen in the tables below¹⁹⁴ which the CMC included in its submission to this review:

Matters assessed: 2008–09 to 2010–11

	2008-09	2009-10	2010-11
Matters assessed	3922	4649	5053
Percentage assessed within 4 weeks	94%	97%	93%

In the last review, the 7th PCMC noted the CMC continually met its target of 85% of complaints being assessed within four weeks of receipt.¹⁹⁵ This Committee also notes that that the CMC has again continued to meet (and exceed) its matters assessed target across the previous three years.

¹⁹⁰ Submission No. 1 - Department of Local Government and Planning, page 2.

¹⁹¹ Submission No. 7 - Department of Education and Training, page 1.

¹⁹² Submission No. 14 - CMC, page 17.

¹⁹³ Ibid.

¹⁹⁴ Ibid., pages 19 & 20.

¹⁹⁵ 7th PCMC, Three Year Review of the Crime and Misconduct Commission, page 33.

The Committee notes the comments above from the Department of Education and Training in relation to timeliness of assessing matters received. The Committee considers that while the CMC should strive to assess every matter it receives within an appropriate timeframe, the Committee accepts that circumstances will arise, from time to time, which will impact upon the CMC's ability to meet its target timeframes. The Committee considers however that by meeting its target over 90% of the time in the last three years, the CMC is operating effectively in this area.

The CMC advises it is continuing to extend its implementation of section 40 directions to government departments which will assist with issues of timeliness. A direction under section 40 of the C&M Act allows the CMC to modify the statutory obligations of a public official to report instances of misconduct to it, and allows the CMC to pre-assess certain categories of complaints so that agencies (which are the subject of such a direction) may start dealing with complaints of the nominated category immediately and report to the CMC on a monthly basis. Further commentary on section 40 directions appears later in this chapter.

The CMC has also trialed providing agencies with direct access to the CMC's own real-time complaints database (COMPASS) to assist in the timeliness of dealing with complaints. Access to COMPASS may be expanded further, commensurate with the expansion of the Building Integrity Program outlined earlier.

The Committee encourages the CMC to continue to implement measures that will assist with the timely assessment of matters, however considers that the improvements in the timeliness of its assessments must not occur at the expense of quality assessments. The CMC must be satisfied that assessments remain thorough and are completed by appropriately qualified staff in other agencies to ensure matters are dealt with quickly, but also appropriately, having regard to all the relevant circumstances of each individual matter.

Investigations completed: 2008–09 to 2010–11

	2008-09	2009-10	2010-11
Percentage completed within 12 months	71% (= 80 investigations)	79% (= 63 investigations)	60% (= 118 investigations)

The figures for the timely completion rate of the CMC's investigations are not as high as its matters assessed completion rates. The CMC has a target of completing 80% of its investigations within 12 months¹⁹⁶. The CMC states that in 2010-11, significant effort was focused on finalising its investigations which were carried over from the previous year.¹⁹⁷

The Committee notes however that while there has been a decrease in the percentage of total investigations completed, the actual number of investigations completed throughout the year has increased by approximately 87% over the previous year. The Committee also notes the CMC's inability to meet its target in 2010-11 was due to the complex nature of recent investigations, and the number of complex investigations carried forward from the previous year¹⁹⁸. Further, The Committee also

¹⁹⁶ Submission No 14 – Crime and Misconduct Commission, page 20.

¹⁹⁷ *Ibid.*, page 21.

¹⁹⁸ *CMC Annual Report 2010–11*, pages 34 & 35.

accepts that the retention of matters by the CMC cannot be pre-determined but is primarily driven by the public interest in the CMC itself investigating those matters.

The Acting Chairperson of the CMC noted at the public hearing:

*In Misconduct we are seeing a trend now, which seems to be quite established, of rising complaint numbers. Our report speaks of an increase in the order of 10 per cent for the last financial year, which follows a significant increase from the year before that. This year we are running around six per cent to date as another increase, so it looks like a fairly established trend. That is across the public sector; it is not in the Police Service. We consider that one of the factors in play here is that, as we work more closely with public sector agencies to improve their integrity frameworks, their awareness of integrity issues is increasing and their reporting of misconduct is increasing accordingly. That volume and the rising number of complaints do place pressure on our resources. We need to deal with issues of timeliness and quality of our decision making and the results that we are producing amidst that increasing volume of workload.*¹⁹⁹

The Committee considers that despite the best efforts of the CMC and all public sector agencies across the state in improving the conduct and integrity of public sector officials – the number of investigations required to be conducted by the CMC is not going to drop significantly in a short space of time. The Committee considers that while the CMC must do all it can to ensure its investigations are completed in a timely manner, innovative techniques and system changes cannot create efficiencies out of nothing. The CMC must be appropriately resourced to ensure it is able to carry out its functions appropriately. Previous committees have monitored timeliness of investigations, and this Committee has discussed the progress of various matters with the CMC at length in its joint meetings, however the Committee understands that ultimately, the relevant minister (currently the Attorney-General) has a responsibility to ensure that the CMC operates to best practice standards.²⁰⁰

The Committee notes that to help the Attorney discharge that responsibility, the CMC must report to the Attorney, when and in the way required by the Attorney, on the efficiency, effectiveness, economy and timeliness of the CMC and its systems and processes, including operational processes.²⁰¹ The Committee considers that as the responsible minister of the government of the day, the Attorney-General has the ability to ensure the CMC is provided with the resources it needs to carry out its role, efficiently and effectively.

Recommendation 15

The Committee recommends the Attorney-General review the current methods under which reports are provided by the CMC under section 260 of the *Crime and Misconduct Act 2001*, to enable him to fulfil his own responsibilities under the Act in ensuring the CMC operates to best practice standards, in areas such as timeliness.

¹⁹⁹ Public Hearing - Transcript , 3 November 2011, page 3.

²⁰⁰ C&M Act, section 260(1).

²⁰¹ Ibid., section 260(2).

Recommendation 16

The Committee recommends after reviewing the methods under which the CMC reports that the Attorney-General takes appropriate steps, as and when required, to ensure the CMC is provided with the necessary resources to carry out its investigative functions.

How can the issue of timeliness be addressed?

In a private submission received by the Committee, it was proposed that in order to reduce investigatory timeframes:

*A statutory limit of 6 months should be adopted for all misconduct investigations unless the CMC applies to and receives approval for an extension in the investigatory time frame by the Public Interest Monitor.*²⁰²

The Committee accepts that imposing statutory timeframes for completion of investigations may provide investigators with an incentive to complete matters in a timely manner, however the Committee considers that this may also lead to other unintended outcomes. While timeliness is essential, the Committee acknowledges that investigations must take their own course, depending on the individual circumstances of each complaint and be as thorough as is required given the individual circumstances of each matter. The Committee considers it is possible that investigations may be compromised by being cut short, if there was a requirement to finalise a matter within a statutory timeframes.

Further, if an investigation into misconduct was not complete, the Committee cannot envisage in what instance the PIM (or any other nominated decision maker) would not extend the applicable timeframe. While it would be expected that a decision maker would be critical of the CMC's performance if the progress of a matter was not conducted in a satisfactory manner, delays themselves should not give rise to an investigation being discontinued. The Committee considers that the Commission itself should take responsibility for its own actions and manage the conduct of its investigations within its own reporting structure. Matters that are not capable of productive investigation should not be commenced or if commenced, should be discontinued at a time when that conclusion is reached. While delays are unfortunate, the Committee does not consider the imposition of a statutory timeframe for completion is required.

Timeliness was considered with respect to the CMC's involvement in the Police Complaints system by the Independent Panel in its report *Simple, Effective, Transparent, Strong*.²⁰³ In relation to benchmarked timeframes, the Independent Panel stated:

In most instances, timeframes should be benchmarked instead of imposing a mandatory timeframe. However, commitment to the benchmark needs to be supported, transparent

²⁰² Submission No. 15.

²⁰³ *Simple, Effective, Transparent, Strong – An independent review of the Queensland police complaints, discipline and misconduct system*, May 2011, pages 70 – 86.

*and accountable. That commitment is dependent on the timeframes being reasonable and fair in affording a satisfactory process that prioritises the timeliness of its outcomes.*²⁰⁴

The Committee agrees that appropriate benchmark timeframes are required for the CMC and that public reporting on achievement of benchmark timeframes is required. The CMC currently reports publicly on its timeframes for finalising investigations in its annual reports and in reviews such as the Committee's triennial reviews. The Committee does not consider that the added burden of requiring the CMC to prepare and apply to the PIM or any other decision maker, for extensions of its investigatory timeframes, would increase its ability to meet its target timeframes. The Committee considers the time taken in seeking approvals from external decision makers would not be an appropriate use of resources and would be better spent in conducting investigations themselves.

The Committee notes that while processes and procedures may be developed to assist in the conduct of investigations, the facts and circumstances of each individual matter may be vastly different. The availability of witnesses and other persons of interest may change from one matter to the next and so too the availability of investigators or a requirement to shift focus to a more important matter from within the CMC itself. After taking into account the CMC's historic figures in meeting target timeframes for completion of investigations, the Committee considers that a target timeframe of 6 months for completion of investigations is simply not realistic and it would not aid the CMC in any way, to halve its current benchmark timeframe of 12 months.

The Committee is aware that the CMC regularly assesses its own performance. The Committee considers that when matters are not conducted within a satisfactory timeframe, or also when matters are completed ahead of schedule, the CMC should be conducting 'after action reviews' to identify their relevant failures or successes (as the case may be) and learn from these matters. The Committee expects that the CMC will continue to scrutinise its investigation strategies and refine its processes and procedures taking into account the lessons learnt, to ensure that investigations are conducted optimally and that appropriate timeframes are set and met.

The Committee notes the Independent Panel, in its review of the Police complaints system, proposed a number of new benchmark timeframes which were supported with amendment by the Government²⁰⁵. The Committee considers that in addition to the CMC's informal reviewing of its own performance, when implementing any new timeframes under the Police Discipline and complaints system, the CMC should consider, where appropriate, whether to implement similar timeframes in its complaints processes that apply across the other areas of its misconduct operations. The Committee considers the CMC should report on this matter in its reports to the Attorney-General under section 260 of the C&M Act. The Attorney may then consider conducting a further review on the CMC's benchmark timeframes for its misconduct operations outside the Police complaints, discipline and misconduct system.

²⁰⁴ Ibid., page 74.

²⁰⁵ Government response to the independent review of the Queensland police complaints, discipline and misconduct system, August 2011.

Recommendation 17

The Committee recommends that the CMC review its benchmark timeframes for conducting both misconduct investigations and reviews of matters, against the benchmarks being implemented under the new Police Complaints, Discipline and Misconduct System to try and achieve consistency across its operations and report to the Attorney-General on this matter under its section 260 report.

Communication with participants in the complaints process

The Committee considers that one area, which ties into the issue of timeliness, where the CMC must take steps to improve is with its communication to complainants and persons under investigation throughout the investigation process.

Provision of updates

Both the QPUE and the LGAQ raised with the Committee during the public hearings for this review, the matter of providing regular updates to persons under investigation. Mr Ian Leavers, President of the QPUE submitted to the Committee on 3 November 2011:

...Some investigations can go on for many years. I know one which has recently been commenced by the CMC and it may take two to three years for that process to be finalised. I think there are some investigations that they do which could be dealt with far more efficiently and effectively. The end result is that they do have a lot of capabilities for investigations—more than any other organisation. But it is not only the police officers whose lives are put on hold but also their families, their work units and the complainants who make a complaint from outside. If they see an investigation taking 12 to 18 months or two or three years, everyone loses confidence in the system. I think it is something that we really need to watch and ensure we have time frames.²⁰⁶

If it is to go on for a long time, there should be regular updates so people know where they stand or what is happening. I do understand that with some complex investigations—whether it be drug related or paedophilia—some things need to be kept completely confidential and you cannot give updates. I am not unreasonable about that. But in the main I think a far more efficient process would benefit all.

While Mr Leavers acknowledged that some investigations may be prolonged, the Committee considers that the issue he has raised regarding the provision of regular updates is not one which should go unaddressed. The Committee acknowledges that persons who are the subject of a CMC misconduct investigation can undergo an indescribable amount of stress and the Committee considers that this should not be exacerbated by needless uncertainty as to what is happening in relation to the investigation.

²⁰⁶ Transcript - Public Hearing, 3 November 2011, page 40.

Mr Tony Goode, Workforces Strategy Executive of the LGAQ, similarly submitted to the Committee on 4 November 2011:

I also accept the fact that I think an improvement could be made to the response time—just keeping people informed of what is happening in itself, because, like all of these matters, it is the uncertainty that is the worst part of it. Particularly depending on the nature of the investigation, if you have some very senior managers being investigated we have duties of care to those particular managers. If you do not know what is going on with that environment, it makes it extremely awkward for you to exercise that duty of care towards that manager.²⁰⁷

Mr Goode reinforces this point from a local government perspective, that the uncertainty as to the process of an investigation can often be distressing and disruptive. The Committee considers that this is an area which the CMC can and should address quite easily. The Committee notes that the Acting Chairperson of the CMC responded to Mr Goode's comments at the hearing as follows:

With regard to the timeliness issues, I have certainly noted what Mr Goode said. I will look further from our own end into some of those feedback issues, but we do have an expectation that once an investigation is known and alive within an agency we would be providing them with regular updates about it. We could look at formalising that within our own processes in terms of set time frames. I am happy to do that, but it probably needs to be coordinated at a more senior level than just investigators. They may deal with agencies and simply advise that an investigation is progressing, but I do not really see it as their place to be liaising with senior officers about the progress of matters. That should be escalated from our end.²⁰⁸

The Committee considers that appropriate communication with stakeholders throughout the conduct of any investigation should be a necessary component of the investigatory process. The Committee considers that the CMC should be able to readily provide participants in the investigatory process with an anticipated timeframe for the investigation at its commencement and provide regular updates to complainants or those persons under investigation to advise them, as to the progress of the investigation and whether there is likely to be any change to the estimated timeframes.

CMC's outcome advices

The other aspect of the CMC's communication with its stakeholders which the Committee has considered is in relation to the final advices provided by the CMC to complainants. This Committee and previous committees have raised this matter with the CMC at its joint meetings and the content of the CMC's communications with complainants is often the subject of complaints received by the Committee.

The Committee has found that in dealing with complaints about the CMC, it is a common occurrence that a complaint to the Committee stems from a failure by the complainant to understand the nature of the role the CMC actually undertook in dealing with the complainant's matter. The Committee often

²⁰⁷ Transcript – Public Hearing, 4 November 2011, page 7.

²⁰⁸ Ibid.

receives complaints where it is alleged 'the CMC refused to look at the matter' or 'the CMC did not do anything at all'.

After consideration of the matter by the Committee, it is often the case that the CMC actually dealt with the matter appropriately and in accordance with the provisions of the C&M Act, but the complainant has misinterpreted the CMC's advice – that after assessing the matter it would not taking action for a particular reason as meaning that the CMC has simply refused to consider the matter or refused to take action.

While the Committee can confidently state that in the overwhelming majority of matters it considers, the CMC has not acted inappropriately, the Committee considers that the CMC must ensure that its communication to stakeholders is written in a manner that is clear, and that it completely addresses all the matters that have been raised. This Committee has noted there has been an improvement in the CMC's communications with complainants however considers that the CMC should review how it corresponds with all stakeholders to ensure that the valuable work it carries out is clearly communicated to other parties and persons involved in the complaints process have a clear understanding of what course of action the CMC has taken and the reasons for taking it.

Recommendation 18

The Committee recommends that the CMC review its communication processes with agencies, complainants and persons under investigation and puts in place a process whereby the CMC provides stakeholders with an estimated timeframe for its investigations at the outset and regular updates throughout the conduct of the investigation.

Section 40 Directions

Over recent years, one of the important strategies used by the CMC to assist in reducing timeframes for managing complaints is by providing a direction to a relevant agency under section 40 of the C&M Act. As stated above, a direction under section 40 of the C&M Act allows the CMC to modify the statutory obligations of a public official to report instances of misconduct to it, and allows the CMC to pre-assess certain categories of complaints so that agencies, the subject of such a direction may start dealing with complaints (of the nominated category) immediately and report to the CMC on a monthly basis.

The use of section 40 directions has been considered by previous committees in their reviews of the CMC's activities,²⁰⁹ with those former committees supporting the CMC issuing the directions. However this Committee notes that a section 40 arrangement is not something that the CMC ought to be providing to an agency without careful and thorough consideration of the agency's ability to effectively deal with the matters covered by the direction.

Both the Department of Local Government and Planning (DLGP) and Queensland Rail expressed in their written submissions to the Committee that they considered their organisations would benefit from a

²⁰⁹ 6th PCMC, Three Year Review, page 48; 7th PCMC, Three year Review, page 34.

section 40 direction – to improve on timeliness and achieve greater efficiencies in the complaint handling process.

The DLGP set out in its submission:

It is the Department's view that duplication could be avoided by permitting the Department to deal with certain matters of official misconduct under a section 40 arrangement. This is likely to lead to little delay in investigating matters and a more streamlined process. The Department believes that both the Department and the CMC would benefit from such an arrangement as it would be a more efficient use of public resources. The Department will continue to raise this with the CMC in an endeavour to see a section 40 arrangement come to fruition.²¹⁰

At the public hearing on 4 November 2011, the representative from the DLGP, Ms Bronwyn Nosse, in discussing section 40 directions with the Committee, stated:

We have been liaising with the CMC for quite a number of months in order to get a section 40 arrangement in place. The CMC have advised us that it is part of the Building Integrity project. They need to be assured that the department has sufficient processes and procedures in place to adequately deal with these complaints. We have received an interim report back from the CMC and we are hopeful of entering into an arrangement with them in the future which would allow that to occur. The whole point really is to say to the department that the CMC is confident of our ability to handle certain classes of allegations.²¹¹

The Committee considers Ms Nosse has summarised the CMC's position accurately and the Committee wholly supports this position. The Committee considers that while there is definitely value in entering into section 40 arrangements with agencies, unless the agency has a detailed understanding of how to deal with instances of official misconduct, the desired efficiencies will not be gained as matters will need to be reassessed and any direction given prematurely may result in it ultimately being withdrawn. The Committee understands that assessments are continuing in the areas of Local Government and also with GOCs to provide appropriate section 40 directions and the Committee encourages the CMC to enter into these arrangements, as appropriate, in order to assist with timeliness and achieve greater efficiencies.

Recommendation 19

The Committee recommends that the CMC continue its assessment of agencies' ability to understand and deal with official misconduct and provide section 40 directions, as appropriate, to assist with timeliness in the complaints handling processes.

²¹⁰ Submission No. 1, Department of Local Government and Planning, page 2.

²¹¹ Transcript – Public Hearing, 4 November 2011, page 3.

5.8 The CMC's ongoing role in the Police Complaints, Discipline and Misconduct System

As set out in part 5.4 of this chapter, over the period covered by this review, a significant volume of work has occurred in reviewing the Queensland Police Service (QPS) complaints, discipline and misconduct system. The CMC conducted its review of current processes for the management of police discipline and misconduct matters producing *Setting the Standard* in December 2010. *Setting the Standard* contained 11 recommendations aimed at 'improving the police discipline framework, policies and procedures, and resolving a number of issues and notable deficiencies in the current system'.²¹²

The CMC did not recommend a specific model for implementation but recommended the current system be jointly reviewed by the CMC and the QPS to develop an improved system. Instead, the Government appointed an Independent Panel to continue this work and undertake the review recommended by the CMC in *Setting the Standard* with the goal of identifying a model for the QPS complaints, discipline and misconduct system.

The Independent Panel produced a comprehensive series of recommendations to reform the police complaints system in its report: *Simple, Effective, Transparent, Strong* and provided this to the Premier in May 2011. The Government tabled its response to the Expert Panel's recommendations in August 2011 and either supported, supported in principle or supported with amendment all but one of the panel's 47 recommendations²¹³. In September 2011, the Government also tabled its full response to the CMC's *Setting the Standard*, supporting the remaining recommendations which were considered to be beyond the scope of the Independent Panel's terms of reference, including the CMC's recommendation for a 'loss of confidence' dismissal power for the Commissioner of QPS.²¹⁴

As the supported recommendations vary in scope from legislative amendment/review and approval of policies and procedures, to the implementation of new staffing models within the CMC and the misconduct area, the Government has set a broad and varying timeline for the implementation of the changes.

It was anticipated by the former Government that amendments to the C&M Act, *Police Service Administration Act 1990* and the Police Service (Discipline) Regulations 1990 would be made by the end of 2012. The QPS and the CMC have commenced revising their policies and procedures in accordance with the supported recommendations, which will be underpinned by the proposed legislative changes.

The Acting Chairperson of the CMC updated the Committee on its progress at the public hearing:

There are 50-odd recommendations with varying time frames. We have already substantially implemented some of the simpler recommendations and we have a detailed implementation plan in place for how we and the other relevant agencies are now proceeding. It is certainly the CMC's view that there are considerable opportunities in that for improving the police complaints and discipline system in our own handling of police complaints. There is certainly a will on our part to make those improvements and do what

²¹² Submission No 14 - CMC, page 57.

²¹³ Government response to the independent review of the Queensland police complaints, discipline and misconduct system, August 2011.

²¹⁴ Government response to the Crime and Misconduct report "Setting the Standard – A review of the current processes for the management of police discipline and misconduct matters", September 2011.

*we can to support a more timely and more efficient and effective system that underpins public confidence in the Police Service. I think the successful implementation of those recommendations will go a considerable way to addressing many of the concerns that have been raised with the CMC and with the committee about how the current system deals with complaints about police.*²¹⁵

To ensure the valuable work currently being completed by the CMC and the QPS is able to commence on time, and to provide QPS officers and other participants with certainty in the reformed system, the Committee considers that the proposed legislative amendments must be given a high priority by the Government in order to be finalised and introduced as soon as possible after Parliament resumes.

Recommendation 20

The Committee recommends that the Government gives a high priority to advancing the legislative amendments required to support the enhancements to the Police Complaints, Discipline and Misconduct System and should aim to introduce the amendments into Parliament for passage by the end of 2012. This includes recommendations from both *Setting the Standard* and *Simple, Effective, Transparent, Strong*.

The CMC has supported the Independent Panel's recommendations and notes in its submission to this review that it:

*...addresses many of the fundamental issues that have at times been of particular interest to the PCMC over the last three years, including the broad issue of 'police investigating police' and public confidence in the police complaints and discipline system; the timeliness of complaint resolution; and consistency and adequacy of disciplinary outcomes.*²¹⁶

These are indeed matters which have been of interest to the current and former Committees, some of which are addressed in this chapter more broadly above. The Committee fully supports the amendments to the police complaints system and considers they will go a long way to improving public confidence in the system which has been lacking for some time. The Committee anticipates that the new system will appropriately address perception issues with 'police investigating police' and will improve the interactions between the CMC and the QPS in the context of being able to effectively perform their respective roles within the complaints and disciplinary system.

The Committee acknowledges that the changes will have major implications for how the CMC approaches its police misconduct functions, including establishing new staffing models and obtaining additional resources to operate under the new framework. The CMC submitted to the Committee:

Implementing the changes required by the government's review of the police disciplinary system will have significant implications for us, including the possibility we will need to realign our internal structures and resources to meet demands of the new system. We are ready for this challenge and welcome the opportunity to play a significant part in delivering much-

²¹⁵ Transcript – Public Hearing, 3 November 2011, page 3.

²¹⁶ Submission No 14 - CMC, page 48.

*needed changes in this area. We are cognisant of the importance of having a police complaints and discipline system in which the public, and police, can have confidence.*²¹⁷

As these reforms are only in their early stages and the timeframe for implementation of the system will be ongoing for the next two years or so, the Committee considers the next PCMC (from an oversight perspective) and the incoming Attorney-General (from a resourcing and performance perspective) must closely monitor the CMC's ability to effectively participate, and its ongoing performance in the new police complaints system.

Recommendation 21

The Committee recommends that future Committees closely monitor the operations of the CMC under the new Police Complaints, Discipline and Misconduct System in order to identify any implementation problems and make recommendations to the Government for any changes as required.

Recommendation 22

The Committee recommends the Attorney-General and Minister for Justice as responsible minister ensures the CMC has adequate resources to operate effectively under the new Police Complaints, Discipline and Misconduct System, as envisaged by the Independent Panel's report.

The Committee acknowledges that the performance of the CMC's misconduct functions in the police complaints, discipline and misconduct system is unique from the performance of its misconduct functions across the broader public sector. The Committee considers there may be some elements of the CMC's operations under the new police complaints system that are identified as having further application across the whole spectrum of the CMC's misconduct operations such as improved internal staffing models, policies and procedures.

As stated above in relation to timeliness, the Committee encourages the CMC to periodically review its polices and processes as the changes to the Police Complaints system are implemented to identify whether efficiencies can be achieved across all areas of its misconduct operations.

5.9 Government Owned Corporations

Background

The CMC's jurisdiction over Government Owned Corporations (GOCs) has been examined in great detail in previous reviews of the CMC in an attempt to arrive at an optimal solution as to what role, if any, the CMC should have in relation to dealing with instances of misconduct within a GOC.

²¹⁷ Ibid., page 63.

The CMC submitted to the reviews conducted by both the 5th PCMC in 2003-2004 and the 6th PCMC in 2006, that entities carrying out public functions should be subject to scrutiny by the Commission, especially where public funding is involved.²¹⁸

This position was accepted by those Committees in principle, but the complexity of the policy and practical issues involved in its implementation remained a concern to the Committees especially the timing of any changes in relation to resourcing and workloads for both the CMC and the affected entities. Both earlier Committees 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.²¹⁹

The Government, in its response to the 6th PCMC's three year review, was not satisfied that there were compelling reasons to commit to detailed consideration of an extension of the jurisdiction of the CMC to private entities that exercise public functions and utilise public monies, and would not be conducting an assessment of the resource and financial implications, during its current term.²²⁰

The GOCs operating in Queensland at that time fell under 2 categories – 'company GOCs' incorporated under the *Corporations Act 2001* and 'statutory GOCs' established under respective Queensland legislation and not subject to the national corporations laws. The CMC had retained jurisdiction over the statutory GOCs but not the company GOCs.²²¹ In 2007, the *Government Owned Corporations Act 1993* (GOC Act) was amended so that all existing statutory GOCs were converted to company GOCs resulting in all GOCs being governed by the same regulatory regime under the *Corporations Act 2001*.

As a result of these amendments, the CMC ceased to have any jurisdiction in relation to misconduct by officers of any GOC within the state.²²²

The CMC, in its submission to the 7th PCMC's three yearly review, set out its concerns about the appropriateness of excluding GOCs from its misconduct function given community expectations about integrity and accountability. In its submission to the 7th PCMC's review, the CMC stated²²³:

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 submitted to the 7th PCMC that, rather than declare all GOCs to be units of public administration thereby bringing them within the misconduct jurisdiction of the Commission, that:

²¹⁸ 5th PCMC Three Year Review, 2004, pages 34-35; 6th PCMC Three Year Review, 2006, pages 53-54.

²¹⁹ 5th PCMC Three Year Review, 2004, page 35, recommendations 12 and 13; 6th PCMC Three Year Review, 2006, page 54, recommendation 16.

²²⁰ Government Response to the Parliamentary Crime and Misconduct Committee, Report No. 71 Three Year Review of the Crime and Misconduct Commission, pages 6-7.

²²¹ *Government Owned Corporations Act 1993*, previous section 181.

²²² *Government Owned Corporations Act 1993*, section 156.

²²³ CMC submission to the 7th PCMC Three Year Review, page 20.

*... 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.*²²⁴

The 7th PCMC, in considering the proposal from the CMC, supported the general proposal to give the CMC jurisdiction to investigate serious allegations of misconduct against officers of GOCs, however it did not support the proposal that the relevant minister have discretion as to whether to refer the matter to the CMC for consideration.²²⁵ The Committee recommended that the relevant legislation be amended to give the CMC jurisdiction to investigate serious allegations of misconduct against officers of GOCs and to play a role in misconduct prevention and capacity building in GOCs.²²⁶

The Government in its response to the 7th PCMC's Report gave its support, in principle, to the extension of the CMC's misconduct jurisdiction to GOCs and stated it would consider the matter as part of its discussion paper *Integrity and Accountability in Queensland*.²²⁷

Current Arrangements

The Government in its response to submissions on *Integrity and Accountability in Queensland* agreed to expand the jurisdiction of the CMC by amending the GOC Act to ensure GOCs could once again be investigated by the CMC in relation to misconduct matters. This was achieved as part of a suite of amendments contained in the Integrity Bill 2009.

Under the new legislative arrangements, chief executive officers of GOCs are now required to notify the CMC of a complaint, information or matter relating to the GOC that involves or may involve suspected official misconduct as if the GOC was a unit of public administration as defined under the C&M Act.²²⁸ There is also an obligation placed on the chief executive of the Department responsible for administration of the GOC Act (the Under-Treasurer) to notify the CMC of a complaint of suspected official misconduct, if the Under-Treasurer reasonably suspects that such misconduct has occurred and the CEO of the relevant GOC has failed to notify the CMC.

Accordingly, GOCs have put in place policies, procedures and processes to deal with the new reporting obligations placed upon them. The CMC in its submission to this review has stated that while the transition has been successful, it has led to the identification of some complex cross-jurisdictional issues arising from the GOCs also being subject to the Commonwealth corporations laws.²²⁹ In particular, this relates to the requirement for a GOC to comply with the recent *Public Interest Disclosure Act 2010*²³⁰ in addition to having to comply with whistleblower protection mechanisms under the Corporations Act.

²²⁴ CMC submission to the 7th PCMC Three Year Review, page 23.

²²⁵ 7th PCMC Report 79, Three Year Review, 2009, page 41.

²²⁶ 7th PCMC Report 79, Three Year Review, 2009, page 41.

²²⁷ Government Response to the Parliamentary Crime and Misconduct Committee, Report No. 79 Three Year Review of the Crime and Misconduct Commission, page 5.

²²⁸ *Government Owned Corporations Act 1993*, section 156

²²⁹ Submission No. 14 - CMC, page 48

²³⁰ The application of the *Public Interest Disclosure Act 2010* is discussed further at Chapter 10 of this report.

In addressing the application of the new arrangements, the CMC submitted:

The provisions of the Corporations Act relating to the confidentiality of disclosures made by persons to certain individuals or entities provide that such disclosures are protected and unauthorised disclosure is an offence. These same provisions provide that authorises disclosure may be made to a limited number of agencies including ASIC, APRA and the AFP or to someone else with the consent of the discloser. While it seems a discloser may give permission for a complaint to be communicated to a State-based integrity agency such as the CMC, it is not specifically identified.

The CMC recognises that in the limited situations where the need for dual reporting might occur, the Commonwealth agency will likely have the expertise and powers appropriate to facilitate the investigation and prosecution of the alleged misconduct of an individual.

However, for the CMC's monitoring role with respect to suspected official misconduct to be fulfilled, certainty is required as to the steps to be taken by Chief Executive Officers and the Under-Treasurer when dealing with concerns so as to meet the reporting obligations imposed by the whistleblower provisions of the Corporations Act, the GOC Act, the CM Act and the PID Act.

Without such certainty there will be continued doubt for GOCs about reporting obligations and concern about exposure to prosecution for failing to report suspected official misconduct to the CMC. There is also the possibility of concurrent investigations of the same alleged misconduct being undertaken by the CMC and a Commonwealth agency, and the likely undermining of the CMC's specific obligations and powers as outlined in our Act.

The CMC is working in co-operation with the GOCs and other sector stakeholders such as Queensland Treasury (Office of Government Owned Corporations) to resolve these legal issues.²³¹

The Committee wholly supports the steps taken by the Government in bringing GOCs back within the CMC's misconduct jurisdiction however, for the CMC and GOCs to operate effectively under the new arrangements, any inter-jurisdictional issues such as those raised by the CMC in its submission must be resolved as quickly as possible. It is unacceptable for there to be any confusion or doubt within GOCs as to how they must comply with their reporting obligations as they could be exposed to prosecution for failing to report suspected misconduct to the CMC. Further, the possibility of concurrent investigations of the same alleged misconduct by the CMC and Commonwealth agencies, must be avoided to ensure there is no waste of resources and more importantly, that the powers of the CMC are not undermined.

The Committee notes in the lead up to, and in the period after, GOCs coming back within the jurisdiction of the CMC, that the CMC has conducted significant training about official misconduct and the jurisdiction of the CMC to individual GOCs, however the Committee considers further legislative support is required in addition to training to resolve these issues.

²³¹ Submission No. 14 - CMC, pages 48 & 49.

Recommendation 23

The Committee recommends that the Government support the CMC in resolving any inter-jurisdictional issues in the application of the jurisdiction of the CMC to GOCs as quickly as possible, including making amendments to the relevant legislation, in order to provide certainty to the processes and procedures being implemented by both the CMC and the GOCs to comply with the new arrangements.

Recommendation 24

The Committee recommends that successor committees closely monitor the CMC's supervision of Government Owned Corporations over the next reporting period to assess the effectiveness of the new arrangements.

5.10 Publication of matters referred to, or under consideration by, the CMC

The publication of matters referred to the CMC or currently under assessment or investigation by the CMC is a topic that has again been in the spotlight over the period of this review – most recently during the state election campaign in February/March of this year. The issue has arisen in different ways, that is, publication by the persons who have referred allegations to the CMC; or publication by the CMC, themselves.

The CMC's Media policy

The CMC has detailed internal policies and procedures on *Communication and Releasing Information to the Media*. The CMC summarises its media policy on its website as follows:

Our policy on releasing information

We recognise that the media has an important role in reporting on our investigations, public inquiries, reports and publications. We also understand that they have the right to report matters of public interest, free of unnecessary official restraint or vetting of information.

At the same time, those who bring their complaints to us, and those we investigate are entitled to privacy and confidentiality throughout the process.

These competing interests require us to strike a balance between the rights of individuals on the one hand and those of the community on the other.

Current complaints and investigations

In general, we neither confirm nor deny the existence, or any aspect, of any current alleged complaint or investigation unless the complainant or agency has made it publically known.

*However, depending on the circumstances (e.g. where the facts have been misrepresented or distorted), we may comment on matters that have been or are about to be discussed on the public record.*²³²

The CMC has a dedicated Media Unit and issues regular media releases as and when required in accordance with its communication policies.

As set out in its media policy, the CMC maintains the general position that it will neither confirm, nor deny, the existence or any aspect of, a matter that has been referred to it unless the complainant or agency has made it publicly known. The stated caveat to this position is that the CMC may provide public comment on a matter if it is, or is about to be, misrepresented or distorted – i.e. is being or is about to be incorrectly reported by the media. This may occur when a journalist is presented with only the complainant’s version of what is alleged to have transpired.

The CMC’s procedure on *Releasing Information to the Media* contains specific mechanisms to be used where the CMC considers it necessary to address a matter being incorrectly reported.²³³

The CMC may:

- issue a statement to the news organisation or the wider media, if required;
- discuss the problem with the journalist who prepared, or is preparing the media article or, if that fails, the chief of staff of the news organisation;
- monitor the electronic media, and contact the editor to request that the error be amended or the news item stopped; or
- write to the editor of the article if the article occurs in the print media.

Publication of matters relating to public officials during election campaigns

The 6th PCMC considered this matter in its 2006 three yearly review of the CMC after issues arising from the local government elections in 2004. The LGAQ submitted to the 6th PCMC:

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

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

²³² www.cmc.qld.gov.au/news-and-media/releasing-information

²³³ *CMC Procedure – Releasing information to the media.*

*Confidentiality is clearly appropriate prior to the conclusion of an investigation so that the presumption of innocence (in the public's mind) is not lost.*²³⁴

The 6th PCMC noted the CMC responded to this issue in a supplementary submission stating the issue had been raised previously, but was not supported by the then government. The 6th PCMC reported on the CMC's observations at the time of that review as:

It is not difficult to understand why there would be reluctance on the part of any government to introduce such legislation, as it would leave itself open to the criticism that both the government and the CMC would be less open and accountable.

There would also be significant difficulties in enforcing any such legislation if the media were to publish details asserting them to be from 'anonymous sources'. Further problems would arise in maintaining confidentiality in the course of an investigation.

The Commission's view is that it would be difficult to justify such an amendment where there is a public expectation that the work of the Commission in politically controversial or sensitive matters be open and transparent. It is important that public debate is not stifled by any legislative proscription. Consequently, the Commission does not support such an amendment.

*However, we will continue to publish on our website, before the next local government and state elections, a message to all candidates seeking their cooperation to ensure that the CMC's complaint processes are not misused for political purposes. The Chairperson will also make media statements at the appropriate times to reinforce this message.*²³⁵

The 6th PCMC stated that it understood the concerns raised by the LGAQ that inappropriate disclosure can damage reputations and undermine public confidence, however the 6th PCMC agreed the CMC's supplementary submission had merit. That committee determined the matter was best resolved by the preventative approach adopted by the CMC above, rather than by legislative amendment.

The 6th PCMC recommended:

*Whilst acknowledging the concerns raised in the Committee's review, on balance and having regard to the need for transparency, the Committee does not recommend any amendment to the Crime and Misconduct Act 2001 to impose an obligation upon persons to keep the existence and nature of complaints against public officials confidential before finalisation.*²³⁶

The then Government agreed with the recommendation of the CMC and the 6th PCMC stating:

On balance the Government agrees with the Crime and Misconduct Commission and the Parliamentary Crime and Misconduct Committee that any amendment would be criticised as reducing openness and accountability. The Government agrees that the problem is better addressed by the Crime and Misconduct Commission's commitment to continue to publish on

²³⁴ Submission No. 17 to the 2006 Three Year Review, Local Government Association of Queensland, page 4.

²³⁵ 6th PCMC Report No. 71 Three Year Review of the Crime and Misconduct Commission, pages 50 & 51.

²³⁶ Ibid., page 51.

*its website prior to State and local government elections a request that candidates not use the Crime and Misconduct Commission's complaint processes for political purposes.*²³⁷

Recent Events

The CMC's position on this matter is clear and remains consistent with the position it held in 2006. In November 2011, similar to its actions prior to previous elections, the CMC released its own brochure, *Don't Risk Your Campaign* applicable to candidates in both the State and local elections.²³⁸

The brochure stated:

If you are a candidate in the state or local government elections in Queensland, the Crime and Misconduct Commission urges you to conduct a 'clean' campaign. We know that the majority of candidates will conduct their campaigns responsibly. None the less, we would like to reinforce to all candidates the importance of not misusing the CMC complaints process.

An allegation of misconduct is a serious matter

If you set out to harm the reputation of your opponent by making a false or frivolous allegation, you are risking your integrity in the eyes of voters and may face prosecution by the CMC. We treat a false allegation of misconduct seriously because it has the potential to compromise the election process, it can unfairly damage reputations and is a waste of public resources.

If you have a genuine concern about misconduct, we want you to tell us – but keep it confidential. Publicity about a complaint may compromise our ability to investigate it effectively. We will, in turn, treat your complaint seriously and with discretion.

This issue came into prominence in the middle of the recent general state election where the CMC's involvement in the assessment of matters relating to the then candidate for Ashgrove, Mr Campbell Newman (while he was Lord Mayor of Brisbane) received a considerable amount of public attention.

As described by the CMC in its media release of 16 March 2012, which is now a matter of public record, the three matters it had been assessing involving Mr Newman were:

1. A referral from the Brisbane City Council (BCC) to the CMC on 3 February 2012, raising allegations concerning impropriety on the part of Mr Newman surrounding a property transaction entered into between the BCC and Mirvac Group in relation to land at Tennyson;
2. A self generated assessment by the CMC on 29 February 2012, of matters which had become the subject of public debate relating to alleged donations by a developer to the LNP's Forward Brisbane Leadership fund (in January 2011) ahead of BCC approval for a Woollongabba development; and

²³⁷ Government response to PCMC report No 71, Three Yearly Review of the Crime and Misconduct Commission, tabled 5 April 2007, page 5.

²³⁸ www.cmc.qld.gov.au/topics/misconduct/advice/ethics/dont-risk-your-campaign

3. A second referral from the BCC to the CMC on 8 March 2012, raising allegations that Mr Newman had knowledge of the activities of two Council staff, employed in the Office of the Lord Mayor in 2005-2006, who allegedly inappropriately established a private company and used undue influence on other Council employees in relation to development applications.²³⁹

The CMC came under much public scrutiny for initiating the assessment into the developer donations during an election campaign and allegedly allowing itself to be used by politicians and releasing information on its activities during the election campaign.

The then Leader of the Opposition and Member for Callide, Mr Jeff Seeney MP, was quoted by *The Courier Mail* on 16 March 2012, as stating:

...the CMC has injected itself into an election campaign and I think that is unfair. I think it is inappropriate and I think it threatens the credibility of the CMC.

I think the CMC is in grave danger of being seen as a political player in this election campaign. They should be extracting themselves from the election campaign.

Fact that the CMC appeared to have instigated an assessment gave credibility to "spurious" accusations, and that raised questions about the Commission's operations.

*It certainly raises a lot of questions about the CMC; what impact that will eventually have on the election campaign itself will play out over the next couple of days.*²⁴⁰

The Courier-Mail reported that the then Leader of the Opposition floated changes to the CMC, if the LNP won government, to ensure it couldn't play a part at election time and to ensure it did not allow itself to be used to destroy people's reputations.²⁴¹

Respected civil liberties advocate, Mr Terry O-Gorman, President of the Australian Council for Civil Liberties stated in relation to this matter that politicians were abusing the CMC's role, trying to score cheap points. *The Australian* reported Mr O'Gorman as stating, on 15 March 2012, the CMC should have waited until after the election to look into developer donations.²⁴²

The article reported Mr O'Gorman's comments to ABC Radio as:

It would be fundamentally unfair to Mr Newman at the height of an election campaign because there's just no prospect that inquiry would be finished by the election campaign and he would be tainted by it...

It is fundamentally wrong to have a file opened at this stage.

²³⁹ www.cmc.qld.gov.au/news-and-media/media-releases/statement-on-matters-concerning-brisbane-city-council

²⁴⁰ CMC risks being seen as political player in election, says LNP's Jeff Seeney, *The Courier-Mail*, 16 March 2012.

²⁴¹ Ibid.

²⁴² QLD's corruption watchdog being 'used' by politicians – O-Gorman, *The Australian*, 15 March 2012.

*If these issues are still alive after the election there's plenty of time then for the CMC to look into it.*²⁴³

At the time of this report, the Committee has not finalised its assessment of this individual matter but considers from the information available to it at the time, the CMC has complied with its media policies in the release of information as it only made public comment on the assessment of the matters after it became aware that the CMC's involvement in the matters was about to be misrepresented in the media. Further, the Committee considers the CMC acted at all times within its authority, that is, under section 35(f) of the C&M Act, in commencing a self-generated examination of a particular suspicion of misconduct.

The CMC, in understanding the very serious nature of this matter and the impact of matters remaining unfinalised during the election, devoted its resources to finalising its assessment of matters and issued a media release on 16 March 2012 clarifying the matters that had been under assessment and providing the public with the outcome to its enquiries as quickly as possible and prior to the election.

What change is required?

Looking at this matter from a broader perspective however, the Committee does not consider that any amendment is required to the C&M Act, imposing a statutory obligation upon persons to keep the existence and nature of complaints against public officials confidential before finalisation. The Committee considers that enforcing such a provision would prove to be problematic given the media's ability to publish details from anonymous sources and furthermore, as stated by the CMC in previous reviews, despite its best efforts to do so, it would be difficult to enforce confidentiality throughout the course of an investigation.

The Committee considers that any legislative prohibition on the CMC in being able to publicly provide information on its operations during an election campaign or otherwise, if it deemed such release necessary, would fly in the face of the independence of the CMC and its status as the lead integrity organisation in Queensland. The public should be able to have confidence in the CMC to be impartial in its operations and the Committee considers that the Government should also have sufficient confidence in the CMC to maintain its impartiality and allow it to perform its functions as required. The Committee considers the ongoing requirement for openness and transparency in the CMC's operations, outweighs the need for any legislative gagging of the CMC or any politician or aspiring politician, for that matter, during an election campaign.

The Committee does acknowledge however, that public discussion of a 'CMC Investigation' may have an impact on persons running for public office, regardless of the outcome of the investigation, or whether an investigation is actually being conducted at all. While the Committee does not consider that legislative amendments are required (or that they will necessarily assist for that matter), the Committee does consider that the CMC should review its current policies and consider whether there is a need to develop a clear, public policy on how it deals with complaints about public officials during election campaigns.

²⁴³ Ibid.

Recommendation 25

The Committee recommends that the CMC review its current media policies, including its *Communication* policy and its policy on *Releasing Information to the Media* in order to establish whether any amendments are required to enhance the public confidence in the conduct of its operations.

Recommendation 26

The Committee recommends that the CMC consider developing a specific, publicly available policy on dealing with matters referred to it about serving public officers or candidates for public office during an election campaign.

Publication of CMC Reports

The Queensland Police Union of Employees (QPUE) raised with the Committee the issue of police officers being named in CMC reports which were tabled in Parliament under section 69 of the C&M Act. The QPUE submitted to the Committee that legislative safeguards were required to prevent the CMC from identifying individuals in reports which attract parliamentary privilege.

The QPUE's written submission stated:

The QPUE, while supporting the misconduct function of the CMC, believes appropriate safeguards need to be introduced to protect the identity of individuals subject to such investigations until such investigations are finalised and criminal or official misconduct charges laid.

Any final report published by the CMC should be subject to a statutory requirement to completely de-identify any person mentioned in the report, unless the person consents to being identified, or the person is charged of a criminal offence or official misconduct. A right to pursue damages should exist where such de-identification is not sufficient.

The CM Act should include provisions which prohibit the publication of details of a misconduct investigation or hearing (other than a public hearing) until such time as the investigation is finalised. Further the identification of an individual who has not been convicted of a criminal offence or official misconduct (or subject to a disciplinary declaration) should be prohibited.²⁴⁴

At the public hearing, the President of the QPUE, Mr Ian Leavers elaborated further on the issue stating:

Any public report is often handed down through the parliament. If there is action to be taken against any individual, I do not believe it should become public at that point

²⁴⁴ Submission No. 12 - QPUE, page 7.

because whoever has an allegation raised against them has the right to a defence. If it is in the public sphere, we may have different sections of the community involved. Depending on what is reported or not reported by the newspaper people are tainted. There was an example in Operation Capri. I made a complaint to the CMC in relation to this. A former officer was named in the report, but he was never even interviewed. That is unacceptable.

If an allegation is going to be levelled at you, you certainly should have the right to reply. However, it became a public document and, although acronyms were used to de-identify the people, those who knew what was going on knew exactly who was who. That concerns me. Once it is in the public area, you have to be careful. If you are going to take action against someone, it should be kept quiet.²⁴⁵

The Committee also sought comment from the CMC at the public hearing in relation to the QPUE's written submission. The Acting Chairperson of the CMC, Mr Warren Strange stated:

I have read the union's submission and concerns about that. I think they misstate some significant aspects of what has happened...

In relation to Tesco itself, it was before my time with the commission when the operation moved from a covert stage to an overt stage, but that did attract significant publicity. One of the ways that the CMC sought to deal with that, as I understand it, was that there was a view formed that there was a lot of inaccurate innuendo put out in the public domain about the scope of potential police misconduct and a Fitzgerald inquiry mark II. We actually issued a media release attempting to dampen down some of that speculation, shortly after or in the context when it was occurring, stating that some of the aspects of recent media reports about the investigation were exaggerated or simply inaccurate. We cannot control the media, but we do, in the public interest, try to put things on the public record where we think that is appropriate to be fair to agencies and people.

In terms of identifying officers, we do not generally do that in media releases or in public reports. Tesco is an example. The police in that report were identified by initials, although not their initials. There is a cipher used to identify those police officers, even though some had been before the courts at that stage and there is no legal impediment to identification. Again our focus was not so much on the individuals and highlighting precisely who has done what in terms of criminal conduct; it was about addressing the underlying major systemic issues. Some of our recent reports: the Palm Island report did identify some officers' names and our accompanying media release did not.

I understand there was significant internal discussion about whether the report should identify the police officers who conducted the initial investigation on Palm Island. It was decided that all of those officers had been mentioned at length in public at coronial inquiries and subsequent other proceedings. Those officers who had not been mentioned in public before and who comprised the investigation review team that overlooked the QPS investigation, their names had not been made public and were not made public in our report.

²⁴⁵ Public Hearing - Transcript , 3 November 2011, page 37.

As I mentioned, with Tesco and going back a couple of years to Operation Capri, which is one that the union mentions, no police were identified in those reports or in media releases. We have identified people in other reports at times if they have been mentioned at length in the public or we have held public hearings, but it is really done on a case-by-case basis.

We are mindful of considerations around people's reputations and particularly mindful of the stage at which people may be seeking comments from us. As I say, we do not generally issue releases about the charging of people. The Police Service will ordinarily issue releases now about the standing down of members and obviously when people appear in court, unless they are charged with certain offences for which non-publication provisions apply, obviously they can be named. We may deal with media queries about our role and we will confirm things that are on the public record in that case. We are very mindful of those sorts of considerations. I think the union's submission significantly overstates the reality of recent events and recent years of how the CMC has approached those concerns.²⁴⁶

The Committee is inclined to agree with the CMC. The Acting Chairperson has clearly stated the CMC's position at the public hearing, that it takes great care in considering whether officers or other persons should be named in its reports to prevent the exact issues with which the QPUE is alleging the CMC has a failing. The Committee notes the actions taken by the CMC in 'dampening down' the speculation in relation to Operation Tesco are consistent with the discussion earlier in this chapter about the CMC being able to take corrective action in relation to media reports not accurately reflecting the true situation.

In the extract above, the Acting Chairperson referred to the CMC's consideration of whether to identify officers involved in the *Palm Island Report*²⁴⁷ and the Committee does not consider this requires further comment. In relation to the *Dangerous Liaisons*²⁴⁸ Report (Operation Capri) and the Report on *Operation Tesco*,²⁴⁹ the Committee considered those reports at the time they were tabled. The Committee having considered those reports is satisfied that no former or serving officers were inappropriately identified by the CMC in either report, as submitted by the QPUE.

The Committee considers that in the case of both reports: it was in the public interest for the CMC to produce the reports and for the reports to be tabled in Parliament. Appropriate consideration was given by the CMC to the level of identification of individuals referred to throughout the reports and appropriate measures were taken by the CMC to protect the identities of those persons.

The Committee does not consider that any substantive issue has been raised by the QPUE, in relation to the CMC's publication of reports, which requires attention. The Committee is satisfied that the requirement in section 57 of the C&M Act, that the CMC must, at all times, act independently, impartially and fairly, having regard to the purposes of the C&M Act and the importance of protecting the public interest – provides sufficient guidance to the CMC in the performance of its functions. Further, the Committee considers that there are sufficient common law remedies available to persons who consider they are adversely affected by the publication of CMC reports.

²⁴⁶ Public Hearing - Transcript, 3 November 2011, page 6.

²⁴⁷ CMC Review of the Queensland Police Service's *Palm Island Review*, June 2010.

²⁴⁸ *Dangerous Liaisons – A report arising from a CMC Investigation into allegations of police misconduct (Operation Capri)*, July 2009.

²⁴⁹ *Operation Tesco – Report of an investigation into allegations of police misconduct on the Gold Coast*, June 2011.

Recommendation 27

The Committee recommends that no amendment is required to the Crime and Misconduct Act 2001 in relation to the publication of CMC reports.

5.11 Queensland Civil and Administrative Tribunal***Introduction***

Since the last three yearly review of the CMC, the Government has implemented significant reforms in the area of civil and administrative justice. On 1 December 2009, the Queensland Civil and Administrative Tribunal (QCAT) came into being, assuming the jurisdiction previously exercised by 23 different bodies, and amalgamating 18 former tribunals into one single body aimed at resolving disputes, reviewing decisions of government agencies and statutory bodies, and conducting disciplinary proceedings for a range of professions, vocations and occupations.²⁵⁰

One of the tribunals which was discontinued on the commencement of QCAT was the Misconduct Tribunal which previously had both an original and an appellate jurisdiction to hear – in its original jurisdiction - disciplinary charges relating to official misconduct and in its appellate jurisdiction to review administrative decisions by bodies (other than the courts or misconduct tribunals) in relation to disciplinary charges imposed of misconduct.

Formerly, the PCMC had a role in the appointment process of tribunal members who sat on the Misconduct Tribunal however this role did not continue in relation to members of QCAT. The Committee considers this to be appropriate and does not consider it is required to have any role in relation to the appointment of QCAT members, including those that sit in misconduct related matters.

Jurisdiction of QCAT

Under the C&M Act, QCAT has the exclusive jurisdiction to hear and decide an allegation of official misconduct against a prescribed person, such persons being a member of the police service or other unit of public administration that is declared by regulation to be subject to QCAT's jurisdiction.²⁵¹ The industrial court and industrial relations commission do not have jurisdiction in relation to any matter that QCAT may decide, even though it may arise out of an industrial matter.²⁵²

Proceedings before QCAT

Similar to the Misconduct Tribunal, QCAT may hear and decide in its original jurisdiction, an allegation of official misconduct against a prescribed person.²⁵³ On application by the CMC or a prescribed person, QCAT may also review decisions made against prescribed persons relating to official misconduct by

²⁵⁰ Explanatory Notes, Queensland Civil and Administrative Tribunal Bill 2009, page 3.

²⁵¹ C&M Act, sections 219D & 50(3).

²⁵² *Ibid.*, section 219E.

²⁵³ *Ibid.*, section 219F.

another body.²⁵⁴ Any review of a (reviewable) decision by another body is done by way of a rehearing on the original evidence given in the proceeding before the original decision maker. There is limited ability for new evidence (either fresh, additional or substituted evidence) to be presented to QCAT, if leave is sought by the party seeking to rely on the new evidence.²⁵⁵

QCAT's processes differ in relation to dealing with official misconduct and police misconduct. The CMC sets out on its website the different processes in relation to QPS disciplinary decisions as follows:

We can recommend to the QPS that it consider taking disciplinary proceedings either for police misconduct or official misconduct.

Process for official misconduct

*When we refer alleged **official misconduct** to the QPS, it appoints a prescribed officer to consider the matter and decide whether or not to initiate disciplinary proceedings.*

If the decision is not to do so, we can take the matter directly to the QCAT to commence disciplinary proceedings. This is called referring a matter in its 'original jurisdiction'.

If the prescribed officer does initiate such proceedings but we are not satisfied with the outcome, we can apply to the QCAT for a review of that decision. This is called referring a matter in the 'review jurisdiction'.

If the QCAT finds that an allegation of official misconduct by a person has been proved, it may order that they:

- be dismissed*
- be reduced in rank or salary level*
- forfeit, or have deferred, a salary increment or increase to which they would ordinarily be entitled; or*
- be fined a stated amount that is to be deducted from their periodic salary payment in an amount not more than 2 penalty units per payment; or their monetary entitlements (other than superannuation entitlements) on termination of their service.*

Process for police misconduct

*When we refer alleged **police misconduct** to the QPS, it appoints a prescribed officer to consider the matter and decide whether or not to initiate disciplinary proceedings.*

If the decision is not to do so, under the current legislation we have no power to request the QCAT to review that decision in its original jurisdiction.

²⁵⁴ Ibid., section 219G.

²⁵⁵ Ibid., section 219H.

If the prescribed officer does initiate such proceedings, a disciplinary hearing follows, after which the prescribed officer will come to a decision. If we not satisfied with that decision, we can apply to the QCAT for a review of that decision.

The CMC's ability to commence a review of a decision before QCAT received much public attention in relation to the Palm Island Matter where the CMC referred allegations of police misconduct against several officers to the QPS for consideration. In the Palm Island matter the prescribed officer, Deputy Commissioner Kathy Rynders decided not to initiate proceedings for police misconduct in QCAT, therefore, the decision was not 'reviewable'.

The reason why the decision was not reviewable is explained by the CMC as follows:

The definition of 'reviewable decision' requires either

- (a) a decision made in relation to an allegation of misconduct against a prescribed person; or*
- (b) a finding mentioned in the Police Service Administration Act 1990 ... that misconduct is proved.*

DC Rynders did not make a finding of the kind mentioned in (b).

In order to meet the terms of (a) there must be a decision 'in relation to an allegation of misconduct'. Counsel's advice was that this when read with other provisions connotes that there must be a disciplinary proceeding on foot.

DC Rynders was asked to consider whether disciplinary proceedings for police misconduct should be initiated on the basis of the CMC's report. She did not formulate any allegations of misconduct against the officers for the purposes of disciplinary proceedings. Hence her decision did not meet the definition of 'reviewable' decision in (a).

Had DC Rynders initiated a disciplinary proceeding and had she come to a decision at the conclusion of that process and the CMC had not been satisfied with that decision, then it had the power to seek review of that decision by QCAT as this decision would have been a reviewable decision (See Crime and Misconduct Act 2001 - Section 219G & Section 219BA).

²⁵⁶

The CMC has submitted to the Committee that it is seeking changes to the review jurisdiction of QCAT to avoid a similar situation as that set out above from occurring. The CMC suggests that the C&M Act could be easily amended by including in the definition of 'reviewable decision' a decision not to commence disciplinary proceedings. In addition, section 50 of the C&M Act could be amended to allow the Commission to prosecute in QCAT both official misconduct and police misconduct allegations.²⁵⁷

The Committee fully supports this proposal and notes this matter was also considered by the Independent Panel in its review of the Police Complaints, Discipline and Misconduct System. The

²⁵⁶ Statement by Crime and Misconduct Commission Chairperson Martin Moynihan AO QC, Media Release 15 March 2011.

²⁵⁷ Submission No. 14 - CMC, page 7.

Committee is pleased that this matter has been supported by the Government and will be implemented as part of the suite of changes arising out the Independent Panel's report.

The CMC has also sought to extend the time limit to commence a QCAT review application so that it reflects the same time provisions as stipulated in the *Queensland Civil and Administrative Act 2009*. This is to ensure consistency between the two Acts relating to review applications, and to provide the CMC with sufficient time to properly consider whether a review application should be sought.²⁵⁸

The QCAT Act provides that an applicant seeking review of a decision must do so within 28 days of a decision being made, whereas the C&M Act provides for only 14 days. The CMC submits that the timeframes should be consistent between the two Acts and that 14 days does not give the CMC adequate time to consider whether it should review a matter, and to obtain material which was before the original decision-maker.

The Committee considers that all relevant time limits should be consistent across the various pieces of legislation and allow all parties the ability to sensibly make use of the procedures provided. The Committee does not consider it is a valuable exercise of legislative authority if an ability to review a decision is included in the legislation, but cannot be used effectively due to restrictive timeframes.

Recommendation 28

The Committee recommends that in developing the legislative changes required for implementation of the new Police Complaints, Discipline and Misconduct System, the Government reviews all relevant time periods to ensure there is consistency across legislation and the time periods provided are reasonable.

The CMC also sought clarification of the ability to claim self-incrimination privilege in matters before QCAT. A discussion on a range of privilege matters follows in *Chapter 6 – Investigative Powers and Hearings* of this report.

²⁵⁸ Ibid.

6. INVESTIGATIVE POWERS AND HEARINGS

Before considering the extent of the CMC's powers, it must be recognised that the CMC is not a court or tribunal. Even though the CMC investigates a matter, it cannot determine guilt in the case of a criminal matter, nor can it discipline anyone in the case of a misconduct matter.

In relation to its crime investigations, the CMC can have people arrested, charged and prosecuted. And as a result of its misconduct investigation, the CMC can refer matters to the DPP with a view to criminal prosecution, if there is sufficient evidence to pursue the matter through the courts or to QCAT to pursue a matter of official misconduct.

The CMC may also refer the results of its investigation to the CEO of the relevant unit of public administration for consideration of any disciplinary action.

6.1 Investigative Powers

To enable the CMC to effectively carry out its functions, it has been provided with a range of investigative powers set out in its governing legislation. The powers vary across both its crime and misconduct functions but generally include:

Powers to require information or attendance

- the power to require information or documents to be produced;²⁵⁹
- the power to 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;²⁶⁰
- the power to require a person (including a prisoner, mental health patient or forensic disability client) to attend a Commission hearing to give evidence or produce a document or thing or establish a reasonable excuse or claim for privilege;²⁶¹

Search warrants

- the power to apply for a warrant to enter and search a place to obtain evidence of the commission of a major crime or misconduct;²⁶²
- the power under the warrant to enter a place; pass over, through along or under another place to get to the relevant place; search the place; detain persons at the place, if reasonably necessary; dig up land; seize a thing found at the place; muster or hold animals at the place; photograph anything at the place; and remove wall or ceiling linings or floors etc to search for evidence at the place;²⁶³

²⁵⁹ C&M Act, section 72 (crime investigations only); section 74 (crime investigations and witness protection functions); section 74A (confiscation related investigations); section 75 (misconduct investigations only); section 75B (crime and misconduct investigations)

²⁶⁰ Ibid., section 73 (misconduct investigations only).

²⁶¹ Ibid., section 82 (crime investigations, misconduct investigations and witness protection functions); section 83 (prisoners, patients and forensic disability clients).

²⁶² Ibid., section 86 (crime and misconduct investigations).

²⁶³ Ibid., section 92 (crime and misconduct investigations).

Searching places to prevent loss of evidence

- the power to enter a place and exercise search warrant powers in order to prevent the loss of evidence (as if they were conferred under a warrant) and subsequently apply to a magistrate for a post-search approval;²⁶⁴

Searching persons

- including the power to conduct an immediate search of outer clothing, or if a more thorough search is required, or it is impracticable to conduct the search at a place, the power to take a person to another place and conduct a more thorough search;²⁶⁵

Seizing property

- the power to seize evidence relating to an investigation;²⁶⁶

Monitoring and Suspension orders

- the power to apply to the Supreme Court for an order directing a financial institution to give information to the CMC about a person; and either
 - provide details to the CMC about any transaction conducted by the person; or
 - notify the CMC of a transaction that has been initiated and refrain from completing the transaction unless the written consent of the CMC is obtained;²⁶⁷

Surveillance Device Warrants

- the power to apply to a Supreme Court judge for a warrant for the use of surveillance devices;²⁶⁸

Controlled operations and controlled activities

- the power to apply for approval and authority to conduct controlled operations and controlled activities which may involve CMC officers participating in unlawful activities as part of the investigation of suspected offences;²⁶⁹

Assumed identities

- the power to lawfully acquire and use assumed identities;²⁷⁰

Covert warrants

- the power to apply to a Supreme Court judge for a covert search warrant;²⁷¹

²⁶⁴ Ibid., section 96 (crime investigations only).

²⁶⁵ Ibid., Chapter 3, Part 4 (crime and misconduct investigations).

²⁶⁶ Ibid., Chapter 3, Part 5 (crime investigations, misconduct investigations and confiscation related investigations).

²⁶⁷ Ibid., Chapter 3, Part 5A (enhancing the CMC's powers under the *Criminal Proceeds Confiscation Act 2002* only).

²⁶⁸ Ibid., Chapter 3, Part 6 (misconduct investigations) and PPRA Chapter 13 (crime investigations).

²⁶⁹ Ibid., Chapter 3, Part 6A (misconduct investigations) and PPRA Chapter 11 (crime investigations).

²⁷⁰ Ibid., Chapter 3, Part 6B (misconduct investigations) and PPRA Chapter 12 (crime investigations).

²⁷¹ Ibid., Chapter 3, Part 7 (crime investigations).

Additional powers warrants

- the power to 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 property, and requires sworn affidavits or statutory declarations relating to property, financial transactions or movements of money or other assets;²⁷²

Arrest warrants

- the power to 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;²⁷³

Telecommunications Interception

- the power to apply to the Supreme Court judge for a warrant to intercept a particular telecommunications service or telecommunication services of a particular named person.²⁷⁴

6.2 Use and oversight of the CMC's powers

A snapshot of how the CMC has used its powers during the past three years for investigating major crime can be seen in the following table:²⁷⁵

	2008-09	2009-10	2010-11
Use of powers			
Investigative hearing days	157	162	114
Witnesses attending on summons	174	157	106
Surveillance warrant operations	21	10	4
Results of investigations			
Arrests	120	101	38
Charges Laid	544	455	330
Drugs seized – estimated street value	\$0.456m	\$4.5m	\$1.6m

Similarly, CMC's use of its powers for investigating misconduct during the past three years is shown below:²⁷⁶

	2008-09	2009-10	2010-11
Use of powers			
Power to enter	0	7	5
Notices to discover information	80	141	122
Notices to attend hearing	44	141	23
Search warrant applications	8	14	30
Surveillance warrant applications	0	3	12

²⁷² Ibid., Chapter 3, Part 8 (misconduct investigations and crime investigations relating to terrorism).

²⁷³ Ibid., Chapter 3, Part 10.

²⁷⁴ *Telecommunications (Interception and Access) Act 1979* (Cth), Part 2-5.

²⁷⁵ *CMC Annual Report 2010-11*, page 20.

²⁷⁶ Ibid., page 34.

It is clear the range of powers granted to the CMC are extensive and the exercise of such powers comes with great responsibility. To ensure these powers are used appropriately, there are a number of checks and balances set out in the overarching legislation to monitor the CMC's use of its powers and to report, where appropriate, to Parliament on how the CMC has exercised its powers.

Controlled operations

The authority for the CMC to obtain approval for its undercover operatives to engage in certain activities (controlled operations) that may involve unlawful activities is contained in Chapter 11 of the *Police Powers and Responsibilities Act 2000* (PPRA). Authorisation may be granted for CMC officers to engage in specified activities such as possession or supply of unlawful drugs in order to gather evidence that could lead to the prosecution of a person for a serious criminal offence.

With the introduction of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, to enable model laws across the country to be implemented as part of a nationally consistent framework, extensive changes were made to the legislation governing the authorisation, conduct and monitoring of controlled operations. That Act repealed chapter 5 of the PPRA and inserted new chapters, namely Chapter 10 – Controlled Activities, Chapter 11 – Controlled Operations, and Chapter 12 - Assumed Identities.

The controlled operations provisions in Chapter 11 of the PPRA apply only to the CMC's major crime investigations only. They do not cover the CMC's misconduct investigations, for which cross-border application was regarded as unnecessary. Provisions dealing with controlled operations for misconduct investigations are set out in Chapter 3, Part 6A the C&M Act.

The PPRA requires the Parliamentary Crime and Misconduct Commissioner, as the report entity for the CMC, to prepare an annual report, as soon as possible after 30 June each year, about the controlled operations of the CMC. The report must be furnished to the PCMC and be tabled in the Legislative Assembly.²⁷⁷ The Parliamentary Commissioner has therefore prepared three such reports over the period of this review, covering the periods 1 July 2008 to 30 June 2009;²⁷⁸ 1 July 2009 to 30 June 2010;²⁷⁹ and 1 July 2010 to 30 June 2011.²⁸⁰

In preparing his reports, the Parliamentary Commissioner has had regard to the reports on information provided to him by the Chairperson of the CMC every 6 months as required by section 268(1) of the PPRA; and has conducted his own inspection of the CMC's records.²⁸¹ The Parliamentary Commissioner concluded in all three of his reports that the CMC Chairperson's reports were adequate and comprehensive and the inspection of the CMC's records verified the information provided by the Chairperson.

²⁷⁷ *Police Powers and Responsibilities Act 2000*, section 269.

²⁷⁸ 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*, September 2009. Tabled 8 October 2009.

²⁷⁹ 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*, September 2010. Tabled 28 October 2010.

²⁸⁰ 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*, October 2011. Tabled 30 November 2011.

²⁸¹ Required under section 272 of the *Police Powers and Responsibilities Act 2000*.

In his 2009 report, the Parliamentary Commissioner went so far as to say that his overall impression was that the CMC demonstrated a good degree of discernment in deciding whether to seek the exercise of its powers pursuant to Chapter 11 of the PPRA and that the powers were used judiciously in the period reviewed. The controlled operations conducted by the CMC resulted in arrests and charges in respect of a number of serious criminal offences.²⁸²

As mentioned above, the reporting regime differs for the CMC's misconduct operations. Provisions dealing with the CMC's controlled operations for misconduct investigations are set out in Chapter 3, Part 6A the C&M Act and require the Controlled Operations Committee to provide directly to the PCMC each year, a report on the Controlled Operations Committee's activities under the C&M Act.²⁸³

The PCMC must table the copy of the annual report in the Legislative Assembly.²⁸⁴

Assumed identities

Differing from the regime for controlled operations, under Chapter 12 of the PPRA, the Chairperson of the CMC may authorise the acquisition or use of an assumed identity in relation to its major crime investigations. The PPRA requires the Parliamentary Commissioner to audit the assumed identity activities of the CMC at least once every six months that an authority for the assumed identity is in operation, or at least once in the six months after an authority is cancelled or otherwise expires.²⁸⁵ There is no requirement for the Parliamentary Commissioner to provide these reports to the PCMC, nor is there a requirement for these reports to be tabled.

However, as soon as practicable after the end of each financial year, the Chairperson of the CMC must provide a report to its nominated report entity in the PPRA, in this instance the Chairperson of the PCMC, 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 undertaken by the Parliamentary Commissioner.²⁸⁶ A copy of this report must be tabled by the PCMC in the Legislative Assembly.²⁸⁷

In the three reports provided to the PCMC Chairperson over this review period, the Parliamentary Commissioner's comments (that have been included in the CMC's report) have varied in relation to his audits:

*The results of the audits were quite satisfactory;*²⁸⁸

*The CMC is generally complying with its responsibilities pursuant to section 315 of the PPRA;*²⁸⁹ and

²⁸² 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*, September 2009. Tabled 8 October 2009, page 8.

²⁸³ C&M Act, section 138.

²⁸⁴ Ibid.

²⁸⁵ PPRA, section 316.

²⁸⁶ Ibid.

²⁸⁷ Ibid., section 314.

²⁸⁸ CMC, *Annual Report to the Chairperson of the PCMC for the Period 1 July 2008 to 30 June 2009: Compliance Requirements Under the Police Powers and Responsibilities Act 2000 for Assumed Identities and Surveillance Devices*. Tabled 3 September 2009.

*The results of the audit were quite satisfactory. The CMC is fully complying with its responsibilities pursuant to section 315 of the PPRA.*²⁹⁰

In relation to its misconduct operations, the Parliamentary Commissioner must conduct similar audits of the CMC's operations as required for its crime operations.²⁹¹ However, the reporting regime differs once more, with the Chairperson of the CMC being required, as soon as practicable after the end of each financial year, to provide a report directly to the Parliamentary Commissioner on its misconduct related authorities for assumed identities.

The PCMC does not receive a copy of these reports as the Parliamentary Commissioner is required under the C&M Act, to table the reports without provision to the Committee.²⁹² The reports however similarly contain comments from the Parliamentary Commissioner on the results of his audits. Over the past three years, the comments from the Parliamentary Commissioner in relation to the CMC's misconduct operations²⁹³ were consistent with the comments provided (above) in relation to the CMC's crime operations.

Surveillance Device Warrants

Another powerful tool at the CMC's disposal is the ability to obtain warrants for the installation, use, maintenance and retrieval of surveillance devices in the investigation of serious crimes. The regime for the use of surveillance devices is set out in Chapter 13 of the PPRA.

Under section 358 of the PPRA, the CMC must report annually to the Chairperson of the PCMC on its activities in relation to the use of surveillance device warrants and under section 362 of the PPRA, the Parliamentary Commissioner must conduct an audit of the CMC's records, from time to time, to determine the extent of compliance with Chapter 13 by the CMC and its officers. The Parliamentary Commissioner must provide a written report to the Chairperson of the PCMC every 6 months on the results of his inspections. These reports are to be tabled in the Legislative Assembly by the PCMC.²⁹⁴

Over the past three years, while all the inspections by the Parliamentary Commissioner have been positive overall and show no issues with the CMC's processes in keeping, maintaining and destruction of warrants – the Parliamentary Commissioner has, on various occasions, identified particular deficiencies by the CMC mostly in the preparation of warrants by CMC officers.

²⁸⁹ CMC, *Annual Report to the Chairperson of the PCMC for the Period 1 July 2009 to 30 June 2010: Compliance Requirements Under the Police Powers and Responsibilities Act 2000 for Assumed Identities and Surveillance Devices*. Tabled 19 August 2010.

²⁹⁰ CMC, *Annual Report to the Chairperson of the PCMC for the Period 1 July 2010 to 30 June 2011: Compliance Requirements Under the Police Powers and Responsibilities Act 2000 for Assumed Identities and Surveillance Devices*. Tabled 4 August 2011.

²⁹¹ C&M Act, section 146ZS.

²⁹² *Ibid.*, section 146ZQ.

²⁹³ CMC, *Annual Report to the Parliamentary Commissioner for the period 1 July 2008 to 30 June 2009: Compliance Requirements under the Crime And Misconduct Act 2001 for Assumed Identities in relation to Misconduct Offences*. Tabled 24 July 2009;

CMC, *Annual Report to the Parliamentary Commissioner for the period 1 July 2009 to 30 June 2010: Compliance Requirements under the Crime And Misconduct Act 2001 for Assumed Identities in relation to Misconduct Offences*. Tabled 3 August 2010;

CMC, *Annual Report to the Parliamentary Commissioner for the period 1 July 2010 to 30 June 2011: Compliance Requirements under the Crime And Misconduct Act 2001 for Assumed Identities in relation to Misconduct Offences*. Tabled 2 August 2011.

²⁹⁴ PPRA, section 363.

The Parliamentary Commissioner has continued to comment in his reports to the Committee, on these matters. The Parliamentary Commissioner's comments have included:

*There was however, one error in the warrant. It is incorrectly dated "January 2009" when it was issued in January 2010....*²⁹⁵

*It was noted during the inspection that, whereas the surveillance device warrant sought and obtained in January 2010 referred to the affidavit of Detective Senior Sergeant C, the copy of the affidavit on the register was made under the hand of Detective Inspector D....*²⁹⁶

*In respect of the defects noted in this report, the CMC Chairperson has advised that he has "asked the Assistant Commissioner, Crime to remind Crime legal officers of the need to be accurate and complete in their work, and to ensure accuracy and completeness, in all future compliance affidavits." Further, the Chairperson has requested that staff ensure that the dates in draft warrants are correct and that copies of the actual signed affidavits used in support of applications are filed with warrant-related records...*²⁹⁷

*The expiry date of the original surveillance device warrant was appropriately extended, however, due to an oversight, the condition which stated the time in which the section 357 report was required to be made, was not extended. This left the CMC open to a potential breach of this condition of the extended surveillance device warrant although a breach was ultimately averted...*²⁹⁸

*One surveillance device warrant sought and obtained in the period covered by this inspection required a series of amendments or variations to resolve problems caused by a lack of attention to detail in the drafting process...*²⁹⁹

The Committee notes that at no stage has any deficiency in the CMC's surveillance device warrants affected the validity of a crime investigation or the admissibility of evidence in any hearing, however the Committee considers that CMC officers must be careful in their preparation of warrants to ensure errors such as these are avoided in future and investigations are not unnecessarily jeopardised.

In relation to its misconduct operations, the CMC may obtain surveillance warrants under the C&M Act through similar processes as set out in the PPRA. While the CMC reports to the PCMC annually on the number of surveillance warrants obtained in relation to misconduct matters, there are no corresponding provisions in the C&M Act for auditing the extent of the CMC's compliance with the C&M Act as exists for its crime operations.

²⁹⁵ 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*, dated June 2010. Tabled 19 August 2010.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ 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*, dated June 2011. Tabled 4 August 2011.

²⁹⁹ 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*, December 2011. Tabled 16 February 2012.

Rationalisation of reporting requirements

As highlighted above, the reporting and compliance regimes for the CMC's investigative powers vary between powers and also between functions, i.e. crime matters or misconduct. The Committee considers these arrangements are unduly complex and should be simplified where possible to ensure consistency in the reporting regimes.

The Committee notes the 7th PCMC in its three yearly review recommended that the PPRA be amended to require the Parliamentary Commissioner to provide to the PCMC a copy of his report on the assumed identities conducted under section 316 of that Act.³⁰⁰ This recommendation was not supported. The Government considered that the Parliamentary Commissioner's report to the CMC contained sensitive information that should not be disclosed to the Committee and that the information contained in the CMC's subsequent report to the Committee contained an appropriate amount of information.

The Committee accepts the former Government's position in this regard, taking into account the level of detail contained in the assumed identities reports; however it considers that work could be done to simplify the reporting and tabling requirements of the various audits and reports outlined above. The Committee considers that such simplification should be examined as part of the review of Chapters 3 & 4 of the C&M Act which is referred to later in this Chapter.

6.3 Telecommunications Interception Powers

Arguably, the most powerful tool available to the CMC in the conduct of its operations is its recently acquired Telecommunications Interception (TI) power.

Background

The Commonwealth *Telecommunications (Interception and Access) Act 1979* (the Commonwealth Act) sets up a national regime whereby State law enforcement agencies may be declared as an authorised agency to apply to the courts for TI warrants to assist with the investigation of certain serious offences. Under the Commonwealth regime, an eligible agency may only be declared by the Commonwealth Attorney-General if he is satisfied the laws of the relevant State make satisfactory provision for a number of reporting, record-keeping, oversight and accountability measures (set out in the Commonwealth Act).³⁰¹

The Queensland Parliament passed the *Telecommunications Interception Act 2009* (the State TI Act) in 2009, which met all the Commonwealth requirements. The Commonwealth Attorney-General declared the CMC to be an agency for the purposes of the Commonwealth Act on 7 July 2009.

The impact and effectiveness of the new TI capability

While the Committee has referred to the effectiveness of the CMC's new TI power in *Chapter 3 – Combating Major Crime*, especially in relation to Operation Warrior, the CMC has been required to make some adjustments to its operations, in order to effectively use its new powers.

³⁰⁰ 7th PCMC, Report No. 79, *Three Yearly Review of the CMC*, page 65.

³⁰¹ *Telecommunications (Interception and Access) Act 1997* (Cth), section 35(1).

The CMC states in its submission that:

The use of TI during the course of Operation Warrior provided significant opportunities, but also posed new challenges for us in terms of our internal structures. The sheer volume of information obtained by virtue of TI highlighted the need to provide more effective investigative and intelligence support to our operations and was one of the catalysts to the restructure of the organised crime area.

Late in the reporting period, we undertook a review of our investigative capacity in all areas of major crime, including organised crime. Our previous model entailed two independently dedicated multidisciplinary teams. The review identified that a more flexible structural approach was necessary so as to deal effectively with the volume of evidentiary material being collected in contemporary investigations.

Although staff numbers have not been reduced, the two teams have effectively merged into one pool of staff with the capacity to easily divide into various staffing models to more efficiently address operational demands, including the ability to divide back into two teams if operationally required.³⁰²

The CMC also submitted:

The introduction of telephone interception in Queensland has had a noticeable impact on proceeds of crime referrals. Since the commencement of telephone interception in Queensland the proportion of proceeds of crime referrals involving telephone intercept evidence has increased significantly.

Currently 48 per cent of all referrals received by the CMC Proceeds of Crime Team contain evidence obtained through telephone intercept, compared with 19 per cent in 2007–08. Telephone interception has resulted in an increase in the number of referrals that might otherwise have emanated from an investigation and has improved the quality of those referrals.³⁰³

In addition, the CMC has set out further benefits which have arisen from the use of its TI capability in that its investigative teams have been able to:

- *more efficiently and effectively target other investigative resources, including physical surveillance and surveillance devices;*
- *greatly increase their understanding of the criminal networks being investigated and identify those involved in serious criminality;*
- *identify and rapidly act on opportunities to obtain physical evidence (e.g. the interception of illicit goods or money being moved by criminals);*
- *identify the proceeds of criminal activities more efficiently and effectively;*
- *consider investigative options beyond the use of covert surveillance devices, which are often resource intensive and high risk; and*

³⁰² Submission No. 14 – CMC, page 25.

³⁰³ *Ibid.*, page 73.

- *obtain evidence which is more easily presented to the courts, especially by the utilisation of electronic briefs of evidence.*³⁰⁴

While the CMC's investigative teams have supported the introduction of TI capabilities into its area of operations, the CMC is quick to recognise that the capability has presented some issues, such as:

- *criminals are becoming increasingly aware of the TI capability in Queensland and are taking more sophisticated precautions;*
- *the TI landscape is ever changing and the interception of data will become increasingly important;*
- *investigative teams need to manage a significantly increased amount of information and adhere to a complex compliance regime imposed by the Commonwealth;*
- *the greater access to real time conversations IT allows raises issues about the timely translation of such conversations when they are held in languages other than English;*
- *acting on increased operational opportunities identified through TI impacts on the deployment of limited staff and equipment;*
- *TI is only one of a range of investigative methodologies and others, including surveillance devices, remain important tools to access communications other than telecommunications; and*
- *staying in touch with increasingly complex developments in telecommunications requires access to well trained and qualified technical expertise.*³⁰⁵

The Committee wholly supports the use of the CMC's TI powers in its fight against major crime and considers the CMC is making its best efforts to integrate the capability into its crime area of operations. The Committee notes the issues raised by the CMC in its submission and considers that the CMC is making good ground in effectively dealing with those issues.

The Committee notes that the CMC is finalising an agreement with the Australian Crime Commission to ensure a long-term telecommunications interception capability for the CMC and considers this should be a priority matter for the CMC to deal with. The Committee considers the Government should provide its full support to the CMC in its endeavours and ensure the CMC is adequately resourced to effectively use the capability with which it has been provided.

Oversight of the TI Capability

Telecommunications Interception can only be regarded as one of the most intrusive powers that can be provided to an investigative agency, therefore appropriate checks and balances must also be implemented to ensure the powers are used appropriately.

A significant safeguard in the operation of the TI power is that similar to applications for surveillance device warrants, all applications to the court for a TI warrant under the Commonwealth Act, cannot be made without notifying the Public Interest Monitor (the PIM) that an application is intended to be made. Under the State TI Act, the PIM must be notified, and if the application is to be in writing, the

³⁰⁴ Ibid., page 124.

³⁰⁵ Ibid., pages 124 & 125.

PIM must be provided with a copy of the application and supporting affidavit required under the Commonwealth Act.³⁰⁶

Further, the relevant CMC officer must fully disclose to the PIM all matters of which the officer is aware, that are both favourable and adverse to the issuing of the warrant.³⁰⁷ The PIM on receipt of the information is entitled to appear at the hearing for the application to test the validity of the application and ask questions of the CMC; and make submissions to the Judge, if required.³⁰⁸ The PIM must give the PCMC and the Parliamentary Commissioner a copy of any report the PIM makes to the Minister on non-compliance by the CMC with either the State TI Act or Commonwealth Act.³⁰⁹

The Parliamentary Commissioner (as the inspecting entity for the CMC) must conduct inspections of the CMC's records at least twice in each financial year to determine the extent of the CMC's compliance with the requirements set out in the State TI Act³¹⁰ and provide the following reports:³¹¹

- to the Attorney-General – a report about the results of the inspection detailing the extent to which the CMC complied with sections 14, 15, 18 & 19 of the State TI Act (relating to the keeping and destruction of records connected with the issue of warrants); and
- to the PCMC – the information contained in the report to the Attorney-General, other than information which is set out in section 63 of the Commonwealth Act.

Section 63 information is information that is “lawfully intercepted information” and “interception warrant information” (both terms being defined in the Commonwealth Act).³¹² These provisions were inserted into the Commonwealth Act in 1995 in order to preserve ‘*both privacy and the security of investigations.*’ They were not intended to ‘*prevent general statistical information about warrants being communicated, used etc.*’³¹³

Neither of these reports are required to be tabled in the Legislative Assembly.

The Committee notes that during the course of the inspections by the Parliamentary Commissioner to determine compliance with the requirements in the State TI Act, there has been no reason to consider the specific content of the intercepted telecommunications. The Parliamentary Commissioner has reported to the Committee – ‘*it is difficult to envisage a situation in which it would be necessary to refer to intercepted information in reports to the Attorney-General.*’ The Parliamentary Commissioner states that if it were necessary to do so, it is clear that such information could not subsequently be included in the report provided to the Chairperson of the CMC or the PCMC.

The Committee notes that the 7th PCMC (in examining the then Bill) was concerned that limitations on information that would be provided to it in the Parliamentary Commissioner's report had the potential

³⁰⁶ *Telecommunications Interception Act 2009*, section 7.

³⁰⁷ *Ibid.*, section 8.

³⁰⁸ *Ibid.*, section 10.

³⁰⁹ *Ibid.*, section 12.

³¹⁰ *Ibid.*, section 23.

³¹¹ *Ibid.*, section 24.

³¹² Section 6E Lawfully intercepted information; Section 6EA Interception warrant information.

³¹³ Explanatory Memorandum for the Telecommunications (Interception) Amendment Bill 1994, page 9.

to impede the Committee from effectively fulfilling its function of monitoring, reviewing and reporting to Parliament on the CMC's performance.³¹⁴

The Committee considers, after receiving two such reports after the commencement of operation of the TI powers, that the provisions in the State TI Act have maximised the amount of information that ought to be provided to the PCMC and the level of content in the Parliamentary Commissioner's reports are appropriate.

6.4 Review of Chapters 3 & 4 of the *Crime and Misconduct Act 2001*

The 7th PCMC considered the matter of uniform provisions for the CMC's powers in its 2009 review of the CMC. The CMC's submission to that review highlighted the difficulties in its operations due to the construct of the investigative powers in the C&M Act. In its report, the 7th PCMC recognised that the provisions in Chapter 3 of the C&M Act were drafted to preserve the CJC's misconduct function and the QCC's crime function in the previously separate Acts³¹⁵ and were not consolidated adequately when they were combined into the original merged C&M Act.³¹⁶

The CMC submitted to that review:

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.*³¹⁷

³¹⁴ 7th PCMC, Report No. 79, Three Yearly Review of the CMC, page 68.

³¹⁵ *Criminal Justice Act 1989* and *Crime Commission Act 1997*.

³¹⁶ 7th PCMC, Report No. 79, Three Yearly Review of the CMC, page 61.

³¹⁷ CMC submission to the 7th PCMC Three Year Review, page 29.

The 7th PCMC acknowledged the unnecessary duplication of provisions in the C&M Act and recommended a review of Chapter 3 and 4 powers in the C&M Act be undertaken in order to develop uniform provisions with generic application to the CMC functions where appropriate.³¹⁸

The Government, in its response to the 7th PCMC's review, supported the recommendation stating that it was timely for a review of the CMC's powers to occur with the aim of achieving uniformity where appropriate. The review was to be conducted concurrently with a review clarifying the privileges that are to be abrogated or unaffected by the C&M Act³¹⁹ (discussed later in this Chapter).

The submission from the then Premier, the Hon Anna Bligh MP to this review, set out the details of concurrent reviews involving the C&M Act as:

The review of Chapters 3 and 4 of the CM Act arising from the Government's response to the PCMC's 2009 Report is underway.

The PCMC's 2009 Report recommends a review of the chapters 3 and 4 powers in the CM Act to:

develop uniform provisions with generic application across the CMC's functions;

expressly nominate the grounds of privilege a witness may rely on to refuse to answer a question at a CMC hearing; and

clarify that these are the only privileges that may be claimed.

The review will also consider the issue of admissibility of evidence given by a person who has claimed the privilege against self-incrimination in a proceeding about the falsity or misleading nature of an answer given during a Crime and Misconduct Commission hearing. The Independent Panel report similarly recommended an independent review of the use of the privilege of self-incrimination in disciplinary hearings across the entire public sector.

The review of the provisions of the CM Act arising from the PCMC's 2009 Report is underway and will be completed in the same timeframe as amendments arising from the Government's response to the Independent Panel's report and the Committee System Review Committee report.³²⁰

Although the review is underway, the Committee understands that it has not progressed substantially to date, so much so that the CMC submitted to this review:

To further improve our capability we are proposing that the recommendations from our previous three-year review submission of 2008 focusing on the review of Chapters 3 and 4 of the CM Act and not yet actioned be re-enlivened...³²¹ [emphasis added]

³¹⁸ 7th PCMC, Report No. 79, Three Yearly Review of the CMC, page 62.

³¹⁹ Government response to the 7th PCMC Report No.79, Three yearly review of the CMC.

³²⁰ Submission No. 19 – Premier of Queensland, page 2.

³²¹ Submission No. 14 – CMC, page viii.

The Committee notes that on 23 July 2010, the CMC provided the then Attorney-General with a detailed submission on the rationalization of the Chapter 3 & 4 provisions and identified various issues based on the CMC's experience of operating under the provisions for approximately 10 years.

The Committee wholly supports the CMC's submission for the review of the relevant chapters to take place and considers that given the previous committee's recommendation in early 2009 and the Government's acceptance of that recommendation in August 2009, it is unacceptable that the implementation of this review may not occur until 2013, being the timeframe for legislative amendments arising out of the Independent Panel's report on the Police Disciplinary System.

The Committee accepts that it is not ideal for amending Acts to the same piece of legislation to be continually brought before the Parliament for consideration, however it considers that discrete matters such as this review may be progressed without waiting for further amendments to be completed. The Committee considers that if this matter is not progressed individually and is held over until there is a more substantial set of amendments, that the Department of Justice and Attorney-General provide the Committee with regular progress reports advising the progress of the matter and an anticipated timeframe for completion.

Recommendation 29

The Committee recommends the Government gives a high priority to completing the review of Chapters 3 and 4 of the *Crime and Misconduct Act 2001* as previously recommended by the CMC and the previous PCMC and supported by the former Government in 2009 – in order to develop uniform provisions with generic application to CMC functions where appropriate.

6.5 CMC Hearings

The CMC is able to authorise the holding of a hearing in relation to any matter that is relevant to the performance of its functions, with the exception that it may not authorise holding a hearing for a confiscation related investigation.³²² Chapter 4 of the C&M Act deals with the CMC's ability to hold hearings and also the claims of privilege and excuse that may be made at such hearings and sets out:

- hearings are generally not open to the public,³²³ however:
 - a hearing for a crime investigation may be open to the public if the Commission considers opening the hearing will make the investigation to which the hearing relates more effective and would not be unfair to any person or contrary to the public interest and the Commission approves the hearing,³²⁴
 - a hearing for a witness protection function may be open to the public if the Commission considers opening the hearing will the hearing more effective and would not be unfair to any person or contrary to the public interest; would not threaten the security of any protected

³²² C&M Act, section 176.

³²³ *Ibid.*, section 177.

³²⁴ *Ibid.*, section 177(2)(a).

- person or the integrity of the witness protection program or other witness protection services of the CMC; and the Commission approves the hearing;³²⁵
- a hearing for any other matter may be open to the public if the Commission considers closing the hearing to the public would be unfair to a person or contrary to the public interest and the Commission approves the hearing;³²⁶
 - a decision about whether a hearing should be public must not be delegated;³²⁷
 - part or parts of a public hearing may be closed by the presiding officer for a particular purpose;³²⁸
 - a public hearing must be conducted by the Chairperson of the CMC; or if the Chairperson considers it necessary for the efficient operation of the CMC by an Assistant Commissioner;³²⁹
 - a closed hearing may be conducted by either the Chairperson of the CMC; an Assistant Commissioner; or another person qualified for appointment as the Chairperson.³³⁰
 - the presiding officer, in conducting a hearing:
 - must act quickly, with as little formality and technicality as is consistent with a fair and proper consideration of the issues.
 - is not bound by the rules of evidence;
 - may decide the procedures to be followed; and
 - may administer an oath, or take a statutory declaration as required.³³¹
 - witnesses at a hearing may be legally represented and may be examined, cross-examined or re-examined on any matter the presiding officer considers relevant, by:
 - the presiding officer; or
 - counsel assisting the CMC at the hearing;
 - a person authorised by the presiding officer; or
 - a lawyer representing the witness.³³²

The CMC is the only law enforcement agency in Queensland with the power to compel people to attend hearings and give evidence. For hearings relating to the CMC's crime investigations and misconduct investigations, the CMC's coercive powers extend to compelling witnesses to attend,³³³ producing documents,³³⁴ and answering questions³³⁵ subject to certain claims of privilege and reasonable excuse.

³²⁵ Ibid., section 177(2)(b).

³²⁶ Ibid., section 177(2)(c).

³²⁷ Ibid., section 177(3).

³²⁸ Ibid., section 177(4).

³²⁹ Ibid., section 178(1) & (2).

³³⁰ Ibid., section 178(3).

³³¹ Ibid., section 180.

³³² Ibid., section 181.

³³³ CMA sections 82, 167-171.

³³⁴ CMA sections 185 (crime investigations) and 188 (misconduct investigations).

³³⁵ CMA sections 190 (crime investigations) and 192 (misconduct investigations).

Use of the hearings powers

In a confidential submission to the Committee, it was submitted that public hearings may disadvantage those persons under investigation and that prior to any decision to hold a public hearing on the grounds of public interest, the CMC should be required to satisfy an independent public interest test, which could be overseen and approved by the PIM. It was submitted that such a process could avert costly and unjustifiable public hearings and enhance civil liberties in the investigatory process.³³⁶

In its submission to the 7th PCMC's review, the CMC submitted:

The hearings power is an important investigative tool which is used to gather information. The CMC uses its hearings power judiciously and in accordance with appropriate checks and balances. In particular, the power to conduct a hearing in public may only occur in relation to a misconduct investigation and is a decision made by the Commission when satisfied that it is not in the public interest to close the hearing.

As the Salmon Report³³⁷ highlighted:

"Where there is a crisis of public confidence about the alleged misconduct of persons in high places, the public naturally distrusts any investigation carried out behind closed doors."³³⁸

The Committee notes that as submitted by the CMC, the C&M Act currently provides that the CMC must take into account the public interest and fairness to a person in making its decision as to whether to hold a public hearing. Further, the Committee notes that a decision on whether a hearing should be a public hearing is one that must not be delegated.

The Committee considers that the Commission, sitting as the Chairperson and four part-time Commissioners, is a more than adequate decision-making body to ensure the public interest is considered appropriately and that a person's civil liberties are sufficiently considered. The Committee considers that this is a precise scenario where the broad cross-section of skills and qualifications held by the part-time Commissioners, especially that of the Civil Liberties Commissioner, would be used effectively in the Commission's decision-making capacity. The Committee sees no reason to require the PIM to be involved in the CMC's decision making process in holding hearings.

It was also submitted that the CMC should not hold a public hearing unless it had verified the accuracy of evidence it intends to rely upon in making serious allegations against individuals and that the PIM should conduct a high level review of key evidence to assess it for accuracy before any decision is taken to hold public hearings.³³⁹

³³⁶ Submission No. 15.

³³⁷ A report of the commission established under the chairmanship of the Rt Hon. Lord Justice Salmon: *Report of the Royal Commission on Tribunals of Inquiry 1966* (Great Britain).

³³⁸ CMC submission to the 7th PCMC Three Yearly Review, page 4.

³³⁹ Submission No. 15.

The CMC has previously stated that it makes use of its hearings power to:

- *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); and*
- *eliminate certain scenarios and refocus investigations.*³⁴⁰

The Committee considers that, as set out by the CMC, the intent of holding a public hearing as an investigatory tool, is to obtain and test the evidence available to the CMC to further its investigation. Decisions to hold public hearings are not taken lightly, but are conducted for significant matters only, where it is in the public interest to do so. The Committee notes that there are no judicial findings that arise out of a CMC public hearing, but that the evidence provided by witnesses at a hearing may be used to further the investigation of possible offences, and if warranted, used at a later stage to refer the matter to a prosecuting authority for consideration of charges.

The Committee considers that involving the PIM or any other third party in reviewing the CMC's evidence prior to conducting a hearing, would in effect, require the CMC to hold a quasi-private hearing in order to determine whether to hold a public hearing. The Committee considers this would not be an appropriate use of resources for the CMC or the PIM and that matters such as the quality of evidence available to the CMC, would be considered by the Commission itself, sitting as the Chairperson and part-time Commissioners at the time the Commission considers whether or not to authorise a public hearing.

The Committee notes that if the CMC's evidence gathered in an investigation of a particular matter was not accurate, a public hearing would provide an excellent opportunity for a witness to dispute that evidence and provide their own version of events, on oath, for consideration by the CMC.

Recent Hearings

The Committee considers the CMC's Public Hearings continue to promote a trustworthy public sector and this is evidenced by the outcomes of recent hearings held by the CMC, which are set out below.

Separation issues in the Queensland Public Sector

The CMC conducted public hearings during the previous review period as part of the investigation into allegations that a former Director-General misused departmental information for his personal benefit and failed to disclose a personal interest in private training company. The CMC used the results of this

³⁴⁰ CMC submission to the 7th PCMC Three Yearly Review, pages 4 and 5.

investigation to look at possible recommendations for dealing with pre- and post- employment separation issues involving ministers and senior executive officers in the public service.³⁴¹

Following the investigation, during the period of this review, a new offence of Misconduct in Public Office has been inserted into the Criminal Code.³⁴²

Alleged misuse of public money, and a former ministerial adviser

The CMC conducted public hearings into allegations of official misconduct involving former ministerial adviser, Simon Tutt, in the granting of \$4.2 million by the Queensland Government to the Queensland Rugby Union, and the further payment of \$200,000 out of those funds to the University of Queensland Rugby Academy.³⁴³ The alleged conduct took place in 2008 when Mr Tutt was a senior ministerial adviser to the Minister for Police, Corrective Services and Sport.

Following the investigation, comprehensive provisions are now in place to prevent inappropriate interactions between ministerial staff and public servants as outlined in the *Ministerial and Other Office Holder Staff Act 2010* and employment contracts. The *Ministerial Staff Code of Conduct* has also been revised.

Police Misconduct on the Gold Coast

In the interests of public confidence in the QPS, in September 2010, the CMC conducted public hearings to explain the matters under investigation and to provide an opportunity to further consider the more difficult questions and challenges presented by the evidence from Operation Tesco.³⁴⁴

As a result of that investigation, QPS policies concerning the acceptance of gifts and gratuities by QPS members, and managing the risk of inappropriate associations, have been enhanced or developed.

Further, the CMC has referred evidence to the QPS with the following recommendations:

- that a post separation disciplinary declaration be considered against a now former uniformed officer. On 22 February 2011 this officer was fined \$4000 for drug-related criminal offences, with no conviction recorded;
- that disciplinary action for misconduct be considered against a plain clothes constable for victimising a suspected whistleblower. This officer was suspended from duty on 19 August 2010;
- that a post separation disciplinary declaration be considered against a former uniformed constable in respect of various allegations of fraudulent and dishonest conduct. This subject officer resigned from the QPS on 5 July 2010;
- that disciplinary action be considered against a plain clothes constable with respect to an incident of public nuisance; and

³⁴¹ *Public Duty, Private interests, Issues in pre-separation conduct and post-separation employment for the Queensland public sector*, December 2008

³⁴² *Criminal Code*, section 92A – Misconduct in relation to Public Office.

³⁴³ *Report on an investigation into the alleged misuse of public monies, and a former Ministerial adviser*, December 2010.

³⁴⁴ *Operation Tesco, report of an investigation into allegations of police misconduct on the Gold Coast*, June 2011

- that disciplinary action be considered against an Inspector for an alleged failure to report misconduct and a failure of the standards and leadership the community is entitled to expect from its senior police officers.
- that managerial guidance be given to a plain clothes officer in respect of his alleged involvement with the second officer mentioned above, in the victimisation of a suspected whistleblower.³⁴⁵

6.6 Claims of privilege at hearings

The C&M Act sets out that it is an offence for a witness at a CMC hearing to refuse to answer a question put to the witness by the presiding officer.³⁴⁶

In relation to a crime investigation or a witness protection function hearing, a person is not entitled to remain silent or to refuse to answer a question on the ground of 'privilege', other than legal professional privilege.³⁴⁷ In a misconduct investigation hearing, a person is not entitled to remain silent or to refuse to answer a question on the ground of self-incrimination privilege or on grounds of confidentiality. A person is entitled however to refuse to answer a question in a misconduct hearing on the grounds of legal professional privilege, public interest immunity or parliamentary privilege.³⁴⁸

The 7th PCMC set out in its report the following, in relation to 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 privilege³⁴⁹ 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.³⁵⁰ What has been referred to by one judge as 'curious drafting',³⁵¹ 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.³⁵²

The 7th PCMC went on to examine the application of spousal privilege and other privileges in CMC hearings and made three recommendations (13, 14 & 15) for amendment to the C&M Act in relation to

³⁴⁵ Submission No. 14 – CMC, page 55.

³⁴⁶ C&M Act, section 190 (crime investigations and witness protection functions); section 192 (misconduct investigation).

³⁴⁷ *Ibid.*, section 190.

³⁴⁸ *Ibid.*, section 192.

³⁴⁹ Explanatory Notes issued with the Crime and Misconduct Bill 2001, page 55.

³⁵⁰ Explanatory Notes issued with the Crime and Misconduct Bill 2001, page 56.

³⁵¹ *Callanan v B* [2005] 1 Qd R 348 at [23] per Jerald J.A.

³⁵² *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]

privilege matters which were either supported or under consideration by the Government. To date, no amendments have been made to the C&M Act. The former committee's recommendations, the Government responses to those recommendations and this Committee's consideration of the issues as part of this review are set out below.

Spousal privilege

Spousal privilege has been raised by the CMC time and again as an issue that prevents it from effectively dealing with investigations into many serious matters. Previous PCMCs have supported the CMC's position and in relation to the application of spousal privilege in CMC hearings, the 7th PCMC recommended:³⁵³

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.*

The then Government responded as follows:

Response to recommendation 13 – Under consideration

*The Government acknowledges that the Committee made a similar recommendation in Report No. 71. The Government is concerned that the availability of the privilege has caused difficulties for the CMC in utilising the hearings power for its crime and misconduct investigative functions. This matter will be included in the review referred to in the response to recommendation 14.*³⁵⁴

As the Government response indicates, the issue of witnesses being able to claim spousal privilege in CMC hearings has been considered in detail by both the 6th and 7th PCMCs in their reviews and has again been raised by the CMC in the course of this review. Highlighting the issue succinctly, in November 2011, Mr John Callanan stated at the public hearings for this review:

*We have consistently made submissions around the abrogation of spousal privilege. It is a significant impediment to the point that we have people, after the service of notices, running off and getting married.*³⁵⁵

Later that month, the High Court of Australia considered the matter of spousal privilege in an appeal by the Australian Crime Commission against a decision of the Full Court of the Federal Court of Australia, which had granted a declaration that the *Australian Crime Commission Act 2002* (Cth) had not abrogated the common law privilege against spousal incrimination.³⁵⁶

The High Court upheld the appeal and ruled that the common law does not recognise a privilege against spousal incrimination. The primary judge in the Federal Court had ruled that spousal privilege did exist at common law but that it was abrogated by the provisions in the relevant Commonwealth Act. The Full

³⁵³ 7th PCMC, Three yearly review of the CMC, page 57.

³⁵⁴ Government response to the 7th PCMC Three yearly review of the CMC, page 7.

³⁵⁵ Transcript – Public Hearing, 3 November 2011, page 19.

³⁵⁶ *Australian Crime Commission V Louise Stoddart & Anor* [2011] HCA 47.

Court of the Federal court, on appeal, determined that spousal privilege similarly existed at common law, however was not abrogated by the Act. The High Court ultimately held by majority decision that the spousal privilege did not exist at common law.

The High Court found that the person in question was a competent witness to be examined under the Act and was compelled by the provisions of that Act to give evidence. No privilege of the kind claimed (spousal privilege) could be raised in answer to that obligation.

Given the decision of the High Court of Australia that spousal privilege is not a recognized common law privilege available, the requirement for it to be abrogated in the C&M Act is no longer necessary. The Committee considers the matter of spousal privilege may finally be put to rest.

Other privileges

In relation to the specific abrogation of other privileges in relation to CMC hearings, the 7th PCMC noted in the last three yearly review:

*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.*³⁵⁷

The 7th PCMC recommended:

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.*³⁵⁸

The then Government responded as follows:

Response to recommendation 14 – Supported

*The Government accepts that the definition of “privilege” in the Crime and Misconduct Act 2001 and its interaction with other provisions in the Act is unclear and ambiguous and that this may impact on the effective functioning of the CMC. The Government will, in consultation with the CMC, review the relevant provisions with a view to further clarifying the privileges that are abrogated or are unaffected by the Act.*³⁵⁹

The Committee understands the former government’s review of clarifying the privileges that are abrogated or otherwise unaffected by the C&M Act is to take place concurrently with the review of the Chapter 3 powers referred to above, in part 6.4 of this Chapter.

³⁵⁷ 7th PCMC, Three yearly review of the CMC, page 58.

³⁵⁸ Ibid.

³⁵⁹ Government response to the 7th PCMC Three yearly review of the CMC, pages 7 & 8.

Journalistic privilege or shield laws

A further category of privilege that has been raised with the Committee for consideration in the context of the CMC's operations is that of journalistic privilege or the implementation of 'shield laws'. It was submitted to the Committee that the C&M Act currently contains inadequate protections of the identity of a journalist's confidential source and that the investigative powers held by the CMC can compel a journalist to produce documents or give evidence even though that may result in the identification of a journalist's confidential source.³⁶⁰

It was submitted that a journalist who is required by the CMC under its coercive powers to reveal the identity of their confidential source would be forced to choose between honouring their ethical obligation to maintain their source's confidence (under the Journalist's Code of Ethics) or breach their ethical obligation and to avoid criminal prosecution under the C&M Act.³⁶¹ It was suggested that provisions similar to those in the *Evidence Act 1995* (NSW) could be implemented to enable the Supreme Court of Queensland to decide any application by the Commission to compel the disclosure of any confidential source.

The matter of shield laws was broached with the CMC at the public hearings. The Acting Chairperson of the CMC stated in relation to journalistic privilege:

I have read the various submissions and I think the issue that the lawyers raise on behalf of their clients is a very relevant one. I know that moves are afoot in other jurisdictions at the moment, particularly in Western Australia, to introduce shield laws for journalists. It is an issue that has been around and has been debated by lawyers for some time. Obviously, in any sort of an issue like this—whether evidence that would otherwise be available should be excluded or prevented from being accessed—there are competing public policy considerations and I understand they well articulate the public policy considerations that favour the protection of confidential sources. The other competing public policy considerations are the need at times to get to the truth of what has happened and establish the truth or the integrity of an investigation of a serious matter.

I probably do not have a fundamental problem with what they are proposing in terms of qualified privilege. I would not support a blanket privilege. I think that is a difficult thing—to excise any potential source of evidence from a proceeding or an investigation. There are other debates about what is broadly referred to as professional relationship privileges, such as confidential communications with a counsellor. There has been consideration in recent times in a number of jurisdictions about protecting from disclosure under subpoena or other form of inquiry or questioning in court confidential communications that alleged victims of sex offences have made with counsellors. There are competing policy considerations there around protecting confidentiality and wanting to promote the openness of that communication as opposed to understanding the truth of what happened and potentially having relevant information available for the defence of a person. Those sorts of issues loom large in any consideration of any potential privilege.

³⁶⁰ Submission No. 17 – Queensland Newspapers Pty Ltd and Channel Seven Brisbane Pty Ltd, pages 1 & 2.

³⁶¹ *Ibid.*

My fundamental position on this is probably that, at the end of the day, there is an option for a court to adjudicate if there is a dispute and a court can balance those relevant public interest policy considerations. In this case, the process would probably work that the CMC would itself do a balancing exercise and if it wanted to persist with a claim then there would be a mechanism of taking a matter to, say, the Supreme Court for an adjudication on whether privilege should be upheld or not.³⁶²

The Assistant Commissioner, Crime, Mr John Callanan stated:

The coercive nature of the hearings and the questioning at hearings relates to failures to answer questions without reasonable excuse. The circumstances in which we have had, for example, spousal privilege raised in crime hearings at least is not the issue—‘There’s a common law spousal privilege.’ It is raised as a matter of a reasonable excuse. I would have thought that if a journalist does not wish to answer the question, he would say that he has a reasonable excuse for not answering. A decision then by a presiding officer that no reasonable excuse has been made out is able to be appealed to the Supreme Court.³⁶³

The Committee considers that while there currently exists the ability for a journalist or any person to who claims a confidential relationship (doctor, priest etc) to claim they have a reasonable excuse for not complying, this is a further category of privilege that is not clearly abrogated or unaffected by the provisions in the C&M Act and should be considered as part of the overall review on privileges, referred to above.

Self-incrimination privilege

The 7th PCMC also recommended, specifically in relation to self-incrimination privilege:

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.³⁶⁴*

The then Government responded to this recommendation as follows:

The Government notes that the privilege against self-incrimination is a substantive right under the common law and its abrogation should occur only where there is substantial justification in the public interest that outweighs the public interest in protecting individual rights. Where the legislature decides that in particular circumstances, the privilege should be abrogated, certain protections are generally put in place. These protections may include a use immunity whereby the compelled information cannot be used as evidence against the person in civil or criminal proceeding. However, proceedings about the falsity of the information given under compulsion are often an exception to the use immunity. The

³⁶² Transcript – Public Hearing, 3 November 2011, page 16.

³⁶³ Ibid., page 17.

³⁶⁴ 7th PCMC, Three yearly review of the CMC, page 60.

rationale for this exception to the use immunity is to ensure the efficacy of the compulsion by enabling the falsity or otherwise of a compelled statement to be dealt with.

In 2006, amendments were made to the Crime and Misconduct Act 2001 which extended the exception to the use immunity to enable evidence given under compulsion to be used in proceedings about the falsity of any compelled information given by the witness. The Government is concerned that this extension to the exception to the use immunity has resulted in a situation whereby witnesses may be able to claim privilege to avoid prosecution for perjury in relation to an earlier statement not given under compulsion. The Government will consider this matter in the review of the privileges referred to in the response to recommendation 14.³⁶⁵

As highlighted by the then Premier, the Hon Anna Bligh MP, in her submission to the Committee,³⁶⁶ the Independent Panel reviewing the police disciplinary system also recommended an independent review of the use of the privilege of self-incrimination in disciplinary hearings across the entire public sector.³⁶⁷

In response to the Independent Panel's recommendation, the Government stated that it recognised the need for an independent review to be undertaken in this matter. The Government confirmed the Attorney-General would commission an independent review and provide a report to Cabinet with a recommended position.³⁶⁸

In addition to the matters relating to CMC hearings, the CMC has submitted to this review that it considers there are evidence-related issues which concern claims of privilege before QCAT. The CMC states in its submission to the Committee:

At present, in QCAT proceedings, police witnesses are able to refuse to answer questions on the grounds of self-incrimination privilege. If that occurs, any statement that the witness may have made previously cannot be relied upon, which means that valuable evidence may be lost. The CMC is seeking for abrogation of this privilege in its proceedings before QCAT, and for the use immunity in the CM Act to be extended to documents/statements made in CMC hearings/proceedings so that they can be used in disciplinary proceedings. The current use immunity is too restrictive – i.e. statements obtained from a person, where that person has made a claim of self-incrimination privilege, cannot be used against that person in disciplinary proceedings or in some other types of proceedings.³⁶⁹

The Committee notes from the CMC's submission, that the CMC wrote to the Attorney-General on this matter and on 18 August 2010 the then Attorney-General, the Hon. Cameron Dick MP, advised the CMC Chairperson that while he acknowledged the arguments in support of legislative change, he preferred that the matter be considered as part of the Government's response to the CMC's report on the police disciplinary system.³⁷⁰

³⁶⁵ Government response to the 7th PCMC Three yearly review of the CMC, page 8.

³⁶⁶ Submission No. 19 – Premier of Queensland, page 2.

³⁶⁷ *Simple, Effective, Transparent, Strong – An independent review of the Queensland police complaints, discipline and misconduct system*, May 2011, page 95..

³⁶⁸ Government response to the Independent review of the Queensland Police complaints, discipline and misconduct system, August 2011.

³⁶⁹ Submission no. 14 – CMC, page 6.

³⁷⁰ *Ibid.*

The CMC has submitted to the Committee:

*The CMC strongly supports that such a review be undertaken as soon as possible to ensure that it is in a position to effectively bring matters before the QCAT in its original jurisdiction.*³⁷¹

It appears to the Committee that the clear determination of what specific privileges are abrogated or unaffected by the provisions in the C&M Act has now dragged on for a number of years without any firm direction. As subsequent reviews have commenced, the scope of matters to be considered has grown; however no substantive results have been achieved. The Committee considers that the Government should take immediate and decisive action on this matter and give priority to conducting its review of the relevant provisions of the C&M Act, including the provisions relating to QCAT, to ensure that the provisions are clear in what privileges apply, and in what circumstances to allow the CMC to function effectively.

To that end, the Committee notes it has recommended earlier in this Chapter, that priority be given to completing the review of Chapters 3 & 4 of the C&M Act, in relation to developing uniform provisions with generic application to CMC functions. The Committee considers that this review should also be given priority and if conducted at the same time as the review of the CMC functions as envisaged by the former Government, it should be able to progress independently from the greater suite of legislative amendments arising out of the Independent Panel's report on the Police Complaints, Misconduct and Disciplinary System.

Recommendation 30

The Committee recommends the Government gives a high priority to completing the review of the provisions of the *Crime and Misconduct Act 2001* to ensure the Act clearly sets out which privileges are abrogated or unaffected by the relevant provisions of the Act and provide certainty to the operations of the CMC.

³⁷¹ Ibid.

7. THE INTELLIGENCE FUNCTION

7.1 Introduction

A critical function performed by the CMC is the gathering of intelligence, which is an essential component in the fight against organised and major crime. Through its Intelligence function the CMC seeks to provide a timely and accurate understanding of criminal behaviour to enable investigators to identify which crimes pose the most serious threat to society.

The CMC's intelligence function supports its crime and misconduct functions by identifying and developing targets for CMC investigative action, providing strategic assessments, maintaining an intelligence database, and providing tactical information and intelligence support to investigative teams. Where appropriate, the CMC also shares intelligence data with other agencies. Since the last three year review the CMC has acquired greater telecommunications powers which has allowed the CMC to carry out its intelligence function with greater speed and accuracy.

The review considered the operation of the CMC's intelligence function and the Committee notes that no issues in relation to that function were raised in the written submissions or at the three year review hearings. The Committee has not identified any need for change to the current regime for the CMC's intelligence function.

7.2 Background

The C&M Act sets out the CMC's intelligence functions as:

- to undertake intelligence activities to support the proper performance of its functions;
- to analyse the intelligence data collected to support its functions;
- to minimise unnecessary duplication of intelligence data; and
- to ensure that intelligence data collected and held to support its functions is appropriate for the proper performance of its functions.³⁷²

7.3 Strategic Intelligence Unit

The CMC's Strategic Intelligence Unit (SIU) is a multidisciplinary unit of experts who monitor trends in organised crime markets including property crime, money laundering, fraud and illicit drug markets, criminal paedophilia, corruption and official misconduct. The SIU is an independent unit of the CMC, wholly detached from the CMC's crime and misconduct areas providing a secure, centralised source from which CMC officers can obtain intelligence information necessary to properly carry out their functions.

³⁷² C&M Act, Section 53.

Other functions include:

- maintaining a database of intelligence information;
- providing the CMC with a centralised point from which a wide range of internal and external data sources can be accessed by authorised officers; and
- sharing intelligence information with relevant entities.

The primary role of Intelligence officers within the SIU is to provide tactical intelligence and analysis to guide and support operations using the following techniques:

- developing threat assessments on targets;
- identifying targeting opportunities for the CMC or other law enforcement agencies;
- providing supporting information for affidavits

7.3.1 Strategic intelligence

Strategic intelligence involves the assessment of current and emerging trends in organised crime markets. Intelligence officers monitor the nature and extent of these markets and recommend strategies to deal with trends allowing the CMC to determine broader organisational objectives and in monitoring crime markets in Queensland to identify changes in threat levels. They also analyse networked criminal activity and misconduct by:

- developing person profiles;
- analysing call charge records; and
- providing intelligence reports and summaries.

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

7.3.2 Intelligence sharing

The CMC shares intelligence with other state and commonwealth agencies including the Australian Crime Commission (ACC).³⁷³ The information supplied by the CMC to the ACC is particularly significant to the formulation of the Picture of Criminality in Australia (POCA) and the National Criminal Target Report (NCTR) produced by the ACC. The CMC has received an extremely positive response from the ACC in relation to the intelligence provided and will continue to respond for requests for intelligence to enhance their relationship with the ACC and law enforcement agencies generally.³⁷⁴

³⁷³ Submission No. 14 - CMC, page 30.

³⁷⁴ Ibid.

7.3.3 Human Source Program

A critical element in the sourcing of intelligence information by the CMC is the use of individuals to provide confidential information in relation to criminal networks. These individuals provide information not available from other sources and are important in progressing investigations. In its submission to this review the CMC acknowledged the risk in using sources such as sources and in the period since the last three year review it has revised its policies and procedures to better manage information and develop a more secure human source database.

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

In accordance with the C&M Act, the Parliamentary Commissioner conducts an annual review of the intelligence data held by the CMC and by the Queensland Police Service.³⁷⁵ Unlike some of the Parliamentary Commissioner's other functions the intelligence data review by the Parliamentary Commissioner is not dependent upon the Committee's direction. The review must be carried out as soon as practicable after the end of each financial year, but in any event within four months from that time.³⁷⁶

The Parliamentary Commissioner prepares a report on the outcome of that review of the intelligence holdings. Copies are provided to the Committee, the Chairperson of the CMC and the Commissioner of the Queensland Police Service.

Section 320(2) of the C&M Act provides that the review has the following purposes:

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

During the term of the current PCMC, the Parliamentary Commissioner reported to the Committee on the results of the intelligence reviews for the financial years ended 2009, 2010 and 2011. The Parliamentary Commissioner concluded that:

All items of data reviewed at the CMC were appropriately held by the Commission having regard to its functions.

³⁷⁵ C&M Act, section 320.

³⁷⁶ *Ibid.*, section 320(6).

There was no evidence of unnecessary duplication of intelligence data held by the CMC and the Queensland Police Service. The Parliamentary Commissioner observed that as both agencies use the Australian Criminal Intelligence Database (ACID) there are limited circumstances in which the possibility of the agencies duplicating intelligence holdings can arise.

Since both the CMC and the Queensland Police Service store their criminal intelligence on ACID, it may be said that they are working cooperatively as partners.

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

The Parliamentary Commissioner has further mandatory responsibilities under the C&M Act and the *Police Powers and Responsibilities Act 2000* by undertaking regular audits and inspections of the records of the CMC relating to surveillance device warrants, controlled operations, assumed identities and telecommunications interception as set out in the previous Chapter of this report.

7.5 Conclusion

The Committee is of the view that the CMC's intelligence regime is functioning appropriately, and sees no need for any change to the current system. The annual reviews by the Parliamentary Commissioner have served to ensure that the intelligence function is appropriately audited.

8. APPLIED RESEARCH AND EVALUATION

8.1 Introduction

Under the C&M Act,³⁷⁷ the CMC's Applied Research and Evaluation Unit (formerly known as the Research and Prevention Unit) conducts evidence based research into police powers and operations, the criminal justice system, public sector misconduct and public policy issues including recommendations for legislative, policy and practice change.

The CMC's research supports its primary mission of combating crime and improving public sector integrity. It also contributes to the CMC's functions³⁷⁸ by monitoring trends and reviewing and evaluating changes in the areas of public sector integrity, crime and criminal justice, while providing important information to stakeholders and the general public in order to give a better understanding of contemporary issues.

The CMC'S research undertakes data analysis and interpretation on issues ranging from drug markets, sexual offending, and crime markets, to policing and law reform. In conducting its research the CMC works with policy makers, legal specialists, public service departments, universities and other research bodies. The CMC encourages members of the public to respond to its surveys by providing submissions to its inquires and reviews.

The CMC undertakes research at its own initiative to support its functions; however, there are instances where legislation will require the CMC to review the effects of changes to the law, particularly where there has been an expansion of police powers.³⁷⁹ The CMC also receives referrals from the Minister to undertake research on matters relating to the administration of criminal justice or misconduct.³⁸⁰

In carrying out its reports and reviews, the research unit often collaborates with other institutions and agencies. For example, in carrying out its report, *An Alternative to Pursuit – a review of the evade police provisions*, the CMC consulted a number of organisations such as the QPS, the Department of Transport and Main Roads, the Department of Justice and Attorney-General and the Centre for Accident Research and Road Safety.

8.2 Police Research

Through its research and prevention activities the CMC strives for the continuous improvement of the QPS. In the three years since the last review, the CMC has focused on the following areas:

- enhancing integrity in the QPS; and
- evaluating the use of police powers, including use of force.³⁸¹

³⁷⁷ C&M Act, section 52.

³⁷⁸ Ibid., sections 23 and 24.

³⁷⁹ See for example the report, *Police move-on powers: a CMC review of their use*, where the CMC was required to review the laws pursuant to section 49 of the *Police Powers and Responsibilities Act 2000*.

³⁸⁰ C&M Act, section 52(1)(c).

³⁸¹ Submission No. 14 - CMC, page 59.

Enhancing integrity in the QPS

Public perceptions of the Queensland Police Service

As part of its monitoring function the CMC continued its series of *Public Perceptions* reports with the latest released in August 2011. The surveys are conducted to measure the extent to which public sector agencies and employees are meeting the Queensland public's expectations of service delivery. As well as the public service and local government the survey contained findings from data collected in 2010 in relation to public attitudes toward the QPS.³⁸²

The survey found that the most common reason that respondents were dissatisfied with a QPS officer was because their manner was unfriendly, rude or arrogant.³⁸³ However, there was a substantial decrease in the proportion of respondents who believed that an officer had treated them unreasonably or unfairly compared with the responses from the 2008 survey. The key findings of the report were:

- Public perceptions of police are generally positive;
- Some negative perceptions of police behaviour increased;
- Perceptions of police corruption remained unchanged with the 89% of respondents believing there will always be some level of corruption in the police service;
- The manner of QPS officers is important in shaping public perceptions;
- Respondents were divided as to whether police had enough powers to perform their role;
- Half of those surveyed who made complaints to the QPS were dissatisfied with the process;
- Public confidence in the QPS complaints process had declined.³⁸⁴

The report concluded that these findings represented an opportunity for the QPS to better communicate to the public the mechanisms it has in place for dealing with misconduct matters. It also found that if officers interacted with the public in a courteous and professional manner, and particularly in circumstances where the police initiate contact, there is a greater chance that public perceptions of police will be more positive.³⁸⁵

Inquiry into policing Indigenous communities: the Restoring order report

In November 2009, the CMC published its report entitled *Restoring order: crime prevention, policing and local justice in Queensland Indigenous communities*. The Government's response was tabled on 11 June 2010, supporting five of the six recommendations for reform that the CMC identified.

³⁸² *Public Perceptions of the Queensland Police Service, Findings from the 2010 Public Attitudes Survey*, Public Perceptions Series August 2011.

³⁸³ *Ibid.*, page 17.

³⁸⁴ *Ibid.*, pages.3 & 4.

³⁸⁵ *Ibid.*, page.4.

The government supported the sixth recommendation in principle which recommended an Indigenous Partnership Policing Command to be led by an Assistant Commissioner.³⁸⁶

Police Ethics Survey Report

In November 2010, the CMC conducted an analysis of its survey's on police ethics carried out between 1995 and 2008. The report, *Ethical perceptions and attitudes of Queensland Police Service recruits and first year constables, 1995-2008*, made the following findings:

- There has been some positive change in the ethical attitude of police officers;
- There are some areas where there could be improvements such as lenient views as to the propriety of accepting gifts of alcohol at Christmas or using a police vehicle for a minor personal matter; and
- There was a slight decline in ethical standards detected in CMC investigations into police in the past two years. The CMC is working with the QPS to introduce initiatives to address these issues, and will continue to do so.³⁸⁷

The report also urged the QPS to ensure ethics training is provided to all police officers and not just new recruits.

Evaluating the use of police powers including the use of force

Taser reform evaluation

In 2011 the CMC reviewed Taser use and in particular evaluated the implementation and effects of 27 recommendations arising from a joint QPS-CMC review in 2009 following the death of a man who was Tasered in North Queensland.

The CMC's review found no evidence of widespread misuse of Tasers but did suggest there was room for improvement. However, the review also found that since the introduction of the revised policy on Taser deployments a Taser was more likely to be used by an 'at risk' group such as those with an underlying mental or physical condition, while Indigenous Queenslanders were also over represented as the subjects of Taser use.

The report's recommendations include the following:

- Improving aftercare for people subjected to Taser deployment;
- Decreasing Taser use against Indigenous people and individuals from at-risk groups;
- Enhancing decision making by QPS review panels; and
- Ensuring that QPS policy, training and procedures fully reflect best practice.³⁸⁸

³⁸⁶ *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities* published in November 2009.

³⁸⁷ *Ethical perceptions and attitudes of Queensland Police Service recruits and first year constables, 1995-2008*, pages.6-7.

³⁸⁸ *CMC Annual Report, 2010-2011*, page 43.

Search Warrant Review

The CMC oversighted the QPS review of search warrant applications made by police officers to Justices of the Peace. The review discovered that 25% of search warrant applications had technical or procedural faults containing incorrect or deficient information. The CMC has resolved to monitor the outcome of the QPS report and the implementation of its recommendations.

Review of Police move-on powers

In December 2010, the CMC tabled in Parliament the report *Police move-on powers: a CMC review of their use*, which reviewed the application and effectiveness of 'move on' powers as required by section 49 of the *Police Powers and Responsibilities Act 2000* (PPRA). In carrying out the report the CMC consulted with stakeholders such as the Aboriginal and Torres Strait Islander Legal Service Queensland, the Queensland Council Law Society, the Queensland Police Service and the Queensland Police Union of Employees.

In its report, the CMC made 11 recommendations including restricting the use of move-on powers to behaviour. The review also raised concerns about the lack of use of more informal conflict resolution methods such as persuasion and mediation and advocated the focus of police should be on ensuring that policing options are selected to match the conduct, with arrest being the last resort.

The report also found the following:

- There had been a steady increase in the use of move-on powers, likely to be associated with the expansion of the power across Queensland;
- Young adults aged between 17 and 24 years were more likely to be moved on;
- Indigenous persons were significantly more likely to receive a move-on direction; and
- Move-on powers, as used by police, are not an effective diversionary mechanism for Indigenous people or juveniles.³⁸⁹

Significant recommendations of the report included:

- The state government appoint a Public Order Advisory Panel, reporting to the Police Minister on the use and impact of public order policing;
- Police improve data collection methods in their use of the powers and provide a written move-on direction; and
- A person who is issued with a move-on direction be required to provide their name and address to police.³⁹⁰

³⁸⁹ Submission No. 14 – CMC, page 61.

³⁹⁰ See the recommendations of the *Police move-on powers: a CMC review of their use* report at pages xiv-xvii.

8.3 Crime research

The CMC undertakes a wide range of research projects designed to support the CMC's crime functions and inform and support the Commission's major crime and crime prevention functions. Since the last three year review the Strategic Intelligence Unit has contributed to the CMC's crime research by completing a comprehensive report on emerging trends and patterns in drug markets in Queensland.

Drug markets in Queensland

In February 2010 the CMC released a comprehensive report, *Illicit drug markets in Queensland – A strategic assessment*. As stated in the report, the purpose of the strategic assessment was the following:

- Determine the extent to which there has been any change in the significance of, and risk associated with, specific illicit drug markets in Queensland
- Identify demand and supply trends for specific illicit drug markets
- Identify trends in the production and use of particular illicit drugs and the impact of those trends on assessed levels of harm and risk
- Identify key drivers of illicit drug markets
- Describe the characteristics of specific illicit drug markets
- Identify strategies, or improvements to existing strategies, where appropriate to enhance law enforcement efforts to effectively detect and disrupt illicit drug markets.³⁹¹

The report identified significant changes in Queensland's illicit drug market in the last five years, particularly in the production, supply and use of cannabis, cocaine and ecstasy. Cannabis use has decreased generally but the effects of using cannabis have been underestimated by the public. The main reason for this is that cannabis has been traditionally viewed as a 'soft' drug; however its use can lead some persons to suffer psychotic episodes. Of most concern was that the demand for cannabis in Indigenous communities had increased which is opposite to the trend in the general community.³⁹²

The report also found that there is a level of criminality involved in supplying cannabis, including extortion and physical violence.

The cocaine market in Queensland had increased to its highest level on record; however its market is small compared with other illicit drugs such as ecstasy.³⁹³ The use of ecstasy has more than doubled in Queensland between 2001-2007 with the perception by users that ecstasy is a 'safe' drug. However, the risk to users remains high, as ecstasy type drugs are often not what they are purported to be.³⁹⁴

³⁹¹ *Illicit drug markets in Queensland – A strategic assessment*, Crime Bulletin No.12, February 2010, page 1.

³⁹² *Ibid.*, page 43.

³⁹³ *Ibid.*, page 6.

³⁹⁴ *Ibid.*, page 3.

General findings of the report included the following:

- There appears to be a general shift in the market towards social drug-taking , primarily to pills and to a lesser extent cocaine;
- Drug dealing within social networks has become normalised and is frequently not associated with criminality;
- Social networks are important in the supply of illicit drugs;
- The supply base for illicit drugs appears to have broadened;
- Australia continues to be one of the most expensive illicit drug markets in the world;
- New telecommunications interception powers will assist Queensland law enforcement agencies to disrupt organised criminal groups producing and trafficking illicit drugs in Queensland.³⁹⁵

8.4 Public sector research

Public perceptions of the Queensland public service and local government

As previously mentioned, in August 2011 the CMC released the latest in its *Public Perceptions* series in relation to the QPS, public service and local government.³⁹⁶ As well as surveying the 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.

The results of the 2011 survey showed that most respondents who had interaction with a public service employee had advised that the interaction was satisfactory.³⁹⁷ However, the survey also indicated that public expectations of complaints handling is not being met and there is less confidence in the complaints handling process.³⁹⁸ Further, compared with previous surveys, the public believes that not enough is being done to combat corruption in public service agencies. The report concluded that: 'better education about the capacity of public sector agencies and oversight bodies to prevent, detect and adequately respond to allegations of misconduct may help to reverse this trend'.³⁹⁹

8.5 Public policy research

The CMC's research projects also focus on significant public policy issues and often involve evaluating the effect of legislative changes or the implementation of the recommendations of an earlier investigation.⁴⁰⁰ Some projects are required by legislation, while others are the result of a Ministerial referral.

³⁹⁵ Ibid., pages 78-69.

³⁹⁶ CMC, *Public Perceptions of the Queensland Public Service and Local Government: Findings from the 2010 Public Attitudes Survey*, August 2011.

³⁹⁷ Ibid., page 37.

³⁹⁸ Ibid.

³⁹⁹ Ibid., page 38.

⁴⁰⁰ For example, reviewing the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*.

Completed research

Review of Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005

On 1 July 2006 new noise laws were introduced via the *Police Powers and Responsibilities Act 2000* to provide police with greater enforcement powers to target nuisance off-road motorbike riders. The laws sought to strike a balance between a person's right to ride a motorbike in lawful areas and the public's ability to enjoy community areas. In accordance with Act⁴⁰¹ the CMC examined the operation of the new laws, the integration of the new laws into the policies and procedures of the QPS and the application of the new laws by police and the courts.

The CMC's review of these laws attracted more public interest than any previous CMC review with over 400 submissions received. The central finding of the CMC's report entitled *Sound Advice – A review of the effectiveness of police powers in reducing excessive noise from off-road motorbikes*, was that the legislation and enforcement scheme did not address the problem of excessive noise and should be repealed. The report said the following:

*The scheme is overly complex, contains legal ambiguities, onerous investigative requirements and numerous administrative processes. Police are provided with limited guidance with competing policing priorities and staff availability. With policing resources stretched in some areas, responding to off-road motorbike noise complaints is often not a policing priority.*⁴⁰²

The report made twelve recommendations including the following:

- A ministerial taskforce and an advisory committee be created to provide a whole of government response to managing off road motorbike riding in Queensland;
- The off road motorbike noise laws in Chapter 4 and 19, Part 3 of the *Police Powers and Responsibilities Act 2000* be repealed and replaced with a series of enforcement strategies that address off road noise problems in specific locations;
- The government implement a long term, statewide strategy which is publically available;
- A free hotline number be available seven days a week so people can report illegal nuisance off road motorbike activity as well as noise concerns;
- The existing laws relating to the lawful riding by licensed riders on registered motorbikes in lawful open space areas, for example state forests, remain.⁴⁰³

The Government is yet to provide a response to the CMC's recommendations.

Review of the evade police offence

In accordance with the *Police Powers and Responsibilities Act 2000* the CMC was required to review the 'evade police' provisions designed to reduce the number of police pursuits and the associated risks to

⁴⁰¹ *Police Powers and Responsibilities Act 2000*, section 808(4).

⁴⁰² *Sound Advice – A review of the effectiveness of police powers in reducing excessive noise from off-road motorbikes*, page 81.

⁴⁰³ The recommendations from the report, *Sound Advice – A review of the effectiveness of police powers in reducing excessive noise from off-road motorbikes* at pages 88-95.

community safety. The provisions work in conjunction with the QPS pursuit policy restricting when police can pursue offending drivers.

The CMC's report, *An Alternative to Pursuit – a review of the evade police provisions*, found that in the last 11 years and most notably since the new laws were introduced in 2006, police pursuits declined by 56 per cent.

The report also made the following findings:

- The provisions have improved community safety and have been a contributing factor to the decline in police pursuits since 2006
- Because the provisions rely on the police being able to serve a notice on the registered owner of a vehicle, they are not effective in all situations where drivers flee. For example, if the offender is driving a stolen vehicle
- Police are under-using the laws and choose to use them only to commence a pursuit if permitted by the policy.⁴⁰⁴

In December 2011 the Government released its response to the report supporting all thirteen of the CMC's recommendations.⁴⁰⁵ The Government expects to implement ten of the recommendations which require legislative change in 2013, with the QPS actioning the remaining recommendations in 2012.

Policing in Indigenous communities

As a result of a referral from the then Attorney-General, the CMC released its report in November 2009 entitled, *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities*. The CMC was asked to examine the following:

- Possible changes to existing police policy and procedure that would result in improved relations between the QPS and Queensland's Indigenous communities;
- Current practices relating to detention in police custody in remote communities; and
- The optimal use of existing and future state resources available to deliver criminal justice services in Queensland's Indigenous communities.⁴⁰⁶

The report provided six principles for reducing crime and violence in Indigenous communities. It also recommended six broad areas for reform with the Government supporting five of these recommendations.⁴⁰⁷ The report also highlighted 51 specific areas for action, of which the Government supported 31 and the remaining 20 were supported 'in principle'.

⁴⁰⁴ See the key findings of the report, *An Alternative to Pursuit – a review of the evade police provisions*, at pages 35-37.

⁴⁰⁵ See the 13 recommendations of the report, *An Alternative to Pursuit – a review of the evade police provisions*, at pages 37-47.

⁴⁰⁶ *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities*, at page 4, setting out the inquiry's terms of reference.

⁴⁰⁷ *Ibid*, at pages 327-338 sets out the principles and recommendations.

Review of the Prostitution Act 1999

In accordance with section 141 of the *Prostitution Act 1999*, the CMC reviewed Queensland's prostitution industry releasing the report, *Regulating Prostitution: a follow-up of the Prostitution Act 1999*, in June 2011. The report found that the *Prostitution Act 1999* effectively regulated the licensed brothel sector which provides a secure and safe environment for sex workers, while also providing a viable alternative to illegal activity. The CMC's Director of Research and Evaluation, Dr Denning, commented:

The picture of prostitution in Queensland has changed dramatically since the late 1980s when the Fitzgerald Inquiry revealed entrenched organised crime and corruption in the illegal prostitution industry. Today, we have no evidence to suggest corruption or organised crime has infiltrated licensed brothels⁴⁰⁸ and this is to the credit of participants in the legal industry and the bodies responsible for its strict regulation. While its widely accepted illegal prostitution will never be eliminated, the illegal sector in Queensland is smaller than in other states. Ultimately, the objective of regulation is to shift the balance between the legal and illegal sectors so that illegal activity diminishes.⁴⁰⁹

The report concluded that there had been limited growth in legal prostitution industry in the last five years, with the number of licensed brothels remaining steady at between 23 to 25.

One of the key recommendations of the report was to establish a Ministerial Advisory Committee to carry out the following:

- Overseeing the prostitution industry generally;
- Provide advice to the Prostitution Licensing Authority on issues such as workplace health and safety and community sexual health;
- Identifying how to respond to emerging issues in the industry;
- Reporting to the Minister annually on issues relating to the prostitution industry.⁴¹⁰

The CMC's previous review of prostitution in 2004 raised concerns about street prostitution which the report found had declined from a high of 800 to a low of 60 per year.⁴¹¹ The other trend highlighted by the report is the growth in migrant sex workers and the emergence of specialist licensed brothels staffed only by Asian sex workers.⁴¹² There was no evidence that these licensed brothels were a front for sex trafficking or debt bondage.

⁴⁰⁸ See Chapter 4, page 19 of *Regulating Prostitution: a follow-up of the Prostitution Act* which discusses prostitution and organised crime in Queensland.

⁴⁰⁹ Media Release 29 July 2011: CMC releases 'snapshot' review of Queensland's Prostitution Act.

⁴¹⁰ *Regulating Prostitution: a follow-up of the Prostitution Act*, pages 47 & 48.

⁴¹¹ See Chapter 4, page 14 of *Regulating Prostitution: a follow-up of the Prostitution Act* which discusses trends in street sex workers.

⁴¹² See Chapter 4, pages 20-22 of *Regulating Prostitution: a follow-up of the Prostitution Act* which discusses the increase in Asian sex workers.

Future research

In 2012-2013 the CMC intends to undertake the following research:

- In the next 1-2 years the CMC intends to focus on the area of criminal paedophilia and specifically paedophilia networks and strategies to combat paedophilia. The CMC intends to publish 'The emergence of online paedophilia', which will be the first in a series of papers addressing current issues. The papers are designed to provide practical assistance to the work of the paedophilia investigation team.
- Conduct a review in 2013 of the operation of the *Child Protection (Offender Prohibition Order) Act 2008*.
- Collaborate with the National Research Centre for Environmental Toxicology (ENTOX), based at the University of Queensland, to conduct a 12 month research project that analyses wastewater in order to estimate illicit drug consumption in south-east Queensland.
- Focus on the steroids market in Queensland and the emergence of synthetic stimulants.
- Evaluate the progress of the government's response to the CMC's recommendations in relation to policing in Indigenous communities, as contained in the report - *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities*.
- Implement the government endorsed reforms arising from the police discipline system.
- A comparative analysis report is currently being prepared on public perceptions of the Queensland public a service and local government survey responses from 2008-2010.⁴¹³

The CMC's Applied Research and Evaluation Unit also seeks to maintain a good working relationship with its partner agencies who contribute valuable information and data to its reports and reviews.

8.6 Staffing

The CMC's Applied Research and Evaluation Unit has undergone considerable re-structure since the last three year review, which was acknowledged by the Acting Chairperson Mr Warren Strange at the public hearing for this review. Mr Strange informed the Committee:

Our research area continues to work to provide a legitimate, robust and independent evidence base for public policy and legislative change. That unit has undergone some very significant change in recent times to ensure it can deliver high-quality, timely and applied research outcomes to government and to our other stakeholders. Some of those changes include a name change, from Research to Applied Research and Evaluation to better reflect the type of work that the unit undertakes and its relevance to the primary objects of the CMC.

They have restructured the area to align more closely with the primary functions of Crime and Misconduct and Witness Protection, implementing a revised communication strategy and reviewing their planning and project management processes and implementing an improved human research ethics process to ensure that all relevant research projects have appropriate

⁴¹³ Submission No. 14 - CMC, page 32.

*ethical considerations, clearance and approvals in place. They are also working, as part of their communication strategy, to improve their consultation and relationship with key government agencies.*⁴¹⁴

The Committee has closely monitored the internal re-structure of the CMC's Applied Research and Evaluation unit and is satisfied that after a period of instability, the unit's change of direction is now allowing it to perform its evidence based research at a high level.

The Committee notes the restructure has included a fresh appointment to the position of Director, Applied Research and Evaluation, which the Committee views as providing the unit with new direction and leadership required to carry out its important, evidence based research. The Committee considers the Applied Research and Evaluation Unit is well placed to provide valuable data and information, specific to the CMC's various work units.

⁴¹⁴ Transcript – Public Hearing, 3 November 2011, page 4

9. WITNESS PROTECTION AND OPERATIONS SUPPORT

9.1 Introduction

One of the CMC's key functions in the C&M Act is to run Queensland's witness protection program.⁴¹⁵ The CMC is the only independent Commission in Australia with the responsibility to provide a witness protection service; in all other jurisdictions this function is handled by state or national policing bodies.

Witness protection has been a function of the CMC and its predecessor, the CJC, since its formation in 1989, when it was identified in the Fitzgerald Report, there was a need for a formal witness protection program. The Fitzgerald Report recommended the establishment of a separate division in the Criminal Justice Commission (CJC) to provide witness protection services.⁴¹⁶

The Fitzgerald Report detailed:

*The essential feature of witness protection is the assurance of safety for those upon whose information and testimony the criminal justice system depends. A professional witness protection unit is an essential component of a progressive criminal justice system.*⁴¹⁷

Since its inception, the CMC has protected over 1600 witnesses with a 100% success rate.⁴¹⁸

The *Witness Protection Act 2000* (WP Act) provides the statutory basis for Queensland's witness protection program. The WP Act sets out:

- the eligibility criteria for inclusion in the program;⁴¹⁹
- the availability of interim protection;⁴²⁰
- the requirement for, and terms of protection agreements;⁴²¹
- circumstances in which protection can be ended by suspension, withdrawal or termination;⁴²²
- arrangements for short-term protection;⁴²³
- mechanisms for protecting identities including changing a person's identity and providing witness anonymity;⁴²⁴ and
- the restrictions on disclosing certain information.⁴²⁵

⁴¹⁵ C&M Act section 56(a); and *Witness Protection Act 2000*, section 5.

⁴¹⁶ Fitzgerald Report, page 319.

⁴¹⁷ *Ibid.*, page 318.

⁴¹⁸ *CMC Annual Report 2009-10*, page 38.

⁴¹⁹ *Witness Protection Act 2000*, section 6.

⁴²⁰ *Ibid.*, section 9.

⁴²¹ *Ibid.*, sections 7, 8, 10 & 11.

⁴²² *Ibid.*, sections 12-14.

⁴²³ *Ibid.*, Part 2A.

⁴²⁴ *Ibid.*, Part 3.

Under the WP Act, the CMC must be ready to provide immediate protection to a person under threat anywhere in Queensland. In order to provide this protection the CMC must maintain a highly responsive and mobile capability at all times. In carrying out its witness protection function as well as its investigations of misconduct and major crime, the CMC relies on its officers from the Operations Support team, incorporating physical surveillance, technical surveillance and forensic computing.

9.2 The Witness Protection program

Introduction

The Witness Protection Program offers protection to persons in the following circumstances:

- They have assisted a law enforcement agency; and
- They are closely associated with a person who has provided such assistance.⁴²⁶

The CMC's witness protection program has a Witness Protection Advisory Committee (WPAC), whose primary objective is to make assessments and provide strategic advice and recommendations to the Chairperson, who has the ultimate responsibility for administering the Witness Protection Unit (WPU).

The WPAC comprises the following persons:

- the Assistant Commissioner of Police, Director Witness Protection and Operations Support (Chair);
- the Executive General Manager, CMC;
- the Detective Superintendent, Operations Coordinator, Witness Protection and Operations Support;
- the CMC Official Solicitor; and
- the Detective Inspector, Officer in Charge, Witness Protection Unit.⁴²⁷

In its submission to the Committee, the CMC set out the functions of WPAC, which include making assessments, evaluations, recommendations and directions in relation to the following:

- applications for interim protection;
- applications for protection;
- applications for a new identity;
- withdrawals from witness protection; and
- other matters of significance relating to witness protection.⁴²⁸

⁴²⁵ Ibid., sections 36-38.

⁴²⁶ Submission No. 14 - CMC, page 64.

⁴²⁷ Ibid.

The WPAC also advises and makes recommendations to the CMC Chairperson on issues relating to witness protection, provides guidance to the WPU and provides support when a witness withdraws from witness protection.⁴²⁹

Admission to the witness protection program

In order to be considered for the 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.⁴³⁰ However, a person does not have to be a witness in court to qualify for the program. The program is open to anyone who has put themselves or members of their family in danger by helping a law enforcement agency.

The relevant law enforcement agency usually applies to the CMC for protection on behalf of a witness. 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, the Independent Commission Against Corruption (ICAC), the New South Wales Crime Commission, the Tasmanian Integrity Commission, and Police Integrity Commission, the Independent Broad-based Anti-Corruption Commission (IBAC) and the Western Australian Corruption and Crime Commission.⁴³¹

The CMC Chairperson decides who takes part in the witness protection program after considering a range of factors including the seriousness of the offence the person can assist 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.⁴³²

However, a person must not be included in the program as a reward for giving evidence or making a statement.⁴³³ In urgent cases, interim protection is available before a final decision as to a person's suitability is made.⁴³⁴

Applications and admissions to witness protection during the review period are as follows:⁴³⁵

	2008-09	2009-10	2010-11
Applications for witness protection assessed (persons)	104	135	114
Admissions to witness protection (persons)	51	46	51

⁴²⁸ Ibid., pages.64-65.

⁴²⁹ Ibid., page 65.

⁴³⁰ *Witness Protection Act 2000*, section 6(1).

⁴³¹ Ibid., Schedule 2 – definition of 'law enforcement agency'; *Witness Protection Regulation 2001*, section 5.

⁴³² Ibid., section 6(2).

⁴³³ Ibid., section 6(4)(b).

⁴³⁴ Ibid., section 9.

⁴³⁵ *CMC Annual Report 2008-09*, page 37; *CMC Annual Report, 2009-10*, page 37; *CMC Annual Report 2010-11*, page 46.

Witness protection services

The CMC's Witness Protection Unit (WPU) provides protection to people who are in danger as a result of the assistance they have provided to the QPS or other national law enforcement agencies. The protection provided can include close personal protection, court security or securing the person in a safe location on a temporary or permanent basis. In appropriate circumstances the CMC has also used video conferencing for a protected person giving evidence in order to reduce the risk of harm to them and allaying any fears they may have when providing evidence.⁴³⁶ The CMC also has the legislative capability to change the identity of a protected witness if approved by the Chairperson.⁴³⁷

While providing security to the participants of the program is a priority, the CMC also ensures they receive any necessary professional assistance and guidance if they have personal problems such as drug or alcohol addiction or financial difficulties.⁴³⁸

Witness protection service statistics during the review period were:⁴³⁹

	2008-2009	2009-2010	2010-2011
Percentage of persons whose safety was not compromised	100	100	100
Percentage of eligible persons offered interim protection within two days of receipt of application	100	95	100
Number of threat assessments conduct for protection operations	60	92	52
Expenses to achieve strategic goal 'To provide an effective witness protection service'	\$5.0m (estimate \$4.9m)	\$5.2m (estimate \$5.1m)	\$5.9m (estimate \$5.8m)

The rates of admission into the witness protection program are difficult to predict because the program is voluntary. Each year a number of people who meet the program's criteria decline to take part.⁴⁴⁰

Witness protection outcomes

The CMC's WPU has maintained a 100 per cent success rate in protecting witnesses.⁴⁴¹ In its submission to the three year review, the CMC have provided several examples of its achievements in keeping witnesses from harm:

⁴³⁶ CMC Annual Report 2009-10, page 36.

⁴³⁷ Ibid., page 38.

⁴³⁸ CMC Annual Report 2010-11, page 47.

⁴³⁹ CMC Annual Report 2008-09, page 37; CMC Annual Report, 2009-10 page 37; CMC Annual Report 2010-11, page 46.

⁴⁴⁰ CMC Annual Report 2009-10, page 36.

- A person gave evidence at a re-trial in 2009 after the accused was granted a retrial when a guilty verdict was returned in 2002 in relation to a murder charge. The person under protection successfully completed their evidence and the accused was found guilty of murder and sentenced to life imprisonment;
- A protected person gave evidence at the trial of two people who were charged with manslaughter, torture and a variety of serious assaults. The defendant was found guilty of manslaughter and sentenced to ten years prison while the second was found guilty of acts intended to disfigure and disable, and was sentenced to five years imprisonment. Other accused were also found guilty on all remaining counts and sentenced to a further five years in prison;
- A protected person gave evidence at the trial of a person who had been charged with five counts of rape. The defendant was found guilty on four of the charges and sentenced to life imprisonment;
- Two protected persons gave evidence at a civil asset confiscation trial initiated by the CMC in relation to a person who had an extensive criminal history in drug trafficking and the production of dangerous drugs. The court made a proceeds assessment order requiring the respondent to repay \$4.2 million; and
- A protected person gave evidence against four people charged with importing a controlled substance under the Commonwealth Criminal Code which led to all four being sentenced to prison terms of five to six years.⁴⁴²

Legislative amendments

In its submission to this review, the CMC identified some concerns with the legislation affecting the efficient operation of its witness protection program. The CMC advised that it does not recommend any legislative changes at present, as the CMC's Office of General Counsel and Legal Services division are reviewing the Acts in question and considering whether legislative changes will be sought.⁴⁴³

The changes being reviewed by the CMC include the following:

- Pursuant to the WP Act when a protection agreement ends⁴⁴⁴ the CMC must inform the protected person why it is proposed that the protection will end; when the protection will end and give the person a reasonable right of reply as to why they believe the protection should not end. However, it may be the case that a protected person voluntarily leaves the program and does not wish to be located. In these circumstances the Chairperson cannot satisfy the legislative requirements of the Act. The CMC is then forced to suspend the protection

⁴⁴¹ Submission No. 14 - CMC, page 64.

⁴⁴² *Ibid.*, page 65.

⁴⁴³ *Ibid.*, page 9.

⁴⁴⁴ *Witness Protection Act 2000*, section 14

agreement until such time as the protected person is located.⁴⁴⁵ This may prove difficult and an inefficient use of the CMC's resources while also inhibiting the ability of the CMC to take other persons into the witness protection program; and

- At times, the WPU needs to liaise with other agencies to establish the whereabouts of a protected person who has failed to communicate their whereabouts in order to ensure that they are safe and have not been compromised. In making these enquiries the CMC is often hampered by privacy laws such as the *Information Privacy Act 2009* and the *Federal Privacy Act 1998*. In particular the CMC is restricted in obtaining a telecommunications warrant under the *Telecommunications Act (Interception and Access) Act 1979* (TI Act). The TI Act requires a criminal offence to be committed before a warrant can be issued, however this may not be clear until the protected person is located. There is no provision in the TI Act for locating a witness in a witness protection program.

The Committee considers that upon completion of the CMC's legislative review, the Government should have regard to any recommendations and liaise with the CMC with a view to implementing any desired amendments to the legislation at that time.

9.3 National Witness Protection Program

The CMC's witness protection program is part of the National Witness Protection Program which aims to meet the challenges presented by ever changing criminal practices. The sharing of knowledge and practices between agencies is a crucial element in maintaining the high standards needed to carry out the witness protection function across every state and territory.

To facilitate this national approach the Queensland legislation sets out the agencies which are declared to be 'law enforcement agencies'.⁴⁴⁶ These agencies include the AFP, the police services of all other states and a range of other crime and corruption agencies. The witness protection legislation for the Commonwealth and each Australian state are declared to be complementary witness protection laws in Queensland.⁴⁴⁷ The WP Act also allows the CMC Chairperson to make arrangements with the chief executive officer of the Australian Federal Police and the police services of other states,⁴⁴⁸ about any matter relating to the administration of a complementary witness protection law.

Indicative of this national approach is the CMC's membership of the Australasian Witness Protection Forum (AWPF) promoting strategies and policies to ensure the continual improvement of witness protection standards and practices.⁴⁴⁹ The CMC also liaises with other agencies through the National Training Sub Group of the Australia New Zealand Policing Advisory Group of the AWPF, which conducts the national training course for witness protection officers and looks to develop and update the witness protection qualification for officers nationwide.

⁴⁴⁵ Ibid., section 12.

⁴⁴⁶ Ibid., Schedule 2 – definition of 'law enforcement agency'; *Witness Protection Regulation 2001* section 5.

⁴⁴⁷ Ibid., Schedule 2 – definition of 'complementary witness protection law'; *Witness Protection Regulation 2001*, section 4.

⁴⁴⁸ Ibid., Schedule 2 - definition of 'approved authority'.

⁴⁴⁹ *CMC Annual Report, 2010-11*, page 48.

9.4 Training and the Witness Protection Program

The Fitzgerald Report recognised that witness protection is a specialist function requiring highly trained and skilled staff.⁴⁵⁰ Witness protection officers are trained in areas such as legislation, policy and procedures, management of court security, use of firearms and tactics and advances in technology used by terrorist and criminals.

In accordance with section 35 of the WP Act, the CMC has developed training courses to meet the specialised training needs of its WPU staff. In conjunction with the Queensland Police Academy the CMC has developed the first accredited witness protection course in Australasia. All CMC staff in the WPU have either completed or are undertaking the Advanced Diploma offered for witness protection and also receive ongoing in-house training and development.⁴⁵¹ A WPU staff member also undertook a study tour of Scotland and Germany in August 2009 to research the witness protection processes used in those jurisdictions. The officer made a number of recommendations which were implemented into the CMC's witness protection program.⁴⁵²

Other training undertaken includes:

- participation in the Australasian Witness Protection Forum (AWPF);
- facilitating training courses; and
- regular communication with counterparts throughout Australasia and other support agencies.⁴⁵³

The WPU also liaises closely with various units of the QPS as Queensland's primary law enforcement agency accessing the witness protection program and conducts training and marketing sessions to prosecutors and regional investigators. The CMC has made a priority of better promoting its witness protection program by engaging with the QPS and other law enforcement agencies to ensure greater awareness of its witness protection program.⁴⁵⁴

The CMC actively participated in a number of programs and conferences in order to maintain its knowledge in witness protection. These include:

- hosting the annual Australasian Witness Protection Forum held in Brisbane in May 2009;
- arranging the revised Advanced Diploma in Public Safety (Police Witness Protection) to be held in Queensland;
- contributing to the curriculum of the National Witness Protection Course held in November 2010 in Perth and attended by two officers from the WPU; and
- participating in research projects conducted by the Australian Federal Police (AFP).⁴⁵⁵

⁴⁵⁰ Fitzgerald Report, page 320.

⁴⁵¹ *CMC Annual Report, 2009-10*, page 39.

⁴⁵² *Ibid.*

⁴⁵³ Submission No. 14 - CMC, page 66.

⁴⁵⁴ *Ibid.*

⁴⁵⁵ *Ibid.*

9.5 Submission by the QPUE

The QPUE has submitted to the Committee that the CMC's Witness Protection function should be transferred to the QPS. The QPUE stated in its submission:

It is also the view of the QPUE (that) the Witness Protection function should be transferred to the QPS. Again, this function is performed primarily by police officers seconded to the CMC. Initially, it was entrusted to the CJC in order to provide protection to witnesses who gave evidence against police officers following the Fitzgerald Inquiry.

Nationwide witness protection arrangements now exist. Should a situation arise where it is necessary to provide witness protection in circumstances where the person is threatened by a police officer, such person would most likely be provided protection outside this jurisdiction.

Transferring the witness protection function to the QPS would not change this principle, and would ensure future witnesses were afforded the same level of protection as they currently are. In fact, should such a situation arise, provision could be made for the CMC itself to organise protection through cooperative arrangements with interstate and federal witness protection bodies, bypassing the QPS entirely.⁴⁵⁶

The Acting Chairperson of the CMC, Mr Warren Strange, addressed the performance of the CMC's Witness Protection unit during the public hearings of this review. Mr Strange stated:

I mentioned in my opening remarks the great track record that the CMC and its predecessor organisation has in witness protection. The committee would well understand of the historical reasons that function was vested in the CJC, the integrity agency going back to the Fitzgerald inquiry days. The fact was that some of those who needed protection were police officers who needed protection from other police officers, so the function could not be located in the Police Service at that time, and hence it was given to the integrity agency. We are unique in that respect, but I think we are extremely well regarded in the national enforcement landscape for our witness protection work, and certainly other agencies look to benchmark against the CMC and to work with us in relevant operational areas.

The function is performed extremely well by our team, led by Assistant Commissioner Peter Barron. They are extremely professional and extremely competent and the results speak for themselves. The system works very well. I do not see a need to change it and perhaps undermine the consistency, the good results, the systems that are in place, the levels of trust and the relationships that have been established. It works very well from our perspective. It works very well from a law enforcement perspective in Queensland and the results speak for themselves.⁴⁵⁷

⁴⁵⁶ Submission No. 12 - QPUE, page 3.

⁴⁵⁷ Transcript – Public Hearing, 3 November 2011, page 14.

Mr Strange also responded to the QPUE's submission that the witness protection function be removed from the CMC and transferred to the QPS to administer:

*We are unique as being an integrity agency that has a witness protection function. I commented yesterday on the historical reasons for that. I think that is really the genesis of that submission – that in other states or in some other states it is with the Police Service and perhaps that should be the Queensland position. I simply reiterate what I said yesterday – that it is working particularly effectively under the current arrangements that are established. We are regarded very well across Australia for our witness protection capability and it works well as it is.*⁴⁵⁸

The Committee does not consider that any compelling reasons have been raised to warrant the transfer of the CMC witness protection function from the CMC to the QPS. The Committee considers the witness protection unit is operating effectively in its current form as part of the CMC and sees no reason why this should be altered.

Recommendation 31

The Committee notes the excellent record of the CMC in the area of witness protection and recommends that the CMC continue to have responsibility for the witness protection function.

9.6 Outlook – Witness Protection

In the immediate future, as set out in its submission to the Committee, the CMC has identified the following key areas as a focus for witness protection in 2011-2012:

- Maintain close contact with national witness protection jurisdictions to ensure that witness protection training is relevant and current in order to ensure that all witness protection jurisdictions have the same base training;
- Meet the commitment to provide an effective witness protection service by looking to establish ways to measure efficiency in providing services, and conduct research and analysis into client and participant satisfaction with processes;
- Meet the challenge of emerging technologies such as facial recognition technology and social media on the security of participants in the witness protection program; and
- Continue to provide witness protection training and presentations to the following agencies:
 - the Detective Training Program at the Queensland Police Service (QPS) academy to educate junior investigators on the use of, and access to, the program;

⁴⁵⁸ Transcript – Public Hearing, 4 November 2011, page 26.

- the QPS Police Prosecutions course that trains prosecutors in court security processes involving protected witnesses; and
- Senior police and regional QPS investigators on services offered by witness protection staff.⁴⁵⁹

9.7 Operations Support

The CMC's operations support comprises three areas: physical surveillance, technical surveillance and forensic computing.

Physical Surveillance

Physical surveillance officers gather evidence to support the CMC's Misconduct, Crime and Intelligence areas who investigate persons suspected of being involved in official misconduct, organised crime or serious criminal activity.⁴⁶⁰

Technical Surveillance

The CMC's technical surveillance includes the use of audio, video and tracking devices to support the CMC's functions. Officers in this unit are engaged in projects involving the digitising of listening and observation posts while also using new technology from remote sites.⁴⁶¹

Forensic computing

Forensic computing allows the CMC to examine data storage devices when investigating public sector misconduct and undertaking crime investigations such as paedophilia. The devices examined include computers, portable storage devices, email servers, file servers, back-up tapes, cameras, personal digital assistants and mobile telephones. The development and accessibility of devices such as smart phones has impacted upon the complexity of the CMC's work in this area. For example, in 2009 a full mobile phone examination could take an hour however with the advanced technology contained in a smart phone it can now take over a week.⁴⁶²

Achievements in Operations Support

The three areas of Operations Support have combined to contribute significantly to the CMC's investigations in the areas of misconduct, major crime and paedophilia. For example, the investigation of police misconduct on the Gold Coast, Operation Tesco, and the extensive joint major crime investigation with New South Wales and Victorian agencies, Operation Warrior, involved all three operations support areas. The forensic computing unit also plays a vital role in supporting the Cerberus team in the investigation of child exploitation material.⁴⁶³

⁴⁵⁹ Submission No. 14 - CMC, page 70.

⁴⁶⁰ Ibid., page 66.

⁴⁶¹ Ibid.

⁴⁶² Ibid., page 67

⁴⁶³ Ibid., page 68.

Training

All three teams in Operations Support undertake training in order to maintain their skills and knowledge base.⁴⁶⁴ Officers in the physical surveillance team are given one-on-one training by experienced surveillance officers.

While there is no recognised training course for technical surveillance units in Australia, the CMC have entered into a partnership with Skills Tech Australia, Eagle Farm TAFE, to conduct a specialised training course for technical officers within Australia.⁴⁶⁵ With ever changing technology the CMC ensures that officers from the forensic computing unit undertake specialist training from highly qualified trainers from both in Australia and overseas so they are up to date with the latest issues and developments. This is important in enabling staff to carry out their role at a high level and give quality expert evidence in any court proceedings which may eventuate.⁴⁶⁶

9.8 Outlook – Operations Support

The challenge for Operations Support in the future will be to maintain its knowledge of new devices, networks, trends and techniques which impact on its three areas of surveillance and to implement these changes in a timely manner to enhance the efficiency of investigations.

In its submission to the Committee, the CMC set out the immediate matters of priority for Operations Support:

- Embrace the use of SMART technology using next generation telecommunications networks and IP systems to be integrated and additive to the surveillance environment;
- Maintain and adopt partnerships with other integrity commissions and law enforcement agencies to discuss problems and provide solutions with the better use of technology;
- Continue to develop specialist training programs for staff to enhance skills and be able to overcome potential constraints generated from emerging technologies used by the criminal element; and
- Improve response and state of readiness to support the various operational and investigative teams.⁴⁶⁷

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid., page 69.

⁴⁶⁷ Ibid., page 70.

10. PUBLIC INTEREST DISCLOSURES

10.1 Introduction

It has long been recognised that for there to be a culture of integrity within the public sector, public service employees must be able to disclose suspected serious wrongdoing without fear of reprisal or other adverse action to their employment. The CMC plays an important role in the disclosure of suspected misconduct within units of public administration by performing its role in the public interest disclosure framework.

The first legislation in Queensland to address the need for protection of persons making disclosures or 'whistleblowers' came as a result of the Fitzgerald Inquiry. Fitzgerald QC recommended that legislation be introduced prohibiting any person from penalising any other person for making public statements about misconduct, inefficiency and other problems within public instrumentalities.⁴⁶⁸

The *Whistleblowers Protection Act 1994* was therefore enacted, providing protections for people who make public interest disclosures to authorised public agencies concerning:

- unlawful, negligent or improper conduct affecting the public sector;
- danger to public health or safety; or
- danger to the environment.⁴⁶⁹

In 2010, the *Public Interest Disclosure Act 2010* (the PID Act), was enacted as part of the implementation of a number of integrity reforms within Queensland. The PID Act replaced the *Whistleblowers Protection Act 1994* to ensure that Queensland legislation and practices were informed by present day best practice and continue to be of the highest standard.⁴⁷⁰ The reforms took into account a number of recommendations from the national *Whistling While They Work* project led by Griffith University and established a centralised system to ensure consistency in the handling of public interest disclosures.

The CMC, together with the other integrity agencies within Queensland such as the Ombudsman's office and the Public Service Commission, provide advice and assistance to whistleblowers and in certain circumstances set out in the PID Act, the CMC may receive public interest disclosures or 'PIDs' about official misconduct.

This chapter looks at the role of the CMC within the new public interest disclosure framework.

10.2 The Public Interest Disclosure Act 2010

The main objects of the *Public Interest Disclosure Act 2010* are to:

- (a) promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector; and

⁴⁶⁸ Fitzgerald Report, page 134.

⁴⁶⁹ *Whistleblowers Protection Act 1994*, section 3.

⁴⁷⁰ Explanatory Notes, Public Interest Disclosure Bill, page 1.

- (b) ensure that public interest disclosures are properly assessed and, when appropriate, properly investigated and dealt with; and
- (c) ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure; and
- (d) afford protection from reprisals to persons making public interest disclosures.⁴⁷¹

Who can make a disclosure?

The PID Act provides protection to people who make a disclosure and sets out the types of matters to which a disclosure of information may relate. Public interest disclosures by a public officer, may be about conduct, that is:

- official misconduct;
- maladministration that adversely affects someone's interests in a substantial and specific way;
- a substantial misuse of public resources; or
- a substantial and specific danger to public health or safety or the environment.⁴⁷²

Under the PID Act, any person, regardless of whether or not they are a public officer, may make a public interest disclosure about:

- a substantial and specific danger to the health or safety of a person with a disability; or
- the commission of an offence against certain provisions or a contravention of certain conditions imposed under legislation, that is or would be a substantial and specific danger to the environment; or
- a reprisal taken against any person for making a public interest disclosure.⁴⁷³

For a person to make a disclosure under the PID Act, they must honestly believe on reasonable grounds that the information they are disclosing tends to show the conduct or matter; or that the information itself tends to show the conduct or matter, regardless of whether the person honestly believes that it does so.

To whom are disclosures made?

Division 2 of the PID Act sets out to whom a disclosure may be made. It provides that disclosures must be made to a 'proper authority'. Any member of the Legislative Assembly is a proper authority to

⁴⁷¹ *Public Interest Disclosure Act 2010*, section 3.

⁴⁷² *Ibid.*, section 13.

⁴⁷³ *Ibid.*, section 12.

receive a disclosure under the Act unless the disclosure relates to a judicial officer.⁴⁷⁴ A public sector entity is a 'proper authority' to receive a public interest disclosure if the disclosure relates to:

- the conduct of the entity or its public officers; or
- anything the entity has a power to investigate or remedy; or
- a reprisal by another person that relates to a previous public interest disclosure;⁴⁷⁵

or the disclosure is appropriately referred under the Act by another public sector entity⁴⁷⁶ or a member of the Legislative Assembly.⁴⁷⁷

The only proper authority to receive a public interest disclosure about a judicial officer is the chief judicial officer of the relevant court or tribunal, or in the case of a disclosure regarding alleged official misconduct or a reprisal, the CMC.⁴⁷⁸

Public interest disclosures may also be made to the CMC by employees of a Government owned Corporation or a corporate entity (as defined in the *Local Government Act 2009* and the *City of Brisbane Act 2010*), in specific cases.⁴⁷⁹

The PID Act continues the indemnities provided under the previous scheme, which protect a person who makes a disclosure under the Act. Such a person is not liable civilly, criminally or under an administrative process for making a public interest disclosure.⁴⁸⁰ The Act similarly continues to prohibit reprisals (i.e. detrimental action) against a person because they have made, or may make, a public interest disclosure and sets out an ability for a person who suffers a detriment to commence an action in for damages.⁴⁸¹

What happens once a disclosure is received?

All proper authorities must establish reasonable procedures to ensure that:

- persons who make PIDs are given appropriate support;
- disclosures are properly assessed, and where appropriate, investigated and dealt with;
- appropriate action is taken in relation to any wrongdoing; and
- that a management program for PIDs is developed and implemented and that public officers are offered protection from reprisals by the entity the disclosure is about or other personnel of that entity.⁴⁸²

⁴⁷⁴ Ibid., section 14.

⁴⁷⁵ Ibid., section 15.

⁴⁷⁶ Ibid., section 31.

⁴⁷⁷ Ibid., section 34.

⁴⁷⁸ Ibid., section 16.

⁴⁷⁹ Ibid., section 18.

⁴⁸⁰ Ibid., section 36.

⁴⁸¹ Ibid., sections 40 and 41.

⁴⁸² Ibid., section 28.

A proper authority must keep a proper record of the disclosure, including:

- the name of the person making the disclosure (if known);
- the information disclosed;
- any action taken on the disclosure; and
- any other information required under a standard, in force, by the oversight authority.⁴⁸³

Similar requirements apply to a proper authority that has a PID referred to it by another entity in accordance with the terms of the PID Act (as set out below).

When an entity receives a PID, it has a number of options available to it, in dealing with or investigating the matter. The entity may decide not to investigate the matter if, for example, the entity considers the substance of the disclosure has already been, or should be, dealt with by another appropriate process; the entity considers the disclosure is too trivial to warrant investigation; or another entity that has jurisdiction to investigate the matter has notified the entity that the investigation of the disclosure is not warranted. An entity must provide the person who made the disclosure with written reasons as to why the entity decided not to deal with the PID.⁴⁸⁴

The entity who receives a PID may also refer the matter to another public sector entity (the referral entity) if the disclosure is about conduct of the referral entity or an officer of the referral entity; or the referral entity has the power to investigate or remedy the matter. In this instance, a referral must not happen if there is an unacceptable risk that a reprisal may happen and in considering that fact, the entity who received the disclosure must, if practicable, consult with the person who made the disclosure.⁴⁸⁵

New feature in the PID Framework – disclosure to journalists

A new feature of the PID framework is that a public interest disclosure may now also be made to a journalist as a last resort, once certain conditions are met. Those conditions are:

- (1) the person must have made a PID under the PID Act to a proper authority; and
- (2) the entity to whom the PID was made (or referred), either:
 - (a) decided not to investigate or deal with the matter; or
 - (b) investigated the disclosure but did not recommend the taking of any action in relation to the disclosure; or
 - (c) did not notify the person, within 6 months after the date the disclosure was made, whether or not the disclosure was to be investigated or dealt with.

⁴⁸³ Ibid., section 29.

⁴⁸⁴ Ibid., section 30.

⁴⁸⁵ Ibid., section 31.

In this instance, the person who made the disclosure may provide the substantially the same information to a journalist, that is, a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.⁴⁸⁶ A journalist is appropriately, not required to maintain confidentiality of the disclosed material like a public sector authority, but may publicly report the matter at their discretion. The journalist is not a relevant person under the PID Act and therefore does not receive the same protections from liability.

10.3 The CMC's role

The role of the CMC, together with a number of other agencies such as the Ombudsman's office and the Public Service Commission provides advice and assistance to whistleblowers and may receive public interest disclosures directly about official misconduct in certain circumstances.

In May 2011, the CMC in partnership with the Queensland Ombudsman and the Public Service Commission contributed to the following publications in response to the implementation of the new PID framework:

- *Handling a public interest disclosure for public sector managers and supervisors;*
- *Managing a public interest disclosure program: a guide for public sector organisations;*
- *Making a public interest disclosure: a guide to individuals working in the public sector; and*
- *Blowing the whistle in Queensland.*

The CMC's prevention team, in its role of providing verbal and written advice to public sector agency employees in relation to misconduct prevention, continues to provide advice on the application of the PID Act to agencies and employees.

Due to the CMC's primary role under the C&M Act in relation to the investigation of official misconduct, there is some necessary crossover with the disclosure of alleged official misconduct under the PID framework. Under the PID Act, the CMC can receive PIDs directly in the following circumstances:

- a disclosure relating to a judicial officer about official misconduct or a reprisal; or
- a disclosure relating to a specified corporate entity or GOC, or employee of that corporate entity or GOC about official misconduct or a reprisal.⁴⁸⁷

The CMC also retains the ability under the PID Act to apply to the appropriate court or industrial commission, in certain circumstances for an injunction about a reprisal, if the reprisal has caused a detriment to an employee or the employee is suffering or may suffer detriment from the reprisal.⁴⁸⁸ Section 212 of the C&M Act supports the CMC in dealing with employees who make PIDs. That section makes it an offence to victimise a person because they or someone else gave evidence to, or helped, the CMC in the performance of its functions, which includes its functions under the PID Act.

⁴⁸⁶ Ibid., section 20.

⁴⁸⁷ Ibid., sections 16, 18 & 19.

⁴⁸⁸ Ibid., sections 48 & 49.

Numbers of disclosures received

In addition to the receipt of a complaint about misconduct, the following tables provide an example of the numbers of public interest disclosures made to the CMC over the 2009-2010 financial year and the first half of 2010-2011 under the former *Whistleblowers Protection Act 1994*.

Public interest disclosures received by the CMC 1 July 2009 – 20 June 2010⁴⁸⁹

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	0	168	713*	55	252	125	1313
16: Public officer complaining of maladministration	0	14	33*	5	15	0	67
17: Public officer complaining of improper management	0	0	18*	1	5	2	26
18: Public officer complaining re health/environment matter	0	1	5*	0	2	0	8
19: Any person complaining re public health or safety matter	0	0	8*	0	5	3	16
20: Any person complaining re reprisal	0	8	17*	1	11	0	37
TOTALS	0	191	794*	62	290	130	1467

* The outcomes of the allegations in this category may not be known at the time of publication.

Public interest disclosures received by the CMC 1 July – 31 December 2010⁴⁹⁰

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	0	110	385*	4	317	231	1047
16: Public officer complaining of maladministration	0	1	2*	11	0	0	14
17: Public officer complaining of improper management	0	0	0	0	0	0	0
18: Public officer complaining re health/environment matter	0	0	0	0	2	0	2
19: Any person complaining re public health or safety matter	0	6	7	0	1	0	14
20: Any person complaining re reprisal	0	1	25*	0	4	0	30
TOTALS	0	118	419*	15	324	231	1107

* The outcomes of the allegations in this category may not be known at the time of publication.

⁴⁸⁹ CMC Annual Report 2009-10, page 73.

⁴⁹⁰ Ibid., page 77.

With the introduction of the new PID Act, there is no longer a requirement for entities, including the CMC, to report on the number of public interest disclosures received by an agency in its annual report. Reporting of PIDs is now submitted to the Public Service Commission under a new centralised reporting regime. It will therefore take some time to see whether there are any emerging trends under the new regime as to how PIDs are received and dealt as opposed to how they were dealt with under the former Whistleblower Act.

In conclusion, the Committee supports the new public interest disclosure framework, and the role the CMC plays within that framework. Given the limited time since the *Public Interest Disclosure Act 2010* has been in operation, the Committee considers that it is not in a position to make any detailed recommendations in relation to its operation.

Recommendation 32

The Committee recommends that future PCMCs monitor the operation of the *Public Interest Disclosure Act 2010* and the CMC's role within that Act to assess the ongoing adequacy of the Queensland whistleblower protection system.

11. CORPORATE SUPPORT AND GOVERNANCE

11.1 Introduction

The effective functioning of any organisation is dependent on a strong governance framework to monitor the achievement of the organisation's goals and performance and set the path for the organisation into the future.

The CMC has seen some significant changes in the area of corporate governance over the past three years and this chapter reviews those changes and examines the CMC's governance framework which includes the areas of Strategy and Services, the Office of the Commission and the Office of General Counsel.

11.2 Review of the CMC's Corporate Governance Arrangements

In its submission to this review⁴⁹¹, the CMC stated that in June 2010, the [then] Chairperson of the CMC initiated a review of the CMC's internal governance and corporate practices by an external consultant. The aim of the Commission's review was to provide parameters for improving transparency, efficiency and governance processes in order to ensure the CMC remains dynamic and relevant to the needs of Queensland.

The CMC has developed a set of guiding governance principles and has committed to embedding a culture of continuous improvement across all areas of the Commission to build and sustain:

- a robust governance framework;
- a culture of corporate ownership;
- strong strategic and performance management;
- structures that support its strategy; and
- improved communication that is open, regular and effective.

The review has resulted with a reorganisation of the CMC's internal committee structures to ensure there is clearer accountability and transparency in decision making; and achieve a general simplification of the structures within the Commission to better align the functional areas to the Commission's key organisational priorities.

The Hon Martin Moynihan, states in his foreword of the Commission's 2011 annual report:

New management arrangements were introduced in November [2010] after a major review of our governance systems and structures. They were put in place to enhance the CMC's effectiveness, and we are beginning to feel the impact of these changes.

Among the most significant was establishing the role of Executive General Manager (EGM); in April this year the Commission appointed Ms Edith Mendelle to this new position.

⁴⁹¹ Submission No. 14 - CMC, page 80.

Her role will be to define and deliver organisational excellence, review and renegotiate performance indicators and targets, and oversee corporate and performance management.

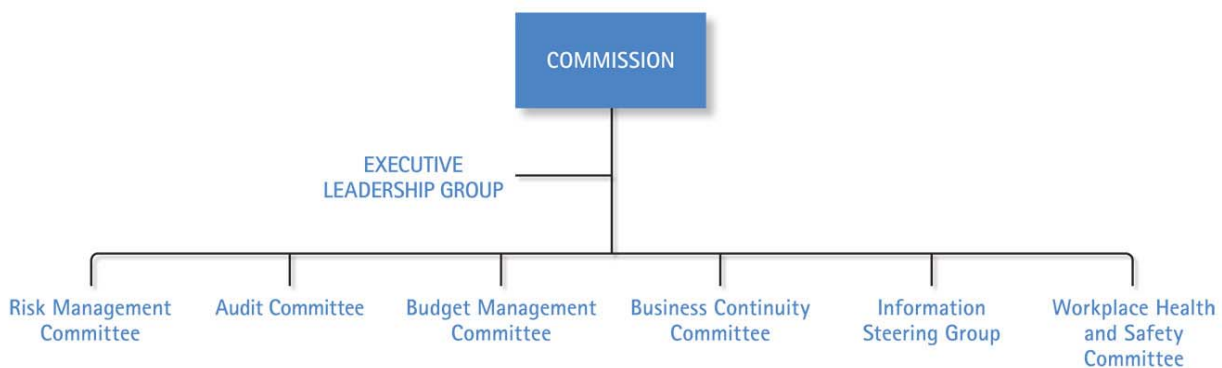
The appointment of the EGM consolidates our new Executive Leadership Group (ELG) which replaces the 13-person Executive Committee detailed in last year’s report. The ELG currently comprises the four most senior officers of the organisation: the Chairperson/CEO, the Assistant Commissioners of Crime and Misconduct (Mr John Callanan and Mr Warren Strange respectively) and the EGM. This group brings together a strategic mix of highly experienced specialist legal and investigative skills and broad management capability.

*This streamlining of our executive management structure is a significant change for the CMC, one I expect to deliver better performance outcomes across the organisation.*⁴⁹²

As stated by the Chairperson, the Executive Leadership Group (ELG) comprises a mix of skills and management capability and has been formed as the primary body to further the achievement of the CMC’s strategies and goals. The ELG does not have delegated authority from the Commission and does not act as a decision-making body on matters that come before it. The ELG is an advisory group that considers and advises on executive matters to allow the relevant officer within the Commission who is responsible and/or accountable for the matter, to remain accountable but have that additional expert in put to assist in decision making matters.⁴⁹³

The review of the governance arrangements has also reduced and therefore simplified the structures within the Commission. The key committees and groups supporting the Commission can be seen in the diagram below and are examined further in this chapter.

Key committees and groups supporting the CMC



Source: CMC Annual Report 2010-11.

⁴⁹² CMC Annual Report 2010-11, pages 4 & 5.

⁴⁹³ Submission No. 14 - CMC, page 81.

11.3 Internal Accountability within the CMC

The Commission

The Commission itself is a statutory body established under the *Crime and Misconduct Act 2001* (C&M Act) and consists of the five commissioners being the Chairperson (and Chief Executive Officer) and the four part-time Commissioners who are community representatives. The Commission is the primary decision making authority within the CMC and with input from the newly established Executive Leadership Group (ELG), it is responsible for the performance of the CMC's functions and achieving the purposes of the CMC under the C&M Act.

The C&M Act provides that the Commission may conduct its business, including its meetings, in the way the Commission considers appropriate.⁴⁹⁴ Accordingly, the Commission has determined that it meets fortnightly to conduct the business of the Commission and consider issues relating primarily to the strategic direction of the CMC⁴⁹⁵.

While the minutes of the Commission meetings are highly confidential and not authorised for release, the matters which the Commission regularly discusses are summarised by the CMC in its submission as being:

- matters affecting all areas of the organisation including strategic, financial and managerial issues;
- specific crime and misconduct operations;
- research and intelligence projects, including capacity development and misconduct prevention activities.⁴⁹⁶

Both the Assistant Commissioner – Crime, and the Assistant Commissioner – Misconduct may attend meetings of the Commission, however they are not entitled to vote at meetings.⁴⁹⁷

The Commission's ability to deal with the matters that come before it, has been strengthened by the establishment of the position of the Executive General Manager (referred to above), who provides expert support to the Chairperson and assists him in driving change and monitoring performance across the CMC, in the execution of his chief executive officer role. The position of Director, Office of the Commission has also been established to provide specialist support to all the Commissioners and assist them in the execution of their duties.

As set out in Chapter 1 of this report, the C&M Act requires the Chairperson to be a qualified legal practitioner who has served as, or is qualified for appointment as, a judge of the Supreme Court of any State, the High Court or the Federal Court.⁴⁹⁸

⁴⁹⁴ C&M Act, section 261.

⁴⁹⁵ Submission No. 14 - CMC, page 79.

⁴⁹⁶ Ibid.

⁴⁹⁷ C&M Act, section 262.

⁴⁹⁸ Ibid., section 224.

In addition one of the Commissioners must be an Australian lawyer with a demonstrated interest in civil liberties, and the remaining part-time Commissioners must have qualifications or expertise in either public sector management and review, criminology, sociology or research related to crime or crime prevention; or community service experience, or experience of community standards and expectations, relating to public sector official and public sector administration.⁴⁹⁹ Nomination for appointment as a Commissioner of the CMC must have the bipartisan support of the PCMC.⁵⁰⁰

The current Commissioners of the CMC are – Mr Ross Martin SC (Chairperson and CEO), Mrs Judith Bell, Mr George Fox (Civil Liberties Commissioner), Professor Marilyn McMeniman AM and Mr Philip Nase.

The Executive Leadership Group

The role of the Executive Leadership Group (ELG) has been touched on above coming out of the review of the CMC's corporate governance arrangements. The ELG considers strategic priorities, resource allocation and operational performance to ensure the efficient, effective and economic management of the CMC. These include considering organisation-wide human resource matters and contributing to high-level policy and strategic issues such as the CMC's strategic plan and submissions to reviews by government and other bodies.

Key Internal Committees

As set out above, the recent internal review by the CMC has reduced the number of internal committees within the CMC. The following four committees comprise the CMC's formal governance committees.

Audit Committee. Provides independent advice to the Commission on determining potential risks to the CMC and where audit focus should be directed.

Budget Management Committee. Provides high-level advice and expertise with budget matters and ensures that appropriate and effective financial management practices are in place.

Risk Management Committee. Ensures that the CMC maintains an appropriate risk management framework to identify and monitor strategic risks in a risk-control environment; and

Workplace Health and Safety Committee. Monitors the CMC's performance in providing a safe and healthy environment for its employees.⁵⁰¹

Audit Committee

The Audit Committee assists the Commission in its governance by ensuring that the Commission exercises due diligence, care and skill in areas such as:

- Financial management and reporting;
- Risk management;

⁴⁹⁹ Ibid., section 225.

⁵⁰⁰ Ibid., section 228.

⁵⁰¹ Submission No. 14 - CMC, page 82.

- External and internal audit functions; and
- Internal controls over the various functions performed by the CMC.⁵⁰²

The membership of the Audit Committee comes from both within the Commission and external to the Commission and monitors both the internal and external audit activities. In February 2011, the Commission appointed a full-time internal auditor, to replace the previous part-time auditor. The role of the internal auditor is to conduct an independent audit function across a range of areas including financial, compliance and assurance audits to ensure that areas with the most risk are addressed in the internal audit plan.⁵⁰³

The Audit Committee regularly liaises with the Queensland Audit Office, representatives of which, along with the Commission Internal Auditor has a standing invitation to attend the meetings of the Audit Committee.

Budget Management Committee

As its name suggests, the Budget Management Committee assists the Commission in its management of its finances and reviews the Commission's ongoing financial and budget processes. The Committee consists of a number of senior officers within the Commission including the Chairperson, Executive General Manager and the Commission's finance manager and provides independent advice to the Commission through its reporting structure, but it does not replace existing lines of the authority or reporting.⁵⁰⁴

Throughout the last financial year, the Budget Management Committee was responsible for matters such as: reviewing the CMC's financial statement and recommending changes where required; making recommendations to the Commission on new budget initiatives; monitoring expenditure against budget throughout the year; reviewing significant financial transactions; and recommending any necessary corrective action.⁵⁰⁵

Risk Management Committee

The CMC's Risk Management Committee has been active for many years, however it has undergone significant change during the period of this review. The newly re-formed Risk Management Committee held its first meeting in January 2011 and met monthly until the start of 2012 to assist the CMC accomplish its organisational objectives under the C&M Act. Meetings have moved to quarterly intervals in accordance with the committee's charter. The Risk Management Committee has seven members including the Chair of the Committee, (currently Ms Marita Corbett) who is external to the Commission and provides expert risk management advice to the CMC.

⁵⁰² CMC Annual Report 2010-11, page 10.

⁵⁰³ Ibid., page 65.

⁵⁰⁴ Ibid., page 64.

⁵⁰⁵ Ibid.

Since its recent re-formation, the Risk Management Committee has redesigned the CMC's strategic risk management framework; developed a computer-based risk incident reporting tool; and increased risk management aware through presentations at internal staff forums.⁵⁰⁶

Workplace Health and Safety Committee

The membership of the Workplace Health and Safety Committee is drawn from employees across the CMC. The Committee has several core representatives who are long standing employees with a wealth of knowledge and experience in the area of WH&S. The Workplace Health and Safety Committee assists the CMC in maintaining a safe and healthy workplace by conducting activities such as : maintaining specialist support services for staff engaged in covert activities that carry significant risk; engaging in rehabilitation and return-to-work programs for staff in need of such services; maintaining the accreditation of the CMC's workplace health and safety officers; and ensuring the CMC maintains compliance with the requirements of the *Workplace Health and Safety Act 1995* and the *Electrical Safety Act 2002*.⁵⁰⁷

Other supporting groups

The CMC is supported by a number of other groups which include the following:

- Business Continuity Committee;
- Managers Communication Forum; and the
- Information Steering Group.

Business Continuity Committee - Due to the nature of the operations of the CMC, it is important to maintain a focus on business continuity to ensure the critical business functions of the CMC are available in the event of a disaster that prevents or disrupts normal operations.

Managers Communication Forum – The forum has been established to provide a better level of communication between managers across all areas of the CMC and the ELG. The forum aims to facilitate discussion and consultation on strategic and management issues.⁵⁰⁸

Information Steering Group – This group assists the Commission with its responsibility to effectively use its information infrastructure and resources. The group does not make decisions in its own right, but provides independent advice to the Commission on matters relating to the use of information and resources.

The Committee considers that the CMC has suitably simplified and streamlined its internal committee structures to enhance its operations. With the additional expert assistance being provided to the Commission as a result of the review of corporate governance arrangements, the Committee considers the CMC is well placed to ensure that the CMC achieves all its strategic targets and is able to perform its functions for the benefit of all Queenslanders. Future Committees should continue to monitor the CMC's corporate governance arrangements as part of carrying out their oversight functions, but the Committee sees no recommendations for change are required at this point in time.

⁵⁰⁶ Ibid., page 62.

⁵⁰⁷ Ibid., page 65.

⁵⁰⁸ Ibid., page 66.

11.4 Legislative Compliance

The Commission continues to receive independent legal advice on matters relating to its functions or operations through the independent Office of General Counsel. General Counsel provides the Chairperson and part-time Commissioners with specialist legal advice and reports directly to the Chairperson to ensure the integrity of advice is maintained and separate from the legal support services provided to the CMC through its legal services area.⁵⁰⁹

The Legal Services Unit is headed up by the Official Solicitor and provides legal support to the operational areas of the CMC, as required with such matters including –

- representing the CMC in litigation matters before a court or tribunal;
- engaging external counsel or solicitors to represent the CMC;
- preparing documentation for use in court, such as obtaining surveillance device warrants; and
- providing timely and accurate miscellaneous legal advice to the CMC and its officers.

The Legal Services Unit also assists the CMC in meeting its obligations to external and Commonwealth agencies overseeing our telecommunications interception function.⁵¹⁰

Right to information and privacy

With the Queensland Government's commitment to give all Queenslanders greater access to information, there were a number of changes, in 2009, to the freedom of information regime that applies throughout Queensland. The CMC as a statutory body must comply with the requirements under the new acts – the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act) and therefore members of the public may apply for access to certain documents in the possession or control of the CMC.

Due to the sensitive nature of many of the operations of the CMC, the RTI Act does not require the CMC to release certain documents such as those relating to the use of surveillance devices, controlled operations, assumed identities, covert search warrants or telephone interception warrants.⁵¹¹ There is also a further limitation that applies to the CMC in that, it is only required to release documents in the Crime and Misconduct areas of the CMC to those persons they concern.⁵¹² Under the RTI Act, there is also a requirement for the CMC to publish on its website, details of certain documents accessed under the Act.

There are similar restrictions in place for the CMC on the operation of the IP Act. The CMC is exempted from complying with the Information Privacy Principles (IPP) if it is satisfied on reasonable grounds that

⁵⁰⁹ Submission No. 14 - CMC, page 83.

⁵¹⁰ *CMC Annual Report 2010-11*, page 66.

⁵¹¹ Submission No. 14 - CMC, page 83.

⁵¹² *Ibid.*

non-compliance with the IPP is necessary for performing its activities relating to the enforcement of laws and intelligence functions.⁵¹³

The CMC has dedicated staff to deal with applications made under both the RTI Act and the IP Act.

Confidentiality of CMC information

The CMC has highlighted in its submission to the Committee, one matter in relation to confidentiality of CMC information which was recently the subject of litigation before the courts. It related to the application of section 213 of the C&M Act which deals with confidentiality of information. The CMC relies upon the secrecy provision in section 213 when it is served with subpoenas, notices of third party discovery and other forms of court process which would otherwise require the disclosure of the CMC's records in matters that do not fall within one of the stated exceptions in the provision.

The CMC summarised the matter as:

In the case heard in the Magistrates Court, it was argued by an applicant seeking to enforce a summons to witness served on the CMC, that the protection given by section 213 should only apply to information related to the CMC's functions of helping to prevent major crime and misconduct. It was argued that the application of this provision must be read with section 62 which appears to grant discretion to the CMC to give written authorisation for information in the CMC's possession to be given or made available to a person for inspection.

The Deputy Chief Magistrate found that 'it was intended that the purpose or policy objective of the legislature was that the CMC be provided statutory protection and it not be required to produce documents as a normal public entity would'. His Honour was satisfied that the literal meaning of the section gave effect to the purpose of the Act and the documents sought in the summons to witness came within the protection of s. 213 and could not be compelled to be produced to the court by the CMC. His Honour declined to give his opinion on whether the CMC had properly exercised its discretion not to grant authorisation to give the information for inspection pursuant to section 62 and instead said this was a matter for the Parliamentary Committee's oversight of the CMC.

The statutory protection of confidentiality is further potentially weakened by the availability of an application to the CMC under the Right to Information Act 2009. The primary objective of this Act is to grant access to information and the present specific exemptions only cover a very limited range of information held by the CMC and the broad 'public interest' exclusion is open to interpretation. In addition section 6 of the Right to Information Act provides that the Act overrides the provisions of other Acts prohibiting disclosure of information.

There have been no cases interpreting whether this provision overrides section 213 of the CM Act. The potential exists for a CMC officer to make a disclosure under the RTI Act which would be in breach of section 213 and thereby expose the CMC to liability for disclosure of a person's confidential information. It is understood that the Commonwealth Attorney-General's Department has requested that ambiguity in the provisions of the Queensland Right to Information Act be resolved. It is noted that integrity agencies in other States appear to have a much wider protection against right to information requests than the exemptions currently available under the Queensland Act.⁵¹⁴

⁵¹³ Ibid., page 84.

⁵¹⁴ Ibid., pages 7 & 8.

The CMC submits that an amendment to the C&M Act could clarify the law related to confidentiality and the level of protection given when there are requests for disclosure of the CMC's records and other information. The CMC considers it is not in the interests of efficiency and best use of the resources of the CMC for it to continue to be drawn into litigation and/or the need to seek rulings from the Information Commissioner to resolve the current uncertainty.

In particular, unambiguous protection from disclosure is required to protect CMC staff confidentiality in areas such as requests for release of staff security vetting information, staff and external participants' research surveys, the records of internal committees such as the Risk Management Committee and the Audit Committee, and internal investigations of complaints against CMC staff. In regard to the latter, where the PCMC has requested completion of a written report and recommendations on a staff investigation for consideration, the C&M Act should make it very clear that such reports are subject to the protection of parliamentary privilege in addition to the protection of section 213.⁵¹⁵

The Committee considers that the CMC raises a valid argument. The Committee is well aware of the matter as it too was drawn into the matter by the eager litigant who was attempting to obtain the information by all means available. The Committee supports the CMC and agrees the Act should be strengthened to ensure the CMC can deal with such matters, efficiently and expeditiously without the requirement of dealing with the matter in the court or other decision making agencies.

Recommendation 33

The Committee recommends that section 213 of the Crime and Misconduct Act 2001 be amended to clarify the protection given extends to a range of information, including but not limited to the following examples: staff security vetting information, staff and external participants' research surveys, the records of internal committees, and internal investigations of CMC Staff. The Act should also clearly state where reports are provided to the PCMC at the Committee's direction, they are subject to parliamentary privilege.

11.5 Human Resource matters

Staffing initiatives and workforce planning

The Committee touched on the CMC's human resource initiatives in Chapter 2 of this report where it considered the limited tenure provisions applying to Senior Officers of the CMC. The Committee noted that in relation to workforce management issues in general, the CMC continues to have issues bearing on:

- attracting, engaging and retaining experienced staff;
- organisational capability and improvement;
- managing a multi-generational workforce;
- strengthening management and supervisory practice at all levels of the organisation.⁵¹⁶

⁵¹⁵ Ibid.

⁵¹⁶ Ibid., page 84.

The most recent figures in the CMC's *Annual Report 2010-11* show that throughout that year, the permanent employee separation rate rose slightly from 12.7% in the prior year to 14.8% in 2010-11. The CMC states in response to that increase:

A number of factors may have contributed to the increase in staff turnover. Our staff often have highly specialised and transferable skills that are valued by other employers offering opportunities and benefits that we cannot always match. To combat this situation we are developing a range of strategies to ensure we have a pool of employees with the appropriate skills and experience required to compete for more senior vacancies as they arise.

*Success in this will see us preserve our corporate knowledge and ensure the professional development and progression of our competent staff.*⁵¹⁷

The Committee notes that the CMC has taken active steps to increase the attractiveness of the CMC as an employer and has simplified its application process and created a pool of administrative officers available for temporary work. The Committee also notes, from the regular briefings it receives from the CMC prior to its bi-monthly meetings, that there has been a steady increase in the number of applicants applying to advertised vacancies. The Committee considers this is a positive sign that the CMC is an employer that people want to work for.

The Committee considers it is also a very positive sign that in the last financial year, the CMC has recognised 47 employees for long and meritorious service including 6 employees serving for over 20 years.⁵¹⁸

The CMC has outlined in its *Annual Report 2010-11*⁵¹⁹, a number of initiatives it is currently implementing in an effort to reinforce its position as a quality employer. These are set out as:

- **Advancing careers through professional development**
 - *Leadership and management development programs;*
 - *Specialised occupational training;*
 - *Staff movements between interstate agencies;*
 - *Building skills in public sector administration;*
 - *Support for professional memberships and ongoing tertiary study;*
 - *Performance Management.*
- **Promoting diversity in the workplace**
 - *Indigenous cadetships;*
- **Improving quality of life for individuals and families**
- **Promoting a fair, ethical and healthy workplace**

⁵¹⁷ CMC Annual Report 2010-11, page 52.

⁵¹⁸ Ibid., page 53.

⁵¹⁹ Ibid., pages 53-55

The Committee considers the CMC is taking sufficient steps to ensure that it is looking after its most valuable resource – its staff. The Committee understands that many of the staff within the CMC have skills and expertise in specific areas, however the Committee is particularly interested in seeing the staff of the CMC expanding their skill bases and being cross-trained or exposed to operations in more than one area. The Committee considers the benefits of building the individual skill base of employees is a positive for the CMC and also benefits the individual members of staff.

The Committee would like to see the CMC continue to promote a system of rotation of staff (as is practicable) between functional work units within the CMC and provide opportunities for secondments and exchanges with other appropriate Queensland Public Sector organisations and interstate agencies.

12. OVERSIGHT OF THE CRIME AND MISCONDUCT COMMISSION

12.1 Parliamentary Crime and Misconduct Committee

The Queensland Parliament has long recognised that given the wide powers vested in the CMC and its predecessor, the CJC, such organisations must be subject to appropriate oversight mechanisms. In his report, Fitzgerald recommended that hand in hand with the establishment of the CJC, the primary oversight body to be established should be a bipartisan Committee of the Parliament.

The *Criminal Justice Act 1989* therefore provided for the creation of the Parliamentary Criminal Justice Committee (PCJC) to oversee the CJC.⁵²⁰ The PCMC is, in effect, a continuation of the PCJC being a stand alone committee of the Legislative Assembly with its membership drawn from across all members of Parliament.

Under section 300 of the C&M Act, the PCMC must consist of seven members, four members being nominated by the Leader of the House and three members being nominated by the Leader of the Opposition. The Act provides that the chairperson of the PCMC must be a member nominated as chairperson by the Leader of the House and therefore, until recently, has always been a government member. Although there is no specific requirement for it to occur, it has been a convention that the deputy-chairperson is appointed from the non-government members of the committee.

Recent changes to the Committee membership

In its report⁵²¹ tabled on 15 December 2010 (the CSRC report), the select Committee System Review Committee (CSRC) set out a number of proposals to reform the Queensland Parliamentary Committee system. Included in its report was a recommendation that the C&M Act be amended to provide that the chair of the PCMC be a Member nominated by the Leader of the Opposition⁵²².

The government supported the proposal of appointing non-government chairs for appropriate committees, but indicated it would seek the views of the CMC in relation to the appointment of a non-government chair for the PCMC.⁵²³ The Government introduced the *Parliament of Queensland (Reform and Modernisation) Amendment Act 2011* on 5 April 2011 to implement a number of reforms arising out of the CSRC Report; however the C&M Act remained unchanged.

In the second reading speech, the Premier, the Hon Anna Bligh MP stated:

With respect to the Parliamentary Crime and Misconduct Committee, this committee is being retained with the current complement of seven members. However, it is the government's intention to appoint a non-government member as chair of this committee.

⁵²⁰ The PCMC is established by section 291 of the C&M Act.

⁵²¹ Committee System Review Committee: Review of the Queensland Parliamentary Committee System, December 2010.

⁵²² Ibid, page 23.

⁵²³ Committee System Review Committee: Review of the Queensland Parliamentary Committee System, December 2010: Interim Government Response, March 2011.

On 16 June 2011, Dr Alex Douglas MP was appointed as the first non-government chair of the PCMC by motion of the House and the current PCMC has been operating effectively over the past 9 months under the stewardship of a non-government chair without issue.

The Committee notes that under the C&M Act, important decisions such as the appointment of CMC Commissioners and the Parliamentary Crime and Misconduct Commissioner; and whether to take action on a complaint received, require the bipartisan support of the Committee to be effective. Current and previous PCMC's have time and again operated in a bipartisan manner and this has not been affected by the appointment of a non-government chair.

The Committee's bipartisan spirit was evidenced most recently by the appointment of the current Chairperson of the CMC, Mr Ross Martin. Although the appointment occurred proximate to the recent election, on receiving the advice from the then Attorney-General of his intended nomination for the appointment, the PCMC met in a timely fashion, put party politics aside and considered the nomination of Mr Martin on his merits as the best person for the job and arrived at a unanimous and therefore bipartisan decision.

The Committee considers Dr Douglas has taken on the role of Committee Chairperson from the opposition benches with exceptional drive and determination and has performed his duties to the highest standard. The Committee supports the ongoing appointment of a non-government chair to the PCMC and considers there is no reason why the C&M Act should not be amended to reflect the recommendation of the Committee System Review Committee in that regard.

Recommendation 34

The Committee recommends that section 300(2) of the *Crime and Misconduct Act 2001* be amended to provide that the chair of the Parliamentary Crime and Misconduct Committee must be a member nominated as chairperson by the Leader of the Opposition.

The role and functions of the Committee

The C&M Act sets out the functions of the PCMC as:

- (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.*⁵²⁴

Monitoring and reviewing the performance of the functions of the CMC

There is no definition of 'monitor and review' in the C&M Act; however, over time, successive PCMC's have developed procedures under which the Committee performs this function. The Committee actively monitors and reviews the performance of the CMC's functions by:

- holding regular Committee meetings;
- carefully examining the confidential reports provided by the CMC every two months which provide detailed information about the activities of the CMC during the relevant period;
- considering the confidential minutes of meetings of the CMC and its executive;
- holding bi-monthly *in camera* meetings with the Chairperson, part-time Commissioners, and Assistant Commissioners of the CMC during which committee members may question Commissioners about the activities of the CMC;
- receiving and considering complaints against the CMC and its officers;
- reviewing CMC reports;
- requesting reports from the CMC on matters which arise via complaints, the media or other means;
- conducting inquiries into specific or general matters relating to the CMC;
- conducting (either itself or through the Parliamentary Crime and Misconduct Commissioner) audits of various registers and files kept by the CMC concerning the use of its powers;
- meeting regularly with the Parliamentary Crime and Misconduct Commissioner to discuss the Commissioner's activities;
- seeking independent legal advice to assist the Committee where a particular skill or expertise is required; and
- examining the appropriateness of the CMC's performance measures.

Reporting to the Parliament

The Committee is also able to report to the Parliament on matters relevant to the CMC or the performance of the CMC's functions. The Committee may determine, at its own discretion, on what

⁵²⁴ C&M Act section 292.

matters it wishes to report; however, any matter relevant to the CMC's functions referred to it by the Legislative Assembly must be reported to the Parliament.⁵²⁵

The 8th PCMC reported to the Parliament on two matters which it had referred to the Parliamentary Crime and Misconduct Commissioner for investigation:

Report 81 – Review by the Parliamentary Crime and Misconduct Commissioner of the actions and holdings of the CMC in relation to the investigation of Senior Sergeant Michael Isles; and

Report 82 – Investigation of the concerns raised by Dr Christine Eastwood regarding the alleged conduct of Mr Robert Needham and Ms Helen Couper.

Whether the Committee reports on a particular matter, will ultimately depend on whether the Committee considers it is in the public interest to disclose the relevant information or whether the matter should remain confidential.

Three yearly review

The Committee also has the specific function to review the activities of the CMC at a time near to the end of three years from the appointment of the committee's members and report to the Parliament about any further action that should be taken in relation to the C&M Act or the functions, powers and operations of the CMC.⁵²⁶

As evidenced by this report, the review is not a clause by clause review of the C&M Act, but a review, by the Committee, of the activities of the CMC in the broader sense and how it is performing its functions.

The QPUE submitted to the Committee that it:

...believes a comprehensive review of the CM Act must be conducted, involving all relevant stakeholders. A process similar to that undertaken by the Queensland Government in the recent review of the Police Powers and Responsibilities Act 2000 ("PPRA") is necessary to ensure the right balance is struck between the need for invasive powers and the protection of civil rights and community freedoms.

At the very least, the QPUE joins with other stakeholders such as the Council for Civil Liberties, in calling for a comprehensive review of any additional powers or legislative amendments sought by the CMC prior to their adoption by the Government. Again, such a review should involve all relevant stakeholders, and be conducted in a similar manner to that of the PPRA.

An appropriate and comprehensive review of the CMC and its governing legislation is an essential ingredient in the preservation of open, transparent and democratic government in

⁵²⁵ See C&M Act, sections 292(b) (c) and (d).

⁵²⁶ C&M Act, section 292(f).

*Queensland. Being the only Australian State without the protection of an Upper House, the robust review and public discussion of Government policy is essential.*⁵²⁷

The matter was canvassed further with the President of the QPUE at the public hearings on 3 November 2011.⁵²⁸ After some robust discussion with Members it was recognised that there are in effect two types of processes – a specific legislative review by the Government on a particular piece of legislation and a broader review of how a body is operating, not limited to just the provisions in its governing legislation.

The Acting Chairperson of the CMC, Mr Warren Strange, commented on the process at the public hearing of this review as follows:

I think the other issue that perhaps created some confusion was around the call for a review process that mirrored the police powers and responsibilities review. That was a specific legislative review. Every five years that Act is reviewed in a way that a committee or a working group is formed that has representatives from key agencies, including the QPS. When I was at Legal Aid we provided a representative. One of the CMC lawyers was a representative. The idea of that forum is for those stakeholders to come together and say, 'We have this problem with the legislation on a police matter and this power does not quite go far enough because I cannot exercise it in these circumstances or Legal Aid says, 'We have a problem with this one, because it is exercised in this way and that is contrary to the intention of parliament when it was enacted.' Everyone comes together with their wish list of issues and problems and that gets fed up through the legislative drafting process, ultimately to a consultation bill. So I think that is a very different sort of review process from what this committee engages in under the section that requires the three-yearly review.

*Certainly, when we are advocating for legislative change and whatever we have sought that this committee supports that with recommendations and takes that forward. There will now, of course, be a consultative process for other agencies to make submissions and address any issues about draft legislation or proposals. So I think that is covered through those existing processes.*⁵²⁹

The CMC Assistant Commissioner, Crime, Mr John Callanan stated:

When you look at the legislative provision, it is about a review of the activities of the CMC. It goes on to require the tabling of a report about any further action that should be taken in relation to the Crime and Misconduct Act or the functions, powers and operations of the CMC. To me, that has always provided adequate parameters for an open discussion around all kinds of issues. The first one I was involved in was not all that long after the merger had occurred, and the QCC and the CJC had morphed into the CMC.

My own experience is that, given that it looks at activities as well—and this seemed to be a bit of a misconception with the references to the PPRA. That is kind of about the Act and how

⁵²⁷ Submission No 12 – QPUE, page 1.

⁵²⁸ Transcript – 3 November 2011, pages 39 and 40.

⁵²⁹ Transcript – 4 November 2011, pages 26 & 27.

*the Act is working. This is a much broader review. The recommendations have always, in my view, been pretty well focused. Not all of them of course have been acted on by government and that is not surprising.*⁵³⁰

The Committee considers that this review process as it stands, is an appropriate mechanism for reviewing the activities of the CMC. All relevant stakeholders were alerted that the review was taking place and were invited to make submissions, which of course could include suggested amendments to the specific legislation.

The Committee notes that any recommendations for legislative amendment that it makes, will be considered by the Government of the day and a response to the recommendations will be prepared and tabled in Parliament. Further, under the recent reforms to the Parliamentary Committee System and the establishment of specific portfolio committees, when a Bill (including an amendment Bill) is now introduced into Parliament, the specific amendments proposed by the Government in the Bill will be referred to the relevant portfolio committee for consideration as well as the rationale for the policy behind the amendments. The Committee considers that relevant stakeholders have sufficient opportunity to be involved in the review process at multiple stages prior to any legislative amendments taking effect.

One issue the Committee does have with this process, is the timing over which the review occurs. The intent as it is stated in the C&M Act is for the timing of the review to align with each Parliamentary term and allow each set of members of the PCMC to provide input into the Committee's report to Parliament.

The 7th PCMC noted in its report after the last three yearly review:

*The timing of the two most recent general elections has resulted in three reviews of the CMC being undertaken within five years. 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 puts considerable strain on the resources of both the CMC and the Parliamentary Commissioner. The Committee considers it appropriate that reviews be undertaken at five yearly intervals.*⁵³¹

In response to the 7th PCMC's recommendation, the Government supported the Committee's recommendation in part. The Government noted that the planning for the review needs to take into account the possibility of an early general election and this may result in insufficient time between reviews to properly evaluate developments or improvements arising out of the implementation of the recommendations from the previous review.⁵³²

The Government agreed that the planning and conduct of the review by the Committee would be more effective if the C&M Act fixed a date for the review; however, it considered that given the pace of social, technological, legal and demographic change and the length of time that has elapsed since the

⁵³⁰ Transcript – 4 November 2011, page 27.

⁵³¹ PCMC, Report No. 79 – Three Yearly Review of the Crime and Misconduct Commission, page 112.

⁵³² Government response to the 7th Parliamentary Crime and Misconduct Committee Report No. 79 – Three Yearly Review of the Crime and Misconduct Commission, page 14.

Fitzgerald Inquiry, a five year review period would not be sufficient to keep pace with developments or monitor any slippage of standards. The Government determined that the C&M Act should be amended to fix the time for a review to three years.⁵³³

The Committee considers that a fixed date for the review of the CMC will add certainty to the operations of the PCMC and the CMC and will avoid reviews occurring too closely together. The Committee notes that although the term of the 53rd Parliament has been closer to three years than the previous two Parliaments, this review will be the fourth report tabled on the activities of the CMC within just over 8 years.⁵³⁴

The Committee echoes the recommendation by the 7th PCMC that it would be more appropriate for the reviews to be undertaken at five yearly intervals. As set out above, the PCMC actively monitors and reviews the CMC at all times and meets regularly with the CMC throughout the year to discuss and examine developments as they occur. Amendments to the C&M Act may be advanced at any time, should they be required due to technological advances. Amendments to the C&M Act are not dependent on the conduct of the three yearly reviews.

The timeframe of three years between reviews is highlighted as being insufficient in the Premier's own submission to this review where it was detailed that the review of Chapters 3 & 4 of the C&M Act arising from the Government's response to the 7th PCMC's 2009 Report is still underway.⁵³⁵ Further, the Committee notes the CMC has again sought the Committee's support for a number of amendments to the C&M Act in its submission to this review - which were supported by the former Government in its response to the previous PCMC review, but are yet to be implemented.⁵³⁶

It has been difficult to conduct parts of this review when the previous review cycle has not been fully completed i.e. the implementation and subsequent monitoring of the previously accepted recommendations. Of particular note, the former Government's acceptance of fixing the time for the three year review was not even implemented prior to this review. The Committee considers that as evidenced by this report on the activities of the CMC, it has matured as an organisation and does not require a review by the Committee to occur every three years. If the review cycle is not able to take its full course, it does not allow the CMC to properly plan for and respond to recommendations when there is the anticipation of change, but it does not occur. The Committee considers that conducting its review every five years will assist the CMC in its operations and also the PCMC in conducting the full cycle of review, implementation and monitoring.

Recommendation 35

The Committee recommends that section 292(f) of the *Crime and Misconduct Act 2001* be amended to fix the timeframe for the review of activities of the Crime and Misconduct Commission to every five years.

⁵³³ Ibid.

⁵³⁴ 5th PCMC review tabled 15 March 2004; 6th PCMC Review tabled 9 October 2006; 7th PCMC Review tabled 20 April 2009.

⁵³⁵ Submission No. 19 – Premier of Queensland, page 2.

⁵³⁶ Submission No. 14 – CMC, page 5

Participating in the appointment of the Chairperson and part-time Commissioners of the Crime and Misconduct Commission

As set out in *Chapter 2 – Structure and Responsibilities*, the Commission itself is constituted by a full-time Commissioner (the CEO and Chairperson) and four part-time Commissioners. The four part-time Commissioners are representatives of the community who between them have a variety of skills and or experience as required by the C&M Act.⁵³⁷

While the appointment of the Commissioners is by the Governor in Council, before nominating any person for appointment as the Chairperson or as a part-time Commissioner of the CMC, the responsible Minister (currently the Attorney-General) must first consult with the Committee. The Minister's nomination cannot proceed unless it has the bipartisan support of the Committee.⁵³⁸

Bipartisan support is defined in the C&M Act as either the Committee's 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.⁵³⁹

The current PCMC and former committees have usually conducted an interview with the Attorney-General's nominated candidate to inform their decision on whether to provide bipartisan support to the proposed appointment. Previous committees have expressed concern about the time taken to appoint commissioners to replace outgoing commissioners. While the quorum required for the Commission to conduct a general meeting and advance CMC business is any three commissioners, the quorum required for the adoption of a Commission report is four commissioners.⁵⁴⁰ Therefore delays in the appointment process have can seriously hamper the effective functioning of the CMC.

In the last three years there have been three reappointments of part-time commissioners and four fresh appointments. While the reappointments have been relatively seamless, it is still clear that there are delays in the process where a new commissioner is appointed. Setting aside the early departure of the Hon Martin Moynihan due to ill health, the expiry of outgoing Commissioners' terms of appointment can be forecast quite readily. Despite this, in two instances there was a vacancy at the Commission of just over one month and another vacancy for over 6 months.

At the public hearings for this review, Part-time Commissioner Judith Bell provided the Committee with her view on the appointment process of Commissioners:⁵⁴¹

The only other thing that I think I would say as a part-time commissioner and a non-lawyer and a non-police person, which makes me fairly unique, is that the timeliness of appointments to the commission matter enormously. I do not know whether that is of interest to you or that goes through departments. It certainly is a thing that impacts a great deal on us as an organisation, and I would just draw your attention to that. We have been

⁵³⁷ C&M Act, section 225.

⁵³⁸ *Ibid.*, section 228.

⁵³⁹ See the definition in the dictionary in schedule 2 to the C&M Act.

⁵⁴⁰ C&M Act, section 264.

⁵⁴¹ Transcript – Public Hearing, 3 November 2011, page 24.

really remarkably lucky in the people who have been appointed—and I have spoken about this before—and the quality of the contributions is extraordinary. I was reminded of that when we were talking about John’s departure, because there are very few people standing around waiting to put their hands up to come and work at the commission and do the sort of work that he has done in such an exemplary fashion for so long.

In response to the specific question of whether she considered the process had been too slow, Mrs Bell replied:

Yes. In the past we have been waiting a great deal of time for a replacement for various part-time commissioners.

In response to whether a time limit should be imposed, Mrs Bell replied:

It is a difficult thing because finding the right people is difficult. But it seems to me that these sorts of appointments should be taken more seriously because the commission is at a disadvantage without its staff. Particularly, for example, as Martin has had very serious health issues, we really have needed all of our part-time commissioners to be in place.

The Committee has taken all efforts to ensure that its role in the appointment process is conducted in an expeditious manner once it receives notice of a proposed nomination from the Attorney-General’s office. The 8th PCMC has averaged less than 2 weeks in providing its recommendation to the Attorney-General, from the date it has received notice of the proposed nomination. This process includes the Committee conducting an interview with the proposed nominee to ensure that the Committee is satisfied that the nominee is suitable for the appointment.

The Committee echoes the sentiments of Commissioner Bell in relation to the quality of recent Commissioners and considers that they have all been of the highest standard and have made valuable contributions to the operations of the CMC throughout their respective terms. Indeed, the same must be said of the performance of all previous commissioners with whom this Committee has had dealings. While the Committee accepts that there are sometimes difficulties in finding willing applicants to fill positions such as the part-time commissioners of the CMC, the Committee does not consider that a delay of over six months to fill such an important position is acceptable.

As the C&M Act provides, the part-time Commissioners are community representatives and provide the Commission with expertise or experience⁵⁴² in the commissioner’s relevant area to provide balance to the Commission in its decision making abilities. The Committee considers that the Attorney-General must take a more active role in identifying and encouraging potential future commissioners to fill these positions as they become vacant. In this regard, the Committee echoes the words on the selection of Part-time Commissioners from the Fitzgerald Report itself. Fitzgerald QC stated:-

Membership of the CJC should not be seen as an occasional pastime, and appointments to it should not be given as honorifics. Service as a member of the Commission should be seen to be an highly responsible public office, demanding and challenging, and constituting a valuable public service.

⁵⁴² C&M Act, section 225 – civil liberties, public sector management and review, criminology, sociology, research related to crime or crime prevention.

Alert energetic people will be needed to perform the demanding tasks which membership of the CJC will involve. The members of the CJC will not merely be “watchdogs” or overseers of performance. That will be but one of their responsibilities. Each member of the Board should be encouraged to lend professional and practical expertise and experience and to take active part in the functions of the CJC as an [sic] whole.”⁵⁴³

The timeframe for the recruitment and selection processes should also be reviewed to ensure there are no unacceptable delays in filling a vacancy.

Recommendation 36

The Committee recommends that the Attorney-General and Minister for Justice review the recruitment and selection processes for Commissioners to ensure that sufficient time is allocated to allow a process to run in its course, including factoring in an appropriate timeframe for seeking the bipartisan support of the Committee.

Recommendation 37

The Committee recommends the Government take a more active role in promoting the importance of CMC Commissioners to ensure that the highest quality candidates are attracted to applying for the positions without the need for the Government to seek out or head-hunt applicants to apply.

In relation to the appointment process itself as set out in the C&M Act, the Committee considers that, subject to the commentary above, the current process whereby the recruitment and selection process is conducted by the relevant Minister and the bipartisan support of the Committee is sought prior to nomination to the Governor, requires no amendment.

Complaints against the Crime and Misconduct Commission and its officers

As a dedicated oversight body of the CMC and as part of its monitor and review function under section 295 of the C&M Act, the Committee is able to receive and consider complaints about the conduct or activities of the CMC or its officers. In addition to providing a process for unsatisfied members of the public to submit a complaint about the CMC to an independent body, the complaints process often provides valuable assistance to the Committee in understanding how the CMC goes about its day to day operations.

Section 329 of the C&M Act also provides a process under which the Chairperson of the CMC is required to notify the Committee of conduct on the part of a ‘Commission officer’ in certain circumstances. In essence, if the Chairperson of the CMC suspects that an officer of the CMC (including a former officer of the CMC) has engaged in improper or disgraceful conduct in either an official capacity or in a private capacity that reflects seriously and adversely on the CMC, the Chairperson has a statutory obligation to notify the PCMC of the conduct.

⁵⁴³ Fitzgerald Inquiry, page 310.

The Committee may take action on the notification under section 329 or a complaint received under section 295 in a number of ways. The options set out in the C&M Act are as follows, 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; or*
- (f) *take other action the committee considers appropriate.*

A decision to take action under section 295(2) of the C&M Act is only effective if it is made with the bipartisan support of the Committee.⁵⁴⁴

The Committee considers that these options provide the Committee with appropriate means to address complaints and notices it receives, or concerns it has, about the activities of the CMC. The Committee is satisfied that it is able to exercise its discretion appropriately in addressing complaints it receives under section 295, to satisfactorily perform its oversight functions.

Are the powers of the Committee sufficient?

It was submitted to the Committee in a confidential submission that:

*The PCMC only has the powers to assess a complaint of inappropriate conduct by the CMC and its officers. This responsibility is too narrow and does not provide the necessary parliamentary scrutiny of an independent body. The PCMC can not assess the findings of a CMC report and its finding can not be altered, unless upon appeal to the Court.*⁵⁴⁵

It was suggested that the Parliament, through the PCMC, should be provided with the power to assess the findings of a CMC investigation and recommend changes to findings if it considers errors have occurred through poor procedure or investigatory practice.⁵⁴⁶

Under the C&M Act, the PCMC currently has the ability to report to the Legislative Assembly:

- on any matter appearing in or arising out of a CMC report; and to
- comment, as it considers appropriate, on matters (relevant to the performance of the CMC's functions or exercise of the CMC's powers) the Committee considers should be brought to the Assembly's attention.⁵⁴⁷

⁵⁴⁴ C&M Act, section 295(3).

⁵⁴⁵ Submission No. 15.

⁵⁴⁶ Ibid.

⁵⁴⁷ C&M Act, section 292.

Further, the Parliamentary Commissioner (examined in further detail below) has the ability to audit documents and material held by the CMC for the purpose of deciding whether the CMC has exercised power in an appropriate way or whether any policy or procedural guidelines set by the CMC have been strictly complied with; and review reports given by the CMC to the PCMC to verify their accuracy and completeness.

The Committee considers that in order for the CMC to maintain its independence, it would be inappropriate for the Committee or the Parliamentary Commissioner, through the Committee, to be able to reconsider the findings or determinations of the CMC in relation to any particular matter. Any conclusions reached by the PCMC or the Parliamentary Commissioner are currently able to be referred to the CMC for consideration, but would not be binding on the CMC. The Committee considers that the appropriate mechanism for any appeal of a CMC decision or finding is through the Queensland judicial system.

The Committee notes its role is that of an oversight committee with the primary function of monitoring and reviewing the activities of the CMC; the Committee should not be considered as an alternative avenue to the courts for disaffected complainants to seek relief. Taking this into account, the Committee considers that it currently has adequate powers to review CMC reports.

Other functions of the Committee

Under the recent reforms to the parliamentary committee system, the PCMC, as a parliamentary committee of the Legislative Assembly, may also be required to perform the functions and duties of a portfolio committee.⁵⁴⁸ To date, the 8th PCMC has had one Bill referred to it, namely, the Criminal Organisation Amendment Bill 2011. The Committee provided its report on the Criminal Organisation Amendment Bill 2011 to the Legislative Assembly on 22 November 2011.⁵⁴⁹

With the establishment of the Queensland Civil and Administrative Tribunal on 1 December 2009, the former Misconduct Tribunals ceased to operate along with the PCMC's role in the appointment of members to that tribunal.

12.2 Office of the Parliamentary Crime and Misconduct Commissioner

Introduction

The Office of the Parliamentary Crime and Misconduct Commissioner (Parliamentary Commissioner) was established in 1997 after the PCJC at the time, raised concerns about the powers and resources available to the Committee to perform its functions.⁵⁵⁰ Parliament recognised that while the PCMC is made up of parliamentary members who may have a variety of skills and experience (including legal experience), some of the matters which the Committee is required to attend to require detailed legal examination.

⁵⁴⁸ SO 131 - Standing Rules and Orders of the Legislative Assembly.

⁵⁴⁹ PCMC report no. 85 – Criminal Organisation Amendment Bill 2011.

⁵⁵⁰ PCJC report number 38 *A report on the accountability of the CJC to the PCJC*, page 119.

The C&M Act now provides that there must be a Parliamentary Commissioner appointed by the Committee, who holds the requisite qualifications to serve as judge of the Supreme Court of Queensland or the Supreme Court of another State, the High Court of Australia or the Federal Court of Australia.⁵⁵¹ The Parliamentary Commissioner has a number of statutory functions which are set out in the C&M Act, the *Police, Powers and Responsibilities Act 2000* and the *Telecommunications Interception Act 2009*. In addition to performing these statutory functions, the Parliamentary Commissioner may undertake other functions as required by a bipartisan direction from the PCMC.

The Parliamentary Commissioner is currently appointed on a part-time basis for a period of between two and five years. A person cannot hold office as the Parliamentary Commissioner for a period, or periods, that exceed five years in total.⁵⁵² The C&M Act provides that by arrangement of the Speaker of the Legislative Assembly, officers or employees of the Parliamentary Service may be assigned to the Parliamentary Commissioner to assist in the performance of the Commissioner's functions.

Functions and powers of the Parliamentary Crime and Misconduct Commissioner

The functions of the Parliamentary Commissioner, as required by the PCMC, include:

- conducting audits of the records, operational files and other material held by the CMC;
- investigating complaints made against the CMC (including allegations of possible unauthorised disclosure of confidential information);
- inspecting the register of confidential information kept by the CMC; and
- reviewing reports given to the PCMC by the CMC to verify their accuracy and completeness.⁵⁵³

The Parliamentary Commissioner may only commence the above audits or investigations with a bipartisan direction from the PCMC. There are however, other statutory audits and inspections which do not require a direction from the PCMC such as the conduct an annual review of intelligence data in the possession of the CMC and the QPS; 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; regular audits of the CMC's records relating to assumed identities and telecommunications interception.

To enable the Parliamentary Commissioner to carry out his functions, the C&M Act accordingly provides the office with extensive powers. Such powers include the ability to conduct hearings in limited circumstances.⁵⁵⁴ The Parliamentary Commissioner cannot conduct a hearing unless:

- (1) the Parliamentary Commissioner has used all reasonable means to obtain information about the matter, without success; and

⁵⁵¹ C&M Act, sections 303 and 304.

⁵⁵² C&M Act, section 309.

⁵⁵³ C&M Act, section 314(2).

⁵⁵⁴ C&M Act, section 320.

- (2) the Committee authorises the hearing by providing a bipartisan direction to the Parliamentary Commissioner to conduct the hearing.

While the Parliamentary Commissioner has not been required to conduct any hearings over the past three years, this matter was considered by the 8th PCMC in the course of dealing with a complaint about the conduct of a Commission officer where a complainant sought for the Parliamentary Commissioner to conduct a hearing.

In this particular instance, it was determined that at the time, the Parliamentary Commissioner had not used all reasonable means to obtain information about the matter and therefore, he was not in a position to exercise his powers and conduct a hearing. The Committee considered that as further avenues to obtain the information were available the Parliamentary Commissioner could not exercise his powers.

The need for the office of Parliamentary Crime and Misconduct Commissioner

Apart from the statutory functions which the Parliamentary Commissioner is required to undertake as required by the C&M Act and other legislation, the current Committee has welcomed the ability to refer some of the more complex matters that come before it to the Parliamentary Commissioner for consideration and advice.

The matter of resourcing of the office of the Parliamentary Commissioner was raised in submissions by the Queensland Police Union of Employees. The QPUE submitted as follows:⁵⁵⁵

The QPUE has concerns about the resourcing of the Parliamentary Commissioner. To the best of the best of the QPUE's knowledge the Parliamentary Commissioner is yet to take any disciplinary action against a member of the CMC for the inadequate or poor performance of their functions...

...A major criticism of the Parliamentary Commissioner is the restriction of the Commissioner's jurisdiction. The Parliamentary Commissioner can only act in relation to matters referred by the PCMC and then only where there is bipartisan support for such referral.

The QPUE believes the Parliamentary Commissioner should have an unfettered jurisdiction to investigate and audit the CMC in the performance of its functions.

As mentioned above, the role of the Parliamentary Commissioner is not to take disciplinary action against officers of the CMC, but to investigate complaints that are referred for investigation by the Committee. It is neither the Committee nor Parliamentary Commissioner's role to take disciplinary action against a CMC employee. Any disciplinary action against a CMC employee is a matter for the Chairperson of the CMC.

In relation to the jurisdiction of the Parliamentary Commissioner, previous Committees have considered whether the Parliamentary Commissioner ought to have an own motion power and investigate matters independent of the Committee's consideration of the matter.

⁵⁵⁵ Submission No. 12 – QPUE, page 7.

The 6th PCMC noted in its report that based on practical experience, that Committee saw no need for change to the Parliamentary Commissioner's powers. The 6th PCMC stated:⁵⁵⁶

In practice, where the Parliamentary Commissioner has received a complaint direct from the public, it has been passed on to the Committee for initial attention. The Committee can, if appropriate, resolve to refer the matter to the Parliamentary Commissioner for investigation or review. If the Parliamentary Commissioner had any concerns regarding any specific issue, the Parliamentary Commissioner could advise the Committee with a recommendation that the matter be formally referred back to the Parliamentary Commissioner to deal with.

The current approach sits well with the policy of the accountability scheme under the CMA, which is that the Parliamentary Commissioner is the agent of the Parliamentary Committee. The Parliamentary Commissioner reports to the Parliamentary Committee which can, where appropriate, report to the Parliament.

An own motion power might increase 'forum-shopping' by complainants and possible duplication of oversight effort. The Parliamentary Committee is the primary accountability mechanism, and can call for assistance from the Parliamentary Commissioner. This reflects the intent that the CMC be accountable to the Parliament through a Parliamentary Committee.

At the public hearing on 3 November 2011, the Committee sought the views of the QPS on how it perceived the role of the Parliamentary Commissioner. Deputy Commissioner Stewart took the question on notice and Commissioner Atkinson provided a written reply dated 31 January 2012. Of note, Commissioner Atkinson stated to the Committee:

In the estimation of the Service, taking into account the purpose of the Act generally and Part 4 of the Act specifically, the role of the office of the Parliamentary Crime and Misconduct Commissioner is appropriate; and there exists fitting legislative functions and powers within the [C&M] Act to allow the Parliamentary Commissioner to assist the PCMC in the performance of its role.

While the QPUE states the Parliamentary Commissioner's jurisdiction is a major criticism, there have been no persuasive arguments put to this Committee that would cause this Committee to alter the view of previous committees. It is a common occurrence for complainants to request the urgent involvement by the Parliamentary Commissioner due to their belief that their matter is of grave importance. However in reality, the 8th PCMC has been able to discern which matters require the attention of the Parliamentary Commissioner and which matters ordinarily do not. The Committee considers it should retain the flexibility of managing what matters ought to be investigated by the Parliamentary Commissioner and seek the advice of the Parliamentary Commissioner at appropriate times.

The Committee notes that the CMC has also consistently supported the role of Parliamentary Commissioner and continues to provide the Parliamentary Commissioner with its full assistance when

⁵⁵⁶ PCMC report No.71, Three Year Review of the Crime and Misconduct Commission, pages 114, 115.

conducting audits or when investigating complaints without the need for the Parliamentary Commissioner to exercise its extensive powers.

In relation to allocation of resources, the Committee notes the office of the Parliamentary Commissioner is managed effectively by a small staff and the C&M Act provides that other officers of the Parliamentary Service may be assigned to provide additional administrative or support services to the office. Further, the C&M Act also provides that additional professional staff, such as legal practitioners or other suitably qualified persons may similarly be engaged to assist the Parliamentary Commissioner⁵⁵⁷. The Committee does not consider any changes are required in this regard.

Audits and inspections by the Parliamentary Commissioner

The Parliamentary Commissioner regularly reports to the Committee and to Parliament on his inspections of the CMC as outlined in Chapter 6 of this report.

One matter raised with the Committee by the office of the Parliamentary Commissioner relates to the inconsistency in the relevant legislation as to when the Parliamentary Commissioner may delegate his inspection powers to his staff.

The Acting Parliamentary Commissioner submitted to the Committee:

The Parliamentary Commissioner's powers under chapters 11 and 13 of the PPRA relate to regular inspections of the CMC's controlled operations records and surveillance device warrants records, respectively.

My concern is that whilst the Parliamentary Commissioner may delegate those inspection powers to the office's Principal Legal Officer pursuant to section 317(7) of the Crime and Misconduct Act, there is no provision for the delegation of the Parliamentary Commissioner's similar audit powers under chapter 12 of the PPRA which relates to the CMC's use of assumed identities. On occasions in the past, when the Parliamentary Commissioner has been involved in lengthy trials in the course of the Parliamentary Commissioner's private practice, it has proved difficult to arrange the attendance of the Parliamentary Commissioner to conduct the audit of assumed identities strictly in accordance with the required time frames.

It should be noted that under section 316(4) of the PPRA the audit of the Queensland Police Service's use of assumed identities may be conducted by a police officer. The equivalent provisions of the Victorian legislation (section 33 of the Crimes (Assumed Identities) Act 2004), the South Australia legislation (section 28 of the Criminal Investigation (Covert Operations) Act 2009) and the New South Wales legislation (section 37 of the Law Enforcement and National Security (Assumed Identities) Act 2010) all similarly permit the audit of the use of assumed identities to be conducted by an officer of the law enforcement agency.

⁵⁵⁷ C&M Act, section 315.

Moreover, section 32(1) of the Telecommunications Interception Act 2009 provides that the Parliamentary Commissioner may delegate any of the Parliamentary Commissioner's powers under that Act to a legal practitioner engaged by the Speaker under section 315(2) of the Crime and Misconduct Act 2001. I can discern no reason why the Parliamentary Commissioner's audit powers under chapter 12 of the PPRA (section 316) should not also be able to be delegated to the Principal Legal Officer.⁵⁵⁸

The Committee considers that given the Parliamentary Commissioner's ability to delegate his powers of inspection in similar circumstances, for operational convenience, there appears to be no substantive reason why this anomaly should not be rectified. The Committee notes however, that the Parliamentary Commissioner remains ultimately responsible for the inspection and ought to exercise any delegation of powers on a case by case basis, as required.

Recommendation 38

The Committee recommends that section 317(7) of the *Crime and Misconduct Act 2001 (the Act)* be amended to allow the Parliamentary Commissioner to delegate his powers under chapter 12 of the PPRA to a legal practitioner engaged by the Speaker under section 315(2) of the Act.

12.3 Oversight by the Public Interest Monitor

The Public Interest Monitor (PIM) also has a role in the oversight of the CMC, particularly in relation to the CMC's applications for surveillance device warrants, covert search warrants and telecommunication interception warrants.

The PIM is required to:

- monitor compliance by the CMC in relation to matters concerning applications for surveillance device warrants and covert search warrants;
- monitor compliance by the CMC in relation to CMC telephone interception requirements;
- appear at any hearing of an application to a Supreme Court judge or magistrate for a surveillance device warrant or covert search warrant, and to test the validity of the application;
- gather statistical information about the use and effectiveness of surveillance device warrants and covert search warrants; and
- whenever it is considered appropriate, provide the CMC with a report on its non-compliance.

The Committee considers the existing functions of the PIM are satisfactory and provide a very important feature in the oversight of the CMC. The PIM is a vital component of the scheme to ensure that all the 'checks and balances' are met by the CMC in exercising its extensive powers.

⁵⁵⁸ Submission No. 10 – Parliamentary Crime and Misconduct Commissioner, page 2.

12.4 Performance Accountability to the Minister

As briefly referred to in Chapter 5 of the is report, the C&M Act provides that each year the CMC must develop, adopt and submit to the Minister, a budget at a time directed by the Minister⁵⁵⁹ (currently, the Attorney-General and Minister for Justice). The Minister has a responsibility to ensure that the CMC operates to best practice standards.⁵⁶⁰

The CMC must report to the Minister on the efficiency, effectiveness, economy and timeliness of the commission and its systems and processes, including operational processes to enable the Minister to assess the CMC performance including the timeliness with which the CMC deals with complaints.⁵⁶¹ The Minister has directed the CMC provide its reports at six monthly intervals.

12.5 Scrutiny by relevant Portfolio Committee

Under the recent reforms to the Queensland parliamentary committee system, several portfolio committees were established under the *Parliament of Queensland Act 2001* (POQ Act) to, in relation to their relevant portfolio areas –

- consider Appropriation Bills;
- consider other legislation and proposed legislation introduced into Parliament; and
- perform a role in relation to public accounts and public works as provided by the PoQ Act.⁵⁶²

In the 53rd Parliament, the CMC fell under the portfolio area of the Legal Affairs, Police, Corrective Services and Emergency Services Committee. Under the standing orders, that committee in considering the Appropriation Bills and estimates for its area of responsibility was able to directly question the Chairperson of the CMC (as chief executive) on matters relevant to the examination of the Appropriation being considered and the CMC Chairperson was required to be present at all times while the CMC was under consideration.⁵⁶³

While the Legal Affairs, Police, Corrective Services and Emergency Services Committee may change at the commencement of the next Parliament, the Committee considers the Chairperson of the CMC is an appropriate Chief Executive to whom direct questioning at estimates ought to continue to apply.

The relevant portfolio committee under whose area of responsibility the CMC falls, also has discretion to exercise its role in relation to public accounts in relation to the CMC. This would allow the portfolio committee to assess the integrity, economy, efficiency and effectiveness of government financial management by examining government financial documents.

⁵⁵⁹ C&M Act, section 259.

⁵⁶⁰ Ibid., section 260.

⁵⁶¹ Ibid.

⁵⁶² *Parliament of Queensland Act 2001*, section 92

⁵⁶³ Standing Order 181 – (c) and (d); Schedule 7 of the Standing Rules and Orders of the Legislative Assembly.

It is through this “public accounts” process that the relevant portfolio committee would be able to examine the CMC’s Annual Report as one of the various reports which fall within its portfolio area of responsibility.⁵⁶⁴

The Committee notes that any portfolio committee’s jurisdiction in relation to the CMC’s Annual Report would be limited to matters relating to financial management by the CMC and would not include an ability to delve into operational matters.

The Committee considers that while there may be some overlap between its role, the role of the Minister and the role of the relevant portfolio committee in the oversight of the CMC, there is no conflict between the jurisdiction of the three entities. With appropriate communication between committees and the responsible Minister, the Committee is confident that the opportunity for duplication of efforts is minimal.

⁵⁶⁴ *Parliament of Queensland Act 2001*, section 94(1)(a)(i).

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(l)(f) of the Criminal Justice Act 1989-1992

The second PCJC of the 47th Parliament

- Report No. 26, tabled in February 1995, titled A report of a review on the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989,

The third PCJC of the 48th Parliament

- Report No. 38, tabled in May 1997, titled Report on the accountability of the CJC to the PCJC; and
- Report No. 45, tabled in June 1998, titled A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989.

The fourth PCJC of the 49th Parliament

- Report No. 55, tabled in March 2001, titled A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989.

The 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.

The seventh PCMC of the 52nd Parliament

- Report No. 79, tabled on 20 April 2009, titled Three Year Review of the Crime and Misconduct Commission.

APPENDIX TWO**LIST OF SUBMISSIONS TO THE THREE YEARLY REVIEW**

No.	Submitter
1.	Department of Local Government and Planning
2.	Confidential submission
3.	Ms Linda Conley
4.	Department of Employment, Economic Development and Innovation
5.	Confidential
6.	Mr Jack Dempsey MP
7.	Department of Education and Training
8.	Brisbane City Council
9.	Ms Sally Spain
10.	Parliamentary Crime and Misconduct Commissioner
11.	Commission for Children and Young People and Child Guardian
12.	Queensland Police Union of Employees
13.	Queensland Ombudsman
14.	Crime and Misconduct Commission
15.	Confidential submission
16.	Queensland Rail
17.	Queensland Newspapers Pty Ltd and Channel Seven (Brisbane) Pty Ltd
18.	Queensland Law Society
19.	Premier of Queensland
20.	Ms Loretta Woolston

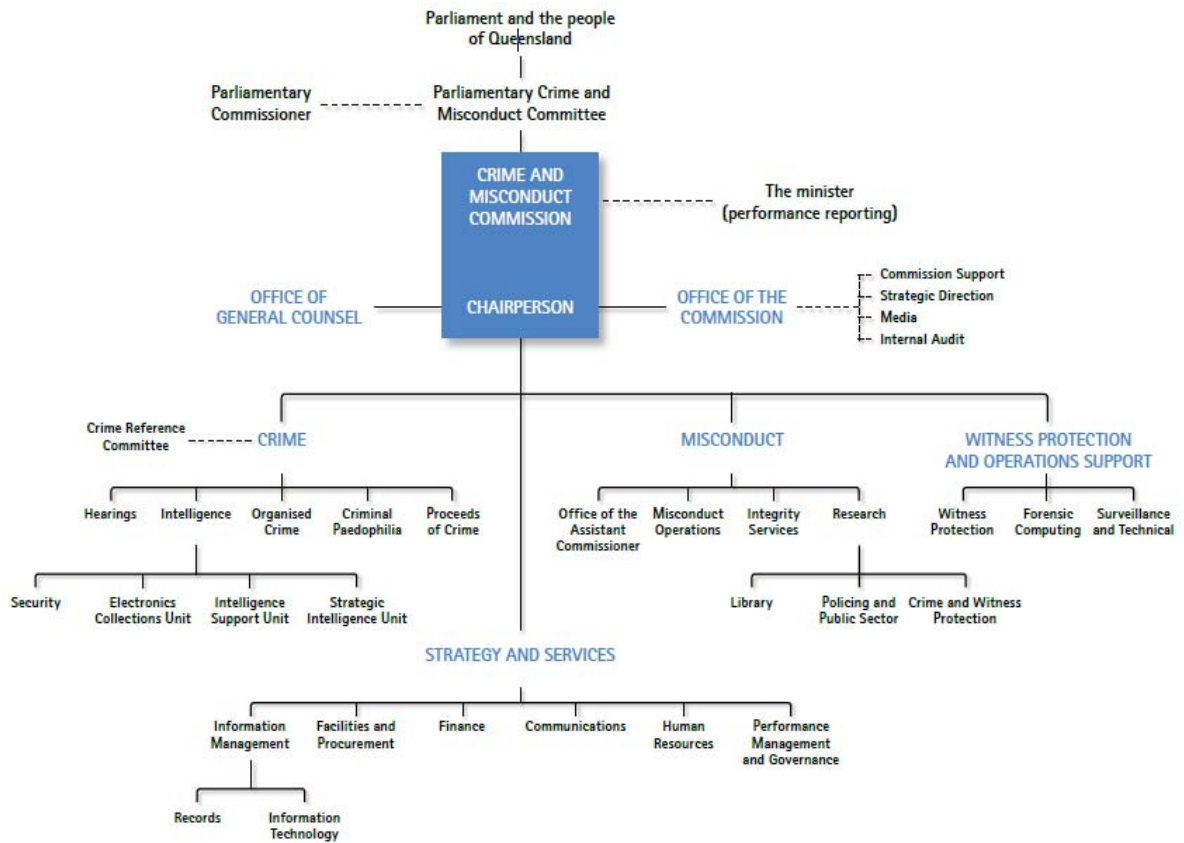
APPENDIX THREE**WITNESSES AT THE PUBLIC HEARINGS**

Thursday, 3 November 2011	
Crime and Misconduct Commission	Mr Warren Strange – Acting Chairperson Mrs Judith Bell – Part-time Commissioner Mr John Callanan – Assistant Commissioner, Crime Ms Edith Mendelle – Executive General Manager Ms Dianne McFarlane – Director, Integrity Services
Queensland Police Service	Deputy Commissioner Ian Stewart - Regional Operations Assistant Commissioner Paul Doyle – Ethical Standards Command
Queensland Police Union of Employees	Mr Ian Leavers – General President Mr Simon Tutt – Media & Government Relations

Friday, 4 November 2011	
Department of Local Government and Planning	Ms Bronwyn Nosse - Director, Legal Services Mr Tim Dunne - Manager, Local Government Programs
Local Government Association of Australia	Mr Tony Goode – Workforce Strategy Executive
Queensland Rail	Mr Adrian Galea – Audit Manager, Corporate Ethics
Commission for Children and Young People and Child Guardian	Ms Elizabeth Fraser – Commissioner Mr Barry Salmon – Assistant Commissioner
Crime and Misconduct Commission	Mr Warren Strange – Acting Chairperson Mr John Callanan – Assistant Commissioner, Crime Ms Dianne McFarlane – Director, Integrity Services

APPENDIX FOUR

STRUCTURE OF THE CMC



Source: CMC Annual Report 2010-11

APPENDIX FIVE**8TH PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE REPORTS**

Report No.	Report Name	Date Tabled
79.	Three Year Review of the Crime and Misconduct Commission 2009	20 April 2009
80.	Annual Report 2008/2009	8 October 2009
81.	A report on a review by the Parliamentary Crime and Misconduct Committee of the actions and holdings of the Crime and Misconduct Commission in relation to the investigation of Senior Sergeant Michael Isles	12 November 2009
82.	A report on the investigation of the concerns raised by Dr Christine Eastwood regarding the alleged conduct of Mr Robert Needham and Ms Helen Couper	15 April 2010
83.	Annual Report 2009/2010	16 September 2010
84.	Annual Report 2010/2011	25 October 2011
85.	Criminal Organisation Amendment Bill 2011	21 November 2011