



PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

Members present:

Mrs EA Cunningham MP (Chair)
Mrs JR Miller MP (Deputy Chair)
Mr PJ Dowling MP
Mr IS Kaye MP
Mr JM Krause MP
Ms J Trad MP
Mr PW Wellington MP (via teleconference)

Staff present:

Mr N Laurie (Clerk of the Parliament)
Ms A Honeyman (Acting Research Director)
Mr P Rogers (Principal Research Officer)

INQUIRY INTO THE CMC'S RELEASE AND DESTRUCTION OF FITZGERALD INQUIRY DOCUMENTS

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 28 MARCH 2013

Brisbane

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Committee met at 10.42 am

CHAIR: I declare this public hearing of the Parliamentary Crime and Misconduct Committee open. I am Liz Cunningham MP, the member for Gladstone and chair of the committee. Mrs Jo-Ann Miller MP, the member for Bundamba, is the deputy chair. Other committee members are Mr Peter Dowling MP, member for Redlands, who will join us shortly; Mr Ian Kaye MP, member for Greenslopes; Mr Jon Krause MP, member for Beaudesert; Ms Jackie Trad MP, member for South Brisbane; and Mr Peter Wellington MP, member for Nicklin, who is joining us via teleconference.

By resolution of the House dated 7 March 2013, the committee is tasked with inquiring into and reporting on (a) the CMC's incorrect classification of documents lodged with the State Archives that were sourced from the Fitzgerald inquiry which were transferred to the State Archives from the CMC between 2007 and 2009 that necessitated urgent legislation being introduced and passed by the House on 7 March; (b) the CMC's failure to remedy the incorrect classification of the above documents in a timely and effective manner; (c) the destruction of records of the Fitzgerald inquiry; (d) the CMC's failure to account to the PCMC in a timely and effective manner in relation to the matters; (e) as to how the issues arising from the incorrect classification of documents can be remedied in the longer term, including whether some or all of those documents have to remain confidential; and (f) on any other matters and make any other recommendations the committee believes necessary to address issues raised in its inquiry.

The resolution of the Assembly requires the committee to report on 5 April 2013. Under the standing orders, witnesses may be accompanied by legal representation. Whilst witnesses may confer with their legal representative to obtain advice on their rights, the legal representative is not a witness in this inquiry and may not address the committee.

I remind all of those participating today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearings at the discretion of the committee. The committee has resolved that the whole of the proceedings of this committee may be broadcast online with the conditions of broadcasters and guidelines for camera operators, which are available from one of the parliamentary attendants in this room. We have also resolved to allow the media to take continuous pool footage, with the traditional conditions that apply.

I ask that all mobile phones or pagers be either switched off or switched to silent. I should also remind you that food and drink are not permitted in the hearing room. For the benefit of Hansard, I ask that all witnesses identify themselves the first time they answer a question asked of them. We welcome the commissioners and thank you for your attendance today. We will commence with Mrs Judith Bell.

BELL, Mrs Judith, Commissioner, Crime and Misconduct Commission

Witness was affirmed—

CHAIR: Mrs Bell, would you like to make an opening statement?

Ms Bell: No, Mrs Cunningham.

CHAIR: This issue has been one that we have all had to face in a very short time frame. It occurred and then took on a life of its own. Prior to the commencement of the hearings, and I will say 6 March because that is when the issue really took foot, were you aware of the matters in relation to the release or the destruction of the Fitzgerald documents?

Ms Bell: No. As far as I can remember there may have been something in a newspaper, but we were assembled on Friday, 8 March. We may have known about it in one way in the sense that we had to be assembled for a purpose.

CHAIR: Over the last two weeks—because we have been having hearings for pretty much the last two weeks—how have you reacted to or what are your thoughts on the information that has been acquired during the hearings? Do you have a comment?

Ms Bell: Yes. Having watched a great deal of the hearing, I felt that it was an anvil to crack a nut. I felt disturbed by the fact that we had been remiss, but I also felt disturbed by what I felt was very heavy-handed treatment of some of our staff. There are two things that I would like to add to what has gone on over the last few weeks, and that I would like the committee to be reminded of, and that is that we have an agency which does extraordinarily good work and some of its units work with very little in the way of personnel or even resources. I think that could have been lost. In particular, for example, our Legal Services Unit has only four people and there are only four investigative teams who have huge numbers of cases. I would like that fact to be perhaps put back into the front of the committee. I suppose those are the main things I wanted to say. I feel that we are a very accountable organisation. I would like to take the opportunity to say that these issues have come about not because of any criminal activity or malicious behaviour in my opinion.

CHAIR: I do not know that anyone has made an assertion during the hearings that it has been based on criminality, vexatiousness or conduct of that nature.

Mrs Bell: I am glad to be reassured of that.

CHAIR: However, it is our responsibility to ensure that the operation of the CMC is not only in accordance with the act but in accordance with the spirit of the legislation and also in accordance with the power and the obligations that the CMC itself administers on other people. If you judge another organisation in terms of accountability and transparency at a certain level, surely you would agree that the CMC should be judged on a similar level?

Mrs Bell: But it is judged, Mrs Cunningham, regularly by reports, both annual and to this committee.

CHAIR: After hearing two weeks of evidence from members of the CMC, has that given rise in your mind to any governance issues that could be addressed?

Mrs Bell: Yes. There are things that we need to improve.

CHAIR: Could you give me some examples of that?

Mrs Bell: I do not think, for example, the lines of authority work very well. Also I do not think the extent of the responsibility in relation to the Fitzgerald materials was properly understood or handled.

CHAIR: So they are the main governance issues that you see need to be addressed as a result of this hearing?

Mrs Bell: Yes, at the moment those are the two that I would probably put. There may be others, but at the moment those are the ones that come to the top of my head.

CHAIR: Did the inability of your senior managers to recall and to document information give you cause for concern?

Mrs Bell: I think the overriding feeling of this particular matter was that at the time it was not seen as a major issue because, in fact, my experience of the CMC is that everything is documented very well and everything is reported to this committee very assiduously. So I think at the time this was not seen as a major issue. That is the only interpretation I can put on it.

CHAIR: Mrs Bell, to be frank with you, I find the documentation at the CMC appalling on the basis of the two weeks of hearings that we have had. I will have to disagree with you on that point. I think you have already answered this question—and then I will pass on to other members—on the basis of the last two weeks do you believe that the role of the commissioners is sufficient in terms of its part-time basis and in terms of the interaction between yourself and the commission? Is that interaction sufficient for the part-time commissioners to provide appropriate and effective oversight?

Mrs Bell: I would have said yes, particularly in the last three years because when Martin Moynihan took over as chair he certainly depended a great deal on our input. The nature of the part-time commissioners is an interesting one. Whatever our backgrounds, we are really appointed as community representatives. One of the things that I have observed in my time at the commission is the quality of these people. I have kept very good company. As to whether you are asking me about structure and involvement, I would have said we had pretty good knowledge, but we are not operational.

CHAIR: How do you get the information then from the commission that informs your oversight?

Mrs Bell: We get reports at the fortnightly meetings. We also attend in our various capacities some of the subcommittees of the organisation. For example, I came into the commission—I was appointed a long time ago to the old Queensland Crime Commission, but I was only there for a matter of weeks before it morphed into the CMC. I then went on to the Crime Reference Committee as a community representative. So when I came in as a commissioner, I tended to stick to crime because that was where I had my greatest familiarity. Only in the last couple of years have I made an effort to attend more of the misconduct side. But we all, in our various ways, attended subcommittees and informed ourselves of procedures and cases.

CHAIR: Do you have any involvement with the LSU's activities?

Mrs Bell: No.

Ms TRAD: Mrs Bell, in terms of the finalisation of our investigation, there will be people obviously in the media and further abroad who want to use this or who may see this as an example of how the CMC operates internally. You have made some general remarks about why this is not the case. I am wondering if you could provide some more detail about whether or not this experience—the release and the destruction of Fitzgerald documents—is not an example of what happens internally in the CMC?

Mrs Bell: The business of the CMC goes on inexorably dealing with all sorts of things that are referred to it. It does not go out trawling for things. Things are referred to it and it goes through them in a manner that, for the most part, is pretty impressive. I am not sure if that is enough reassurance, Mrs Trad. We see matters, both in Crime and Misconduct, continuously that are being dealt with in a most meticulous manner. We are often accused of a lack of timeliness. I think that is one of the biggest problems for the commission. That is not always of our making because things go back to their original organisations and they are delayed or they go down to the DPP. We also have a very small staff, but that is something we are constantly aware of. It is the timeliness issue.

Ms TRAD: In terms of the role of the part-time commissioners, the significant issue that the PCMC has been aware of in the last 12 months—as long as I have been on it—has been the issue to do with resourcing and restructuring the organisation to deal with a reduction in resources for the agency. Do you want to make any comments in relation to that as a major issue that has preoccupied the CMC over the past 12 months?

Mrs Bell: It has an impact on the commission itself, for example, because as a result of advice from the consultancy we had set up a support system for the commissioners. Partly as a result of the cutbacks, partly as a result of people leaving, that fell into abeyance—it took a less active form. I think that impacted on the commission a great deal because we lost that very good hands-on—

Ms TRAD: Support?

Mrs Bell:—support, yes.

Mr KAYE: How often do the commissioners meet?

Mrs Bell: We meet formally every fortnight on Friday.

Mr KAYE: How long would that meeting normally go on for?

Mrs Bell: It can take the greater part of the day but if there is not a lot of business it can be over by late lunch.

Mr KAYE: In general, how much time would the commissioners actually spend at the CMC, say, in an average week?

Mrs Bell: It varies. If I have, for example, a number of subcommittees that meet, I can be in there for another couple of half days. There is also quite a lot of reading that one does. That is a really difficult one.

Mr KAYE: Obviously the other commissioners can speak for themselves.

Mrs Bell: Yes, that is right.

Mr KAYE: So it would vary depending on the commissioners' responsibilities?

Mrs Bell: Yes, it does. Also, for example, when Judge Moynihan was chair there were a number of matters which demanded—we spent a lot of time in the commission supporting him at that time.

Mr KAYE: If something big comes up, the commissioners would come in?

Mrs Bell: Yes.

Mr DOWLING: Good morning, Commissioner. You say you meet fortnightly. Who is normally present at those meetings?

Mrs Bell: It is chaired usually by the chair and there are the four part-time commissioners. Quite often there will be the head of Crime, the head of Misconduct and the head of Witness Protection. Sometimes there are quite a lot of people around that table. That is the core of the attendees.

Mr DOWLING: And the purpose obviously enough is for you to arm yourself with knowledge of the operational functions of the CMC?

Mrs Bell: Yes.

Mr DOWLING: I do apologise for being late. I came in from Russell Island. The question, I imagine, has been posed: were you made aware of this incident back in May 2012 when the access to the files was uncovered?

Mrs Bell: No.

Mr DOWLING: And not again in September?

Mrs Bell: No.

Mr DOWLING: You became aware of it then in March?

Mrs Bell: Yes.

Mr DOWLING: Are those meetings that you have with the commission and the heads of the various silos within the CMC minuted?

Mrs Bell: Yes.

Mr DOWLING: And those minutes are circulated to all in attendance for confirmation?

Mrs Bell: Yes.

Mr DOWLING: You might not be able to comment on this, but it is unusual that this part of the organisation keeps minutes and the rest of it appears not to keep minutes. Certainly that has been the evidence here: so many of the meetings are unstructured—

Mrs Bell: No, a lot of the subcommittees do keep—the subcommittees that I attend keep minutes.

Mr DOWLING: Do they?

Mrs Bell: Mmm.

Mr DOWLING: And the subcommittees that you are involved in—

Mrs Bell: Yes, as far as I know, yes, they do.

Mr DOWLING: As far as you know? You definitely know?

Mrs Bell: I do. I say they do.

Mr DOWLING: All right. Are there delicate matters discussed in those meetings? The reason for me saying that is: would it be inappropriate of me to ask for a copy of a few samples of those meetings, just to get a feel for what it is the commission—

Mrs Bell: No, I can't imagine that that would be readily available because there is a lot of sensitive material that—

Mr DOWLING: With all due respect, we handle a fair bit of sensitive material ourselves.

Mrs Bell: Well, you asked me a question and I am answering what I think would be the outcome.

Mr DOWLING: I think I would like to exercise that option. Could we get a copy of some of those minutes, please, Madam Chair?

CHAIR: Member for Redlands, perhaps that is a matter that we could discuss in the committee meeting after these hearings in terms of the approach and the type of request to ensure that we are not requesting operational documents.

Mr DOWLING: Okay. Thank you. Mrs Bell, you said that the timeliness of the process of the commission often comes under criticism. What steps has the commission put in place to try and address that? It is not a modern-day event; it is not in the last 12 months. It is something that has been ongoing for many, many years as the organisation has grown and diversified. What has the commission put in place or suggested in order to address those issues?

Mrs Bell: I suppose we just constantly make requests for progress reports. I cannot really answer that. We just constantly talk about it and request speed. But we cannot be too operational because those things are being carried out by our teams. We have to be guided by their sense of urgency.

Mr DOWLING: All right. You talked about a support system being introduced to support the commissioners. When was that idea floated or when was that proposed to commence?

Mrs Bell: It has been in existence.

Mr DOWLING: For how long?

Mrs Bell: It came into existence when Judge Moynihan was in the chair. It really mainly constituted one particular officer who was detailed off to be our support system. She was a particularly competent person and it worked very well.

Mr DOWLING: Explain to me what she might do.

Mrs Bell: Well, she would make sure that when she attended commission meetings she made note of things that we needed to get copies of or to be kept up to date on, or if a commissioner had made a particular request for information then she would make sure that it got to us.

Mr DOWLING: So like a one-person secretariat for the commission?

Mrs Bell: Yes.

Mr DOWLING: And she had been in place for a number of years?

Mrs Bell: Well, I suppose by the time she left she would have been there for about—there might have been someone before that, actually. I am thinking of the person who occupied it in the last role. The first person who came in in that role was introduced at the request of Judge Moynihan and then that changed and another person took over.

Mr DOWLING: And that person left when—the lady, the most recent one?

Mrs Bell: The woman who was there? I cannot remember exactly, but it would be at least six months ago, I think.

Mr DOWLING: Okay. So the support service to the commissioners and the support staff has no bearing—there is no nexus between the two? It is not as though you can say, 'The reason things went off the rails was because we lost our support.'? That would clearly be wrong because six months ago—

Mrs Bell: No, I would not say that, certainly not in this particular instance. We do have a governance section, but it is a bit more removed from us than it used to be.

Mr DOWLING: And does the governance section have sway or stewardship or carriage of anything to do with the Legal Services Unit?

Mrs Bell: Well, they would answer to the new executive—I forget what her title is now. Edith Mendelle. I forget what her exact title is. But she is like our executive manager and they would answer to her and she would probably coordinate with the Legal Services Unit. I am not absolutely sure about that.

Mr DOWLING: I am not entirely sure that is accurate, either, but that is okay. I am probably getting beyond your range. I do not have anything further.

CHAIR: Because Mr Wellington is by phone, you will have to excuse us. Peter, did you have any questions?

Mr WELLINGTON: No, I am happy, thanks, Liz.

CHAIR: Can I just take you back to your opening comment, Mrs Bell. You said that it is your view that we have used an anvil to crack a nut. How, then, do you believe—or in what context do you place the destruction of commission of inquiry documents and the release of information which has the potential to create a situation where, not wishing to be overly dramatic, a person could be placed at physical risk with the release of that information? What should have been a reasonable response in your view?

Mrs Bell: Well, if I had been allowed to do what I would like to have had happen, it would have been an internal investigation.

CHAIR: Only?

Mrs Bell: Mm-hmm. I mean, we would then have reported to our committee, of course. But it would have been an internal investigation.

CHAIR: You would not have reported to the PCMC until the committee—

Mrs Bell: Oh, no, no. I think the parliamentary committee should have been notified, but I think it could have then been handled as an internal inquiry—if you want my personal opinion.

CHAIR: That is what I asked for. In your view, would, for instance, the destruction of original notes by a solicitor that works at the CMC have come to light with an internal review?

Mrs Bell: Oh, I think so. Mind you, my interpretation of that, if you also want my personal view of the universe—

CHAIR: Sure.

Mrs Bell: And I am not a solicitor, so I am not sure about practices, but it seemed to me that that solicitor took her very informal notes and put them into a formal structure and then she felt—I am answering for somebody else—that she had captured the essence of the matter.

CHAIR: I am informed in my view of the destruction of the notes by the fact that there are solicitors both inside—I cannot speak for the ones that work within the CMC—and external to the CMC who said that that was a fundamental error on her part, not just because of the context in which the notes were destroyed or the timing in which the notes were destroyed but because legal representatives have taken other members of the community—police officers have been used as an example—to pieces for doing exactly that and that it would have been an action that should have been considered by a legally trained person as not even of consideration.

Mrs Bell: Well, I am not a solicitor, so I have no comment about that.

CHAIR: Neither am I. Did you want to say anything else?

Mrs Bell: No, I don't think so, Mrs Cunningham.

CHAIR: Thank you very much. You are stood down.

FOX, Mr George, Commissioner, Crime and Misconduct Commission

Witness was sworn—

CHAIR: Thank you, Mr Fox. Did you want to make any opening statement?

Mr Fox: No, Madam Chair. I have made some notes during the course of these proceedings as to questions that occurred to me and I wonder whether it might be better for me to answer the members' queries and then perhaps add any other comments at the end that may not have already been covered.

CHAIR: Absolutely. Are you similarly, as Mrs Bell, of the opinion that you did not know about the destruction of the documents until 5 March?

Mr Fox: No. I was told about dissemination of the documents, I think, on the morning of Wednesday the 6th in a very brief conversation as I was attending a meeting at the CMC for other purposes, and then later that afternoon or the next day I was then advised of the destruction of documents.

CHAIR: Who was the meeting with?

Mr Fox: The meeting at which I was told of this?

CHAIR: Yes.

Mr Fox: I was attending a meeting that deals with basically triaging new misconduct referrals. Before attending that meeting I dropped into Mr Martin's office just to say hello and he gave me a very quick briefing that a problem had arisen in relation to dissemination of documents. I think by that stage he had made contact with this committee.

CHAIR: Mr Strange rang me at about half past five on the 5th.

Mr Fox: Yes. And then I went down to the meeting.

CHAIR: After being briefed on that, in your mind do you recall how severe you interpreted the situation?

Mr Fox: It was certainly a matter of serious concern.

CHAIR: And without wanting to put the cat amongst the pigeons—and I am not trying to, believe it or not—is it your view that we have used an anvil to crack a nut?

Mr Fox: Your committee has powers and obviously parliament has powers. I do not think it is for me to presume as to what was in the members' minds or parliament's mind when it went down this track. It is clearly within its power. As to whether it was appropriate I think will depend on what concerns may have been in the members' minds as to whether it is necessarily the best method of arriving at what needs to be done. It may well depend on what findings are made as to the causes that give rise to this problem.

CHAIR: This question may avert to the notes that you have brought. What has been your reaction and view on the material that has been garnered from testimony this last fortnight?

Mr Fox: How can I put it? When we hear in the media of a plane crash we are invariably told that there is no one single cause. While there has clearly been a significant degree of human error—I think that has been openly acknowledged by at least one member—I think my early training as an auditor prompts me to look for structural issues or governance issues or structural changes which might have prevented the human error. So I suppose I have been asking questions in my mind as to how this could have occurred.

CHAIR: And have you come up with answers in your mind?

Mr Fox: At this stage I think it would be presumptuous to have answers, but I certainly have concerns and queries as to what may have contributed to this sort of issue.

CHAIR: And is the contribution governance issues?

Mr Fox: I have concerns around things like was it fair for Mr Duell, whose background is in IT, to be given responsibility for something that is a matter of archiving or librarian work. I have concerns with to what extent he could rely on subordinates who may be more skilled in that area. I have concerns about why there does not appear to have been any formal handover when he took that role. One gathers from the testimony—and I have not heard it all but I have heard a fair bit of it—that there was no written briefing from anyone on what this material contained. So those things concern me. As a matter of strict authority, I understand he had authority to change these documents. It would appear from the testimony that, notwithstanding that authority, he thought that

some approval or comfort was required from higher up. We have heard testimony as to perhaps who that should have come from—whether it should have come from the manager or the chair or general counsel or the head of the Legal Services Unit, and the lack of clarity around that is obviously a concern and I suspect it relates to the sort of governance issues which were raised in the Jameson report of some years ago which I presume the committee has a copy of.

CHAIR: You have sat in the gallery for quite a considerable amount of the hearings in the last fortnight. Would you have any comment to make on the lack of documentation and documenting of meetings and/or the apparent inability of senior members of staff to recall events adequately?

Mr Fox: In terms of recording of meetings, it is not every meeting that requires formal agendas or minutes and I think it is a matter of appropriate good corporate management, particularly when you have silos, as being the phrased used—regular meetings, I call them tearoom meetings, where people simply come together to promote things like collegiality, understanding of everybody else's concerns and needs, particular difficulties and simply developing a corporate goal. Now, those meetings are not ones which generate formal outcomes or come with formal agendas, but they are for a particular purpose. So it is not every meeting as a matter of good governance that will require minutes, but obviously the formal meetings—the audit committee, the risk committee, commission meetings—have agendas and outcomes will be derived from those meetings and clearly they need to be minuted.

CHAIR: I will ask a question again. In relation to the COI release and destruction, would you regard the conversations around those incidents as tearoom meetings or necessary for formal notes?

Mr Fox: I would have expected if the information sought from Mr Duell was a formal authority then there would have been written comments about that.

CHAIR: Thank you. Do you see in your own mind where improvements could occur in the governance areas?

Mr Fox: Again, I suppose my thoughts on that go back to the Jameson report, which identified issues around the structure of the legislative structure. I think part-time commissioners, I am told anecdotally, their role is very much dependant on the views of the chair of the time and sometimes their role has been, I am told, in the past minimal. Sometimes, particularly in recent times, it has operated more on a corporate model. The Act, I think interestingly, does not actually say what the role of the part-time commissioners is meant to be, but it's almost by exception that commission authority is required. So I think by default it has been approached from a line of what might be regarded as a corporate model. But the corporate model probably falls down a little bit when—and it's not, I think, probably model corporate governance—you have a chair who is also the CEO who the chair is responsible to supervise and particularly when the CEO has operational requirements as well as being the only person to conduct hearings. Some might think it is a model designed by trial lawyers for particular purposes but not by governance experts, and it may be that the organisation has outgrown its structure—what was a corporate model sufficient for some years ago may no longer be, and I think Mr Davis averted to some of that or touched on that in his questioning of who are the managers here. My recollection was there was no easy or apparent answer to that, and I think some of that raises concerns when members asked, 'Who does Mr Duell actually report these to? Is it to the executive director or the lawyers?' and we had to say, 'Which lawyer?'

CHAIR: Would you like to see the role of the commissioners clarified and entrenched in legislation more clearly?

Mr Fox: I would like to see a review of the corporate structure to reflect the needs of a modern, large bureaucratic organisation which has moved beyond—and it is not for me, how can I put it, to say what might have been in the minds of the people when the legislation was originally put in place. But one might think that, as I commented earlier, it does not represent a corporate model that would—if one designed one afresh for an organisation of this size—adequately reflect what is now accepted as corporate needs and responsibilities. As I mentioned earlier, by default we have reached a position of identifying the responsibilities of the part-time commissioners as akin to those of directors of a corporation. But there is no statutory provision for that.

CHAIR: Thank you.

Mrs MILLER: Thank you very much for being here today, Mr Fox. I was just wondering in relation to some comments being made that some members of this committee have absolutely no experience of bureaucratic organisations in relation to apparently the keeping or not keeping of notes et cetera. I was also wondering about the almost wicked cutback in your budget last year which has resulted in, I think, over 30 officers of the CMC being made redundant.

Mr Fox: Thirty-six, I think.

Mrs MILLER: Thirty-six were made redundant. I am just wondering whether you think that was a 'get-square' on the commission on behalf of this new LNP government, which has made its opinion of the CMC very well known not only in the parliament but also in the media. So I would like your comment on that, please.

Mr Fox: I have no information on the motivation of government in making those quotes other than what has been made publicly available.

Mrs MILLER: And what has been the impact of the reduction in staff by 36 people, bearing in mind that there are about 300 officers of the CMC. When you take out the roughly 100 or so police officers, there would be only in fact 200 other officers there. Would that be right?

Mr Fox: Look, I think that is right, and do not hold me to the proportion of police to other staff because that ratio varies with time. But certainly a reduction of 10 per cent has both administrative and operational consequences and also obviously some morale issues, and I think I have commented privately in the committee on those sorts of issues in the past.

Mrs MILLER: So when you bear in mind the fact that the Queensland public sector has about 200,000 public servants and there are only 200 officers, excepting for the police contingent, at the CMC, it is a drop in the ocean in terms of the budget and the resourcing to the CMC of this government.

Mr Fox: I think that is probably a comment rather than a question.

Mrs MILLER: No, no; I am asking what you believe in relation to that.

Mr Fox: I do not regard it as my role to apportion budgetary expenditure between various organs of government. I do regard it as my role to communicate to this committee the possible effects of that, and I think the part-time commissioners have done that in the past in the appropriate meetings. And I should point out that, while the effect of the staff cuts you have referred to are significant, the issues in relation to this matter predated those staff cuts but also a number of the significant events revolved around the inability of staff to get ready access to timely legal advice. My knowledge of this comes only from the testimony that I have heard, but I seem to recall that the setting of the RAP at 60 years was a function of inability to get legal advice, so somebody took a conservative view. The pressure to revise the RAP came from in excess of 12 months to get legal advice on a particular dissemination, and 12 months is clearly unacceptable—by itself, let alone anything else. So those factors have played somewhere in this, and I'm not suggesting they're excuses. But they seem to have been the catalyst for various events to being considered, and given the size of the Legal Services Unit it is not surprising that day to day they are running a very busy practice with a very small number of people.

Mrs MILLER: So, Mr Fox, the fact is that the CMC has roughly 300-odd officers there and about 100 police officers, so you are trying to run an anticorruption commission on the smell of an oily rag. That is what it appears to me to be. And now that you have had a 10 per cent reduction in staff, it would be even harder for the CMC to be able to undertake all the duties as is outlined in the act. I am just wondering if you could comment on that.

Mr Fox: Clearly, greater funding would enable the CMC to fulfil its role to a greater extent.

Mrs MILLER: Greater funding which would enable you to have an increase in officers.

Mr Fox: Certainly we would like to have an increase in the number of investigation teams. We have talked about the issues surrounding proceeds of crime and those matters, and I do not want to delve too much into operational areas, but the effects of those I think have been canvassed in the regular meetings with the members of the committee.

Mrs MILLER: So just in conclusion, Mr Fox, are you aware of the fact that there is any difficulty in recruiting people to work at the CMC?

Mr Fox: In some areas; I will go back a bit. I think the CMC has always been seen by its peer group, if I can put it that way, of other anticorruption bodies as very much the—it is not only the oldest but in my view has been seen by those other bodies as the premier model. So in terms of prestige for staff, there is significant prestige in working at the CMC and certainly the quality of the

police that have come to the CMC I think reflects a view that they are certainly among their peers, again, as regarded as particularly high quality. But obviously the pay, particularly in technical areas and professional areas, is going to be less than people, particularly after receiving extensive training at the CMC, can obtain in other areas. And I don't think that's a problem unique to the CMC, but obviously it has an impact.

Mrs MILLER: Thank you.

CHAIR: I have a clarification, Mr Fox, and I am conscious that you are put in a difficult position in the questioning today. There has been talk about budget impacts and budget cuts and a desire for more income, and I think every department would want that and the community perspective would be health and schools and policing. They would be their priority. Do you see the budget cuts—and I think you alluded to this earlier—as having contributed to the difficulties of the release of information in this instance?

Mr Fox: No; how can I put it? The release of the information predates that, so the objective event predates that and I have commented in relation to the shortage of people in the Legal Services Unit as being a factor associated with that but not an excuse. Whether it has contributed to how the matter was handled may be a different matter, but it is an incidental—not a factor that brought this about.

Mr KAYE: Mr Fox, you mentioned, obviously, the corporate governance side of things and that you think that perhaps there could be some changes in that area to perhaps modernise. Have you got any suggestions on who would be best placed to actually do that?

Mr Fox: And really this was the response to the question you asked me as to the approach—whether the approach taken in dealing with this issue would resolve all the contributing factors and I think—I would think it is a collaborative workshop approach between the various organs of government who have responsibility for this area, including the committee. It is a workshop approach, it is not somebody directing that this will happen. Clearly the staff within the CMC have the greatest knowledge of the particular issues and the operational matters. And I think we are fortunate to some extent that those governance issues which have been identified previously in reports, that I presume the committee has, have been moderated significantly by the high quality of staff we have, particularly at the assistant commissioner level who are the heads of the various silos and their willingness to work extremely cooperatively together.

Mr KAYE: All right. Thank you.

CHAIR: Member for Redlands?

Mr DOWLING: Good morning, Mr Fox, how are you?

Mr Fox: Good morning, Mr Dowling.

Mr DOWLING: Look, you have touched on a number of things that I wanted to revisit. You talked about the informal meetings, the collegiate meetings I think you said, around the kitchen table but obviously not a kitchen table.

Mr Fox: Like it was tea room meetings, yes.

Mr DOWLING: Yeah, and I understand that they're important in an organisation. My concern I suppose is in your role, and I understand that there are the requirements for both the formal meetings and the informal meetings. What appears on the surface to me through the process of this hearing is that there are—it is almost like people turn up on the off-chance there is a meeting and then if there is nothing really on the agenda then they do not bother meeting and they do the collegiate side of things. It seems to be a very casual and informal environment. And I appreciate it is probably at the same time a very high pressure work environment with the sort of issues that they deal with. I do not see the necessity—and I would probably ask you to comment, do you see the necessity to front up every fortnight for a meeting when—I do not know whether 10 per cent are minuted, whether 50 per cent are minuted whether 90 per cent are minuted. That is probably the question that I would have. Is there a need for that ongoing repeat attendance to meetings?

Mr Fox: From members of the commission or staff?

Mr DOWLING: Commission.

Mr Fox: All the commission meetings are minuted with formal agendas and matters for consideration, as one would expect from a governance board organisation. And I take it from—

Mr DOWLING: As part of your answer I thought you said that some meetings were minuted and others were not.

Mr Fox: No, I am sorry, and I might have misstated that. I was simply making the comment that it is not an inviolable rule that all meetings within an organisation have to be documented and minuted. There are some meetings for some purposes that that is not necessary or appropriate for, but if I can put it, the body of the business of the commission very much has formal meetings and formal minutes. And members have commented on the fact that there does not appear to be this train evident in this and again obviously that has been a matter that I have been thinking about sitting in the back of the room, and I think a lot of the problem is that this was simply not core business, very few people seemed to know about it. I never knew that the organisation was responsible for historic records that were shifted off site but somehow we retained responsibility for. It almost seems to have been placed in the—how can I put it—a convenient receptacle that was not core operational, and I have already commented on the fairness perhaps of somebody whose skills were not in that area being given responsibility. Some people, I think, have expressed as a matter of sentiment that those records should be retained at the CMC because—how can I put it—the Fitzgerald inquiry was the mother of the CMC. I suppose from a more cold blooded management exercise, my view would be it is not our core business. Other state archivists and so on have responsibility for that. But perhaps it is time to cut the umbilical cord. But I would have thought, if it remained with the CMC, then the decisions for review in fairness should be made by people whose skills should enable them to more accurately understand the nature and effect of the documents held in those records.

Mr DOWLING: Have the commission met since this inquiry began or since this issue came to the fore on either 5 or 6 March?

Mr Fox: The commission met briefly on the morning of the Friday, which—that Friday was a rather busy day, as you might recall, but, in fact, today is our normal commission meeting.

Mr DOWLING: Did you meet before this or are you going to meet after?

Mr Fox: We met very briefly before this but certainly not as in terms of the commission. It was a brief have a cup of coffee. The meeting will take place after the conclusion of this one, but it does have a formal agenda and the minutes of the last meeting.

Mr DOWLING: I am pleased to hear that. During the course of this last three-odd weeks have you been shown the metadata—part of one of the underlying issues?

Mr Fox: No.

Mr DOWLING: So you are not aware of the sensitivity and the content?

Mr Fox: I have been made aware by the evidence given of the sensitivity of that.

Mr DOWLING: But you have not physically sort of seen it?

Mr Fox: No. I try not to, to the extent possible, get involved in that level.

Mr DOWLING: And I think it has already been covered off that going back historically there was probably an opportunity lost, and I like your description, actually, of those airline disaster movies, those aeroplane crashes. It is very often lots of little things that –

Mr Fox: That have added to it.

Mr DOWLING:—align to the worst possible outcome. And I would suggest to you that—do you have—does the legal services unit fall under your brief?

Mr Fox: Not directly. As I say, we operate, to the extent possible, as a board of governance to whom the CEO would report. Unfortunately in our model we have a sort of a range of CEOs, if I could put it that way, which would be the chair as CEO reporting to the commission; Edith Mendelle, who is the executive director, reports directly to the commission; and the assistant commissioners of crime and misconduct report directly to the commission. Now, in addition to that there will be reports of the audit committee and the risk committee in particular to the extent that they raise issues of concern, and we get down to things like disaster recovery and those sorts of things—and workplace health and safety—which are particularly areas of immediate personal concern to the commission, if I can put it that way. And in addition there is a practice of part-time commissioners trying to inform themselves and improve their understanding by attending particular meetings not in any operational or directive sense but simply to get a better understanding of the problems people face and those sorts of things.

Mr DOWLING: Could you refresh my memory. How long have you been a commissioner?

Mr Fox: Since, I think—I think I was appointed in—essentially a year and a half.

Mr DOWLING: Okay, so relatively new to the team?

Mr Fox: Mmm.

Mr DOWLING: And I do not want to sound like I am verballing you but I would really like clarification and your thoughts on—and it is to do with audit and risk, and audit seems to be the one thing that was not conducted on the archives, on the material that you held from the Fitzgerald—not you, sorry, the CMC.

Mr Fox: No, I appreciate that.

Mr DOWLING:—held from the Fitzgerald inquiry. So, there was certainly no audit ever conducted of the materials that you had custody of. Then there was the transfer process which again failed to properly audit and account for the materials that you had in 2007 and how it might then be displayed et cetera and accessed and that which has zero RAP, that which has the 65 and that was which has the 100-year RAP. And then the next incident is where wholesale access has been allowed and the 65-year RAP removed all in February pre the change of government, pre the budget cuts; is that a fair assessment?

Mr Fox: That is the—I understand—

Mr DOWLING: Just the counter point has been—

Mr Fox: Yes. Sorry. I understand that to be the evidence provided and essentially my knowledge of this matter comes from the meetings that I have—the hearings I have taken part in or heard here.

Mr DOWLING: And even down to the legal advice, there can be no sheeting of blame to the current government when this advice was sought through the latter part of 2011 and the early part of 2012 on Mr Duell needed some direction and some legal advice.

Mr Fox: I am not aware of any interaction between individual officers of the CMC or the government relating to this matter other than to the extent that has been canvassed in the media and evidence here.

Mr DOWLING: Thank you. Do you support the proposition as put by Ms Bell that it should have been an internal investigation?

Mr Fox: Should have depend on individuals' perception of the problem. I think regardless of the outcome of—sorry, the deliberations or recommendations of your committee, there will be necessarily internal process and to some extent for good legal reasons that is on hold until this committee has made its decisions. I do not think it is—how can I put it—fair for me to say what your organisations, other organisations may have or should have done. To some extent, in terms of my personal preferences, I probably would have liked to have seen something—the involvement of the Parliamentary Commissioner as perhaps achieving—being more likely to achieve—how can I put it—the workshop style discussion that I think is necessary to address the sorts of governance issues, but that is simply a matter of personal preference and coming from my perception of the issues.

Mr DOWLING: Thank you, Mr Fox. I have nothing further.

CHAIR: Thank you, Mr Fox. Did you have any further comments that you wanted to make?

Mr Fox: If I could. A comment has been made about particularly a number of people and particularly in relation to the services unit about destruction of file notes by Sidonie Wood. And I should preface it by saying I think prior to these hearings I have had one conversation with her in which we had a disagreement as to the capacity of another person. So, that is my comment. But I do know that she is highly regarded by the staff who work with her. I have heard senior counsel comment on her very high ability in her area and how she is regarded by others. The work of her and her unit is reviewed almost on a daily or at least a weekly basis by the judiciary and very critically reviewed by opposing counsel and none of those have made any adverse comment to my knowledge. It is certainly, as the chair has noted, in a legal practice standard gospel that you keep file notes, and I suspect the prospect of her destroying a file note on any of the litigation files she maintains is minimal. I would be very surprised from what I have been told of other people, and perhaps all I can do is look at it from my perspective both as a solicitor doing that sort of work where you keep file notes. One of my other occupations is chair of an IT company in which I regularly have discussions critical to that company's existence or performance, both internally and externally, and I will make rough notes in those meetings, convert them to more intelligible and useful formats for my board and shareholder and then destroy the old notes or simply throw them away.

I'm not to say what was in her mind or what role she was performing, but if in her role she was performing an administrative function, not running a legal file but as a corporate officer of a corporation producing intelligible documents for what she understood was communicating in a more useful form, then that would be, for me, a different matter. It's not for me, I think, certainly at this stage, to inquire into her mind. I am just trying to put that in context. Simply because saying someone is a lawyer means that over the whole range of activities of that person they must keep all file notes is, at least for me, I hope, not so. If lawyers then get into administrative tasks in a corporate structure, obviously their approach to these matters changes.

CHAIR: Thank you.

Mr Fox: There was also a comment about keeping her file notes of discussions. It has already been commented on the busy practices of the people here. Again, I can only speak for my comment and I think Mr Hutchings touched on this in criticism of his record keeping. When I was a community-based lawyer, it was not unusual for me to speak to 30 people a day external to the office and sometimes that was as high as 50. The good book says I should keep file notes of all those discussions. To keep proper file notes of all those discussions would have added another five hours a day to a 10-hour day. So essentially we make judgement calls and we prioritise on the nature and it is a risk assessment. That seems to be the buzz word of the day, of making risk assessments and mitigating risk.

For me a concern in this very unhappy exercise is that, in my best calculation, six pairs of hands or six eyes had some sight or handling of this problem. Certainly some of them at least are smarter than I. But none of them clearly understood that inside this package was the landmine and the ticking timer. I suppose it concerns me somewhat, if I'd seen the same package, however it was packaged, would I have come to a different conclusion? I would hope perhaps, as an outsider with hopefully a more objective view, I would have. But it concerns me a little bit that what was the packaging around this or, again, because it was not core business, that none of this was apparent to a whole range of very experienced and qualified people. But there is no doubt that the plane crashed and now it is appropriate to look for—to mitigate the damage, to stop it from happening again, find out why it happened and put in place systems to ensure it does not happen again.

CHAIR: Thank you, Mr Fox. I omitted to ask Peter, did you have any questions?

Mr WELLINGTON: No, I am fine thanks, Liz.

CHAIR: Thank you, Mr Fox. You are stood down.

Mr Fox: Thank you.

CHAIR: I call Professor McMeniman.

McMENIMAN, Prof. Marilyn, Commissioner, Crime and Misconduct Committee

Witness was sworn

CHAIR: Thank you, Professor McMeniman. Did you have any opening comments you wished to make?

Prof. McMeniman: No.

CHAIR: Like other commission members, were you first aware of these issues on 7th or 8th March?

Prof. McMeniman: Yes, that is correct, 8th March, in terms of formally being aware of those concerns and those issues. We were called to a meeting which began just before 2.30 pm on 8th March.

CHAIR: You use the word 'formally' advised. When were you informally advised?

Prof. McMeniman: I had heard media reports. I would regard those as informal.

CHAIR: You attended some of the hearings?

Prof. McMeniman: Yes, I did.

CHAIR: How do you personally reflect on the information that you heard delivered in the process of those hearings?

Prof. McMeniman: I attended when the chair was answering questions from the committee. If you ask me about—did you use the word 'integrity' then? I don't think so.

CHAIR: No, I didn't, but you are quite welcome to use it.

Prof. McMeniman: No. I thought that they reflected the reality that I knew, as well, of circumstances as they occurred. At the Friday 8th March meeting, we were briefed by the chair. That was the first time I think we realised the full extent of what had happened. We were given some documents, some documents that were really in email form. We were allowed time to read them or given time to read them and then we had a very long discussion about them.

CHAIR: I will ask the same question to you as I have asked to others, because for me as part of this committee it has been of great concern to me the lack of documentation and the lack of an ability by senior members of staff to recall critical information. Did you have any response or reaction to that?

Prof. McMeniman: When you are asking me, I guess, to recall something that happened several years ago, many years ago, I can understand responses such as, 'I cannot recall', 'to the best of my knowledge, I cannot recall that'. But in terms of records management, you would expect that there would be some formal documentation. When you are looking at something as important as shifting, say, the length of time in a RAP, you would expect some formal documentation of discussions that were held. Having said that, if you look at the email exchanges, in a sense that could constitute an electronic record. But I am talking also about the extent to which there was examination of what was in the files themselves that were to have their length of time reduced.

CHAIR: Have you had any opportunity, as well, since hearing that information and hearing other evidence, either being here or online, do you have any comment to make in relation to the governance issues at the CMC?

Prof. McMeniman: Governance issues in terms of delegations and so on and the reporting lines?

CHAIR: Delegation, records management?

Prof. McMeniman: Yes, the reporting lines. I would have expected that the director of information services might have reported that to, in this case, his manager. That would have been something in my own organisation that would have happened as a matter of course. I also think that, in terms of the evidence that we have heard, then the level of risk might have been something that was examined very acutely. We do have, since I have been at the commission—I think I have nearly been there, in early April, two years now—there was a concerted effort to identify high-risk projects. In fact, that is now an item on every commission meeting. The idea that all matters that come before the commission are of identical risk is not what actually happens in fact. There are some that are of such high risk that people do reprioritise the resources they put into it, into the examination of that risk, and so on, of that particular matter. As the hearings here have unfolded, I think that it was a high-risk activity that has occurred, in my opinion.

CHAIR: Do you have a comment on the effectiveness of the oversight of the part-time commissioners and do you have a view on how that may or may not be improved?

Prof. McMeniman: I think since I have been there, there have been a lot of improvements. Just before I arrived, there was an executive general manager appointed. That is Ms Mendelle. There was nobody in that position before. I think that was an initiative of Justice Moynihan. I think that was an important appointment. I think we have heard at length from Mr Fox about one person fulfilling two roles of CEO and also of chair. I think that is part of the governance structure that needs further examination.

But I do think that the appointment of external chairs was a good move for both the audit committee and the risk management committee—all of those things. I think the documentation that exists around those committees and the minuting of those four major committees of the commission is quite appropriate and very detailed. The advent of the, as it is now called, applied research and evaluation committee was very important. The establishment of the ethics committee—all those things have come on recently. But I do think the governance structure could be improved.

CHAIR: What became evident over the last week or so is that, whilst you have commented that Ms Mendelle's appointment as the GM was a positive move, she was not included in any of the information that moved from either Mr Duell, Ms Woods, Mr Hutchings—I don't know where she fits 100 per cent in that structure. But as GM and a person who manages that information area, she was not even apprised of the issue, it appears on the evidence we have received. How can that be remedied, in your view?

Prof. McMeniman: I think that the records manager and the manager of information services should certainly have escalated that to the level of the EGM, the executive general manager. This is my opinion.

CHAIR: That is what we are seeking.

Prof. McMeniman: Yes, that is my opinion. It should have been escalated to that level.

CHAIR: Do you have any other comments in relation to the movement of information in relation to the matters that we have been inquiring about?

Prof. McMeniman: I think when the LSU was asked for information, it is surprising that that wasn't forthcoming, although I have read the documentation around that and it appears that they were extremely short staffed at that time and were awaiting another appointment. You can see how all of these gaps appeared in the processes, but I do think that it would be very unusual that legal services would not have replied had they been able to. I found that an oversight.

CHAIR: Just to go back to some reploughed ground, things like meetings in doorways—without referring to Mr Fox's testimony in a derogatory way; I'm certainly not doing that. He talked about tearoom meetings. Would you have a view on whether the meetings in the doorways between Mr Duell and Mr Martin and others should have had a paperwork trail?

Prof. McMeniman: I haven't been witness to too many of those doorway meetings, I must admit. There are a lot of smaller meetings that do occur. For example, I might go and ask Rob Hutchings for some advice. But that is not a meeting. I wouldn't call that a meeting. I would call that 'corridor exchange' and it happens all the time. We all do it. I would expect that for very serious issues there would be records, but I do not think doorway meetings are of that ilk.

CHAIR: Peter, do you have any questions?

Mr WELLINGTON: No, I'm fine thank you, Liz.

CHAIR: Do you have any closing comments you would like to make, Professor McMeniman?

Prof. McMeniman: No. I think that the preceding speaker has covered a lot of issues around which we have some concerns. But I think that one of the things that we have looked at, we have had—actually, today is our second formal meeting since we had one two weeks ago. Today will be our second formal commission meeting since we were briefed. I do think that we need to look again at risk management and the level to which that has permeated below the commission and at very senior management levels. I do think that that is a problem and we need to take that on board. I think we should do that as a matter of urgency.

CHAIR: Thank you very much. You are stood down.

NASE, Mr Philip, Commissioner, Crime and Misconduct Commission

Witness was affirmed—

CHAIR: Thank you, Mr Nase. Do you have any opening comments?

Mr Nase: Yes, I do. I want to make some comments about the general issue of governance of the CMC. During the year 2010, under the guidance of Judge Moynihan, the CMC engaged outside consultants to conduct an exhaustive review of the governance arrangements at the CMC. An interim report was delivered in June of that year and a final report in November of that year. The recommendations and findings of the review resulted in far-reaching changes in the way in which the governance arrangements took place at the CMC. One thing that happened is that the role of executive general manager was created. The role was envisaged as akin to the role of a director-general in the state Public Service. The new position of executive general manager was the result of a recognition that the blended roles of chairperson and CEO, together with the narrow eligibility criteria for appointment, may result in the appointment of chairpersons who lacked experience in corporate management of complex organisations. That finding and recommendation was implemented. It was designed to accommodate as best we could the legislative strictures in the CM Act.

The review went on to suggest that many of the committees that were then in existence at the CMC did not provide any appreciable value to the functions and operations of the CMC and contributed to what was described as a lack of a sense of personal accountability for decisions within the CMC. Following the report, the commission disbanded many of the existing committees and in their place created or strengthened a number of key governance committees.

So the position of executive general manager was created, and that was intended to fulfil a high function of corporate governance within the CMC. An executive leadership group was created that comprised only the chairperson, the two assistant commissioners and the new executive general manager. The group was to meet weekly, and it does. In association with the executive leadership group, a broader management communication forum was brought into existence—it was to be chaired by the chairperson or, in his or her absence, the new executive general manager—to which a larger group of managers within the CMC should attend with a view to two-way communication on relevant management issues. That forum meets regularly.

In addition, a risk management committee was created. The CMC did not have a risk management committee until then. There were functions of risk management that were performed by what was called the executive committee that had a variety of functions, but the recommendation was made that we have specialist risk management committee headed by an external chair with expertise in risk management and we located someone who was very highly qualified, external to the CMC, to chair the risk management committee and it was brought into being. The risk management committee met regularly—I think it was every month at its commencement—and it has engaged with the various functional parts of the CMC with the brief and intention of embedding a sense of risk awareness and appropriate reporting mechanisms throughout the CMC.

The key governance bodies of the CMC, therefore, are the executive leadership group, the risk management committee and the audit committee. The audit committee is required by the CM Act. The audit committee has a number of independent members. The chair of the committee is, oddly enough, a person called Peter Dowling. He is very highly qualified.

CHAIR: Do you mean Peter Duell?

Mr Nase: No, I meant Dowling. His name is Peter Dowling, the same name as the member for Redlands. He has an am after his name and has various awards. He is a very well respected external person who guides the audit committee. In addition, there are members from the Queensland Audit Office who attend each audit committee meeting. As a part-time member, I also attend the meetings of the audit committee. Another part-time commissioner attends the meetings of the risk management committee, as does the executive manager, who attends all of the key governance committees.

The other governance committee is the budget management committee, to which I also belong. All of those committees have proper agendas and they have proper minutes. Indeed, when the commission meets the meetings are not only minuted but also recorded and the minutes are drawn up from the recording. So it is a very formal and thorough business of minuting and recording decisions that are made at the key management committees.

There is one other thing I should say. The commission also strengthened the role of the audit committee by appointing a full-time internal auditor. Until that time there was a part-time internal auditor. A full-time internal auditor was recruited, again with excellent qualifications. He works under the supervision of the audit committee on a full-time basis conducting audits. It is a pity, in a way, that he did not get around with a program of audit committees that was certified and approved by the audit committee. In due time he would have reached the information management part of the CMC.

Without going into any detail, you can see that the management of the CMC is not the invention of some lawyers who sat down. The key governance framework is a framework that was settled on after an exhaustive review of the existing governance arrangements. That is all I wanted to say very briefly about that aspect.

I do want to say that I was, like the other members of the commission, dismayed when I heard about the release of the documents. One reason I was dismayed is not only that it was not a good thing but also that the safekeeping of those records is not part of the core business of the CMC. The core business of the CMC is found in the act. Its core functions are prevention, crime prevention and misconduct. It also has statutory research functions and a witness protection function. The preservation of the documents that we produce in our work is a by-product of the work that we do. In fact, we employed 14 people to look after those documents and safe-keep them. So it was especially distressing that all of the work in our other functions is held to ransom, in a sense, by a failure in this one area and a failure by only one or two people. That causes me distress.

I am also dismayed because one of the recommendations in that report back in 2010 was that there be a review of the information management framework and systems including a review of the adequacy of the training. We carried out that review, and the structure that was put in place when these events occurred was the structure that was put in place after receiving external advice on how it should be set up. So I am dismayed for all of those reasons.

As far as the role of part-time commissioners is concerned, the obvious analogy is to a board of directors. Within the commission, considerable time has been spent on that issue: what is the precise role of part-time commissioners? The commissioner that I succeeded on the CMC was Justice Drummond who was formerly a Federal Court judge and before that the special prosecutor following Fitzgerald. He wrote an exhaustive paper which guides our understanding of what our tasks are. I am sure if the PCMC wants a copy of that paper it will most certainly be provided. Those are the comments that I wish to make by way of introduction.

CHAIR: Thank you. To pick up on your comment about the structure that had been created with the executive leadership group, the risk management committee, an audit committee—

Mr Nase: And the budget. They are the key governance bodies within the CMC and all of them work in a very formal way. They have formal agendas, they minute their proceedings and in fact we pass on to the commission the minutes of the various other bodies so that we are informed. And part-time commissioners serve on them. I serve on the audit committee and the budget committee as well as an operational committee.

CHAIR: We took evidence from Ms Mendelle in relation to the risk management committee.

Mr Nase: Yes.

CHAIR: And she advised us of a risk incident register. She produced a document titled *The 2011-12 risk incident register*, bearing in mind that in the early part of 2012 there were references to the CMC about the accessibility of very sensitive confidential information.

Mr Nase: Yes.

CHAIR: That document states—

The matters reported in the time frame range from a staff member cutting their thumb with a kitchen knife in the staff tearoom to various trips and falls on the premises to the loss of security token providing remote access to the CMC.

Why did the release of the COI documents not manage to get into the risk incident register?

Mr Nase: That was a failure. That was simply a failure to follow the existing processes.

CHAIR: All right.

Mr Nase: As I understand it, there was a clear reporting chain from information management to the executive general manager and it is unfortunate that that chain was not followed.

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CHAIR: I am assuming that the risk register, the risk management committee and that structure places an obligation on all officers at the CMC to respond and report to the risk management committee about—

Mr Nase: Yes.

CHAIR: So each of those officers, you are saying, failed—

Mr Nase: I am not saying anyone failed, but I am saying there was a failure. I am not pointing my finger at anyone in particular. I have not heard the evidence and it is not my responsibility to tell you what to do.

CHAIR: No, I am saying that if a risk register has been established and the risk management procedures have been established within the CMC, it appears more than unfortunate that not just one officer failed to alert Ms Mendelle to the risk posed by the release of the COI documentation— all of the officers who had knowledge of it, that is, Mr Duell, Mr Hutchings, Ms Wood—

Mr Nase: No, that would not be within the responsibility of Mr Hutchings or Ms Wood.

CHAIR: So you are saying that the risk management obligations do not apply to all members of the CMC?

Mr Nase: No, I am not saying that at all. You have to accept that you work within certain areas and you would expect other people would fulfil their obligations.

CHAIR: With respect, that is partly why the CMC is there, because government departments in the past have assumed or presumed that somebody else would take responsibility for a serious breach or a serious misconduct and not report it.

Mr Nase: All right. In the past—I do have quite a bit to do with the present general counsel and the general counsel before that. I think they are both active in reporting anything they perceive is a risk. I do not know whether you were on the PCMC when we had a problem with some research that was done. That was brought to the attention of the commissioners by general counsel that led to a notification to the PCMC. The PCMC asked the CMC to appoint an independent investigator and there was ultimately a whole process that was set in train. I have no doubt that general counsel, if they saw any risk, would take the appropriate action.

CHAIR: Without speaking for the rest of the committee, general counsel had the worst case of amnesia that I have seen in a well trained senior person in a corporation or a business.

Mr Nase: I only saw a part of Mr Hutchings' evidence, but I do have quite a bit to do with him and I do have a very high opinion of him. In fact, I was on the committee that appointed him. He had a very good background and he has, on a number of issues, given very good and strong advice to the commission. One particular issue—although I am not trying to give him a reference—that was quite sensitive was that of Kathryn Ellis. He gave quite strong advice to the commission as to what we should do, without me revealing what that advice was, of course. I must say I have a good opinion of him.

As to the issue about amnesia, unless there is some reason to make a note of something, you do not make a note of it and the human memory is very fallible. I was in practice all my adult life as a lawyer. I would make notes when I had to. If I knew that litigation was coming up I would open a book and I would make file notes. But apart from that, I would rely on memory. I think Mr Fox answered in a similar vein.

Mrs MILLER: Thank you for being here today and for your opening comments.

Mr Nase: It is a pleasure to be here.

Mrs MILLER: You spoke in your opening comments about the other functions of the CMC.

Mr Nase: They are the core statutory functions.

Mrs MILLER: Absolutely. I think it is of some concern to some members of this committee that this is being used like a football to try to damage the CMC's reputation in the general community. I take on board what you have said that the Official Misconduct division, the Crime division, intel and all of them are working quite well. I was just wondering whether you would like to comment on the resourcing. I know that it is probably going to be even more of a major issue in the future, given that some line departments are actually now disbanding their ethical standards units. Therefore, the CMC might even have greater demand on their time and their experience there.

Mr Nase: The CMC does its best with the resources it has. Indeed, all anticorruption agencies do that because no agency has all the money that it would like. The CMC does work under a lot of pressure. For example, in Misconduct there are four investigative teams. The teams

are multidisciplinary and really at the top of the tree as far as expertise and knowledge go. They have a load at the moment of 60 matters that they are investigating and many of them are not simple little matters. A large number of them are very complex and difficult matters. I am just giving that as an example that the whole of the CMC is operating under stress because of the workload. We will simply do our best to manage our resources as best we can. I know that some anticorruption agencies—ICAC for example—only take on a limited amount of work and select cases that they think will be high profile cases to have maximum impact within the community. I do not know, perhaps we may have to consider a similar approach and not try to do as much work. I do not know. That is one of the risks that the commission itself will have to debate into the future.

Mrs MILLER: I hope that that will never occur in Queensland given that the Fitzgerald inquiry for many people is still very much in the forefront of their minds, particularly when you bear in mind that departments are now getting rid of their ethical standards units. I am not necessarily talking about police here; I am talking about line departments. I am very concerned about the fact that the workload of the commission will increase simply because of that fact.

Mr Nase: The commission is a bit over 300 people and there are 180,000 public servants. On top of that there is the university sector among other sectors and the whole range of GOCs as well as the work that we do with organised crime, the hearings that we conduct and so forth. It means that we are stretched. We simply have to do the best we can with the resources we have.

Mrs MILLER: In conclusion, I am aware that there are stress related issues for officers out at the commission, which I understand.

Mr Nase: Earlier there was a question about recruiting. It did take some time to recruit the last chair. As the last two chairs have had health issues, partly aggravated by the stress of the role, there may be ongoing problems in recruiting people into the CMC.

Mrs MILLER: That is very much my concern as well. I have certainly heard the phrase that working at the CMC is like working in the salt mines compared to—

Mr Nase: I hope we are not as bad as that.

Mrs MILLER:—the fact that you can get to very similar levels within the main Public Service and maybe have quite a lot of support staff for you—

Mr Nase: Yes.

Mrs MILLER:—which is not necessarily the case at the CMC.

Mr Nase: Yes, that may well be true.

Mr DOWLING: Thank you, Mr Nase. How long have you been with the CMC?

Mr Nase: Since November 2008.

Mr DOWLING: So you came in at or about the time of the transfer—the files from the CMC were going across to State Archives?

Mr Nase: Yes.

Mr DOWLING: Did you have any involvement?

Mr Nase: I had no knowledge of that transfer at all.

Mr DOWLING: I am led to believe it was quite a significant event and you are telling me that as a commission when you met for a period of time—if you started in 2008, the last tranche went across in 2010—you were oblivious to it and it never came up in meetings?

Mr Nase: No, I had no knowledge; the issue was not canvassed before the commission. I assumed the decisions were made before I became a commissioner.

Mr DOWLING: But you were aware that the CMC had custody of the—

Mr Nase: No, I was not aware of that.

Mr DOWLING: When did you become aware of that?

Mr Nase: In March.

Mr DOWLING: I find it surprising, Mr Nase, that you can sit on a board and they are transferring and relocating and part of the fallout or casualty of that relocation is that you can no longer house Fitzgerald inquiry documentation and you were oblivious to it.

Mr Nase: I think that is very loaded language. I was very alert to my duties and responsibilities. I tried to explain that looking after documents is not a part of the core business of the CMC. The CMC at that time employed 14 people to look after its documents. It produces in the Brisbane

course of investigations similar sorts of documents that Fitzgerald produced, and the CMC has 14 people with a job of looking after that. It is non-contentious, it is governed by policies and all the rest of it. It is not a current issue. The issues we have are to do with organised crime and serious issues of misconduct. They are not looking after old documents.

Mr DOWLING: It was not a loaded question. I am surprised you—

Mr Nase: It sounded like a loaded question. You said I was oblivious as if I was neglectful.

Mr DOWLING: No, I said that something as significant as a relocation—you were aware that the CMC moved offices?

Mr Nase: When I arrived at the CMC it was located at the present office. I was aware it had been located elsewhere, yes.

Mr DOWLING: Nothing came up for the board? I am imagining—and maybe you can explain it to me. There are a number of commissioners sitting—

Mr Nase: You just have to understand that it was not part of our core business.

Mr DOWLING: But you managed the exceptions and you work with the chair and you—

Mr Nase: Look, I am not making myself clear. It just was not part of our core business. Looking after the old documents—there were sufficient people employed to do that. As far as we knew they had the skill and expertise to do that and that was their job and no issue was raised about it.

Mr DOWLING: Nothing ever surfaced, not even when another tranche of documents, the final documents, went across to the archives?

Mr Nase: I assumed—I was not there when that happened but I have no knowledge of it.

Mr DOWLING: The first you heard about (a) the change of the RAP, (b) the destruction of documents and (c) that your agency was responsible for the archives was early March, about three weeks ago?

Mr Nase: That is right.

Mr DOWLING: It is interesting that you have outlined a very strong case of good governance, good management, process and due diligence as part of your—

Mr Nase: Yes, I think the CMC is, to a very large extent, a model agency. Certainly, I have heard comments to that effect from the independent chairs of the audit committee.

Mr DOWLING: So you have outlined to us here this morning and can I tell you it is the first and only time we have heard any sort of testimony that actually explains that there are processes in place and good governance and proper practices all the way through the—

Mr Nase: Well, I think that is because the committee is looking at a particular incident that occurred. There were obviously failures—and serious failures—that occurred in that particular incident, but it is very often a mistake to generalise from a particular incident across to the general issues of governance that exist in a body.

Mr DOWLING: I accept that.

Mr Nase: I mean—well, I will leave it at that.

Mr DOWLING: What I do not understand and what I do not accept is that, with so many checks and balances in place, as you have outlined, in this one instance those checks and balances let the team down—

Mr Nase: Look, I do not know why information management did not report to Edith Mendelle. If that basic reporting had occurred, what happened would have been detected much earlier, I am confident. It was most unfortunate that the May disclosure was made on an informal basis—verbally—to a chairperson who had only been there for three months instead of following the clear line of authority or communication that existed.

Mr DOWLING: Well, apparently—

Mr Nase: I mean, it also distresses me that that happened, but it happened.

Mr DOWLING: But there are two lines of communications that Mr Duell works within. One is to Mendelle and one is to Martin.

Mr Nase: The chairman's door should not really be open to everyone for any reason for any reporting. I mean, it is a matter for the committee to look at in the end result, but there was a clear line of authority that was not followed.

Mr DOWLING: Well, that explains the May incidents but it does not explain the February.

Mr Nase: The September, you mean?

Mr DOWLING: No, I mean the February, when it first happened.

Mr Nase: What is the February?

Mr DOWLING: Duell sought advice from legal counsel. That advice was not forthcoming and he acted without advice.

Mr Nase: This is my understanding of what happened in February. I have seen the advice. I have seen very few documents; I have only seen about five of the documents, at the meeting in March when Mr Martin had to leave the CMC. Among the documents was advice by general counsel that said the only documents that should be disclosed were those that were already publicly available. That is pretty clear.

Mr DOWLING: But it is quite obvious that they did not know what they did not know.

Mr Nase: Well, it was their job to know. I mean, you cannot spoonfeed everyone in the world.

Mr DOWLING: No, we should not have to spoonfeed anyone. These people are allegedly highly skilled.

Mr Nase: Well, yes. As Mr Fox said, I have no doubt that Mr Duell is highly qualified and skilled, and he was well paid to do the job that he did. But it may be that he was not appropriately qualified in making the judgement that he made about the documents. I mean, I assume his expertise is in information management, not Fitzgerald documents.

Mr DOWLING: You do not see how those two are interconnected, that managing information is key to what that role is?

Mr Nase: No, no, I did not say that at all. I am sorry if I did not make myself clear. The structure in February had been set up under the advice of external consultants following the general governance review in 2010. It is unfortunate that it did not work.

Mr DOWLING: Can I put the same question to you as I put to Mr Fox.

Mr Nase: Yes, which one?

Mr DOWLING: Mrs Bell's assertion that there should be an internal inquiry as opposed to an external inquiry—

Mr Nase: Can I shortcut it and just answer. My experience of what has happened in the past with the parliamentary committee is that there is a notification made to the committee and then we wait for the committee to respond. And if it is a serious matter the committee will say, 'We think you should appoint an independent investigator,' and may even suggest the names of the investigators. And the CMC will then appoint and pay for the independent investigator to carry out the investigation. If there had been a notification, that may well have happened. I cannot say. But that is what has happened in the past.

Mr DOWLING: I am not sure you answered the question. Do you think it should have been—

Mr Nase: Perhaps I jumped in. I'm sorry.

Mr DOWLING: Should it have been an internal inquiry?

Mr Nase: Well, see, you cannot ignore the process. I mean, if the process had been followed there would have been a notification to the PCMC and I dare say the PCMC would have wanted an independent person to investigate. And that would have happened.

Mr DOWLING: Thank you. I have nothing further.

Ms TRAD: Mr Nase, can I start by thanking you for your opening comments. They were edifying and I hope that other members of the committee found them as much. Can I just ask in relation to your broader management forum. You did not say how often that met.

Mr Nase: That was supposed to meet a fortnight, but I cannot swear that in fact it meets as frequently as that.

Ms TRAD: And is that a forum which Mr Duell would attend?

Mr Nase: Yes. I have attended a meeting of it and he has been there.

Ms TRAD: And had the transfer—

Mr Nase: I mean, the CMC is not a big place and there is communication between different parts of it. It does not consist of little salt mines that are incommunicado, as it were. I mean, if there is an issue it is not difficult to raise it.

Ms TRAD: So Mr Nase, would a large project come to the broad management team for discussion?

Mr Nase: What do you mean 'a large project'?

Ms TRAD: Well, if the broad management team was in existence when the decision was made to transfer the Fitzgerald files to the Queensland State Archives, would that be an issue that would have potentially been canvassed at the broad management team?

Mr Nase: I do not know. I cannot answer the question.

Ms TRAD: Well, just in terms of the types of issues that come to the broader management team.

Mr Nase: Well, a mixture of issues that concern staff. For example, when we had to shed people various aspects of that dominated the communication forum—issues relating to the offers that were to be made to people and so forth. So those range of issues affect people, but other issues that are more mainstream work issues can be raised as well.

Ms TRAD: The external management and governance review, the 2010 external review—

Mr Nase: Was conducted by a body called Board Matters Pty Ltd.

Ms TRAD: And did they go to the issue of the oversight of the PCMC?

Mr Nase: No, they didn't. That was not part of their brief. We were looking at ourselves, not looking at you.

Ms TRAD: Sure, but in terms of reporting up, Mr Nase.

Mr Nase: Reporting up? I cannot see any problem in the reporting-up arrangements. I mean, we have a pretty strict obligation to report to the PCMC.

Ms TRAD: So do you think there was a failure last May to report to the PCMC?

Mr Nase: In hindsight there was a failure.

Ms TRAD: Thank you.

Mr Nase: But as far as Mr Martin is concerned, it depends what exactly he knew, exactly how the information was communicated to him. He did not receive a memo setting it out and he had only been in the job for three months.

Mr KRAUSE: One of the issues Mrs Bell raised earlier was about the timeliness of the CMC dealing with investigations.

Mr Nase: Yes.

Mr KRAUSE: In your time at the CMC has the commission, to your knowledge, ever made an approach to the PCMC or the government of the day seeking whatever changes are necessary to the way the CMC operates or is set up to alter the way investigations are conducted?

Mr Nase: Well, there is no need to alter the way investigations are conducted. It is a mixture of resources and—I suppose it is basically a resource issue.

Mr KRAUSE: Has there ever been an approach by the commission to the PCMC or the government to assist in that or to change the establishment of the CMC to effect that outcome?

Mr Nase: We have made approaches in relation to the proceeds of crime. In fact—

Mr KRAUSE: That was very recently, was it?

Mr Nase: Yes, that was fairly recently. We made those approaches to the present Attorney-General and he is well aware of the various issues concerning that.

Mr KRAUSE: Putting aside representations regarding resourcing, has there been any other approach?

Mr Nase: I am sure there have but I cannot pluck it out of the top of my head.

Mr KRAUSE: Has there been any approach regarding the structure of the CMC or areas of responsibility for the CMC—any approach to the government of the day or the PCMC—to alter those areas?

Mr Nase: The structure of the CM Act?

Mr KRAUSE: Yes, or the areas of responsibility of the CMC?

Mr Nase: Not to my knowledge, but I have only been there for four and a bit years. My memory is not perfect also.

Mr KRAUSE: Sure. Thank you.

CHAIR: Mr Nase, you talked about information management not being core business. You said that on a number of occasions.

Mr Nase: Yes.

CHAIR: And I can understand that perspective with the commission of inquiry documents because you inherited those, albeit that it has to be acknowledged that some of the commission of inquiry documents were the seed documents for the CJC.

Mr Nase: Yes, that is right.

CHAIR: But then you went on to say that the investigations the CMC carry out create a quantity of documents similar to a commission of inquiry. Could I put to you, then: management of those documents is part of your core business?

Mr Nase: It is a consequence of our core business. As a consequence of fulfilling our core business we end up with lots of documentation—lots of stuff that should never see the light of day.

CHAIR: Sure. It just sounded—

Mr Nase: Telephone interception is a good example. That amasses large masses of documentation. It is managed under a fairly strict statutory framework and it has to be destroyed eventually. We cannot keep that sort of material.

CHAIR: But would you hold the view that because that material is consequential to your core business its management is unimportant?

Mr Nase: No, no. I would not say that for a second. I am not saying that at all.

CHAIR: You are very well attuned to the management level of the commissioners in the CMC. Have the part-time commissioners satisfied themselves, especially in relation to this matter—that is, the changes of the RAPs, the access to the commission of inquiry documents; they have been the main focus of both the CMC and us as a committee for it seems like forever but I think it is only three weeks—that the dissemination of the Fitzgerald material was done according to a proper authority in relation to delegations? Have you and the commissioners checked out that part of the process in the last three weeks?

Mr Nase: No, we are waiting for your committee to. Although it might not seem like this, we are happy that the PCMC is conducting a formal inquiry into the issue in the hope that it can reach some fairly clear conclusions that will hopefully put the issue in a proper context.

CHAIR: Thank you.

Mr Nase: But the answer to your question is no. I think you probably have all the documents.

CHAIR: I hope we have only got copies of the documents and not the originals. In the delegations register under the Crime and Misconduct Act, delegation 25 refers to section 62 of the act and it states—

Any document, information or thing in the commission's possession may be used and dealt with in performing the commission's functions but must not otherwise be given or made available for inspection by any person without the commission's express written—

I am assuming that is 'authority'.

Mr Nase: And I thought that delegation was to the chairperson.

CHAIR: It says who holds the power—it is the commission—and who has the delegation. It is the assistant commissioner of crime, the assistant commissioner of misconduct and the chair. The instrument commenced in January 2002. The current date of the instrument is 23 February 2010 for all parties, and the conditions of that delegation are that it is limited to authorising in writing the giving of information or evidence under sections 60(1) and 60(2) of the act, limited to authorising in writing the giving of information or evidence under section 60(1) and section 60(2) of the act. My question is does that delegation allow for the redelegation of the authority to the Mr Duells and others who were given that delegation in the CMC or have they been acting outside of the power of the delegation?

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Mr Nase: I'm not in a position to answer that at the moment. I mean, that has got a clear answer, but you'd have to get a legal opinion on it, and I'm not in a position to give an off-the-cuff legal opinion on that issue.

CHAIR: But it's not something that the commission has turned its mind to?

Mr Nase: Oh well, we will, and we've looked at reorganising information management, and we've looked at various other issues, but we're still a work in progress as far as this issue is concerned.

CHAIR: Sure. Do you have any other comments to make?

Mr Nase: No.

CHAIR: You are stood down, Mr Nase. Thank you for your attendance.

STRANGE, Mr Warren, Assistant Commissioner, Misconduct, Crime and Misconduct Commission

CHAIR: Thank you, Mr Strange. You remember that you remain under oath?

Mr Strange: Yes. I was sworn last time, Madam Chair.

CHAIR: Thank you. Do you have any opening comments that you wish to make?

Mr Strange: I do have some comments, Madam Chair, that I would like to place before the committee. Essentially they're directed towards three areas: one is preliminary thoughts about what has gone wrong and has led us to where we find ourselves today and in recent weeks; some of the issues that we have at this stage, at least in a preliminary fashion, identified as requiring further consideration at the commission level; and also to make some comments about the issue of perspective of this incident in the broader scheme of the commission's work and role. I would stress that these comments are preliminary in nature. We know that your committee will report within a short time frame and these are developing thoughts on the part of the senior officers of the commission and things that we will be discussing further today at today's commission meeting.

The word 'dismay' has been used before by myself. I think Mr Martin said that. At least one of the commissioners today has expressed that view as to our attitude as to what's happened. There has been clearly and unequivocally a failure to appropriately manage the historical Fitzgerald inquiry documents. That's not a matter of argument. That's clear. It seems on the evidence as it's emerged across the last fortnight that there are a number of contributing factors. Somebody used the analogy before it's like a plane crash: there's probably not one single factor or incident of human error that caused what has happened, there are probably a number of factors. One, and going back in time, is the state of the Fitzgerald inquiry records themselves. The indications are that they are not in a detailed audited form. There were generic descriptions of document categories, a lack of accurate categorisation and organisation in the documents and some inconsistencies in the metadata descriptions and that's perhaps been a factor.

Secondly, I think the actual decision or the project to transfer the documents from the CMC to State Archives, with the benefit of hindsight of where we sit now in light of the evidence, raises some issues. One that I know has exercised the committee and which has troubled me is the metadata issue. I'm not in any way being critical of State Archives, and don't take these comments at all to be critical of State Archives, but their practices are if you give them documents they will provide access, at least in a very limited form, through the metadata in a catalogue. That seems to me to be the system; that if they hold your documents then unless you specifically request that the metadata be suppressed there will be metadata available even though the documents may be subject to all sorts of viewing restrictions. Why that wasn't appreciated in the exercise at the time of transferring these documents from the custody of CMC records to State Archives I'm unsure, but clearly it is an important issue. Secondly, on that, we know that State Archives' practices are when somebody is to inspect an available document they will make an entire box of documents available. We've found out that those documents that were requested by some of the people who had access in that window of opportunity, they were in fact given access to a much wider range of documents because a box was brought out to them. Is that an appropriate process of making available some of the very important historical records of this state? Again I have a question mark about that.

You've just spoken about the process or the decision to authorise the director of information management to be the decision maker around this. My understanding of his authorisation is that it relates to the Public Records Act, it's an authorisation that was given by the State Archivist which has since, I should add, been revoked. There were two authorisations, one to Mr Duell and one to Ms Sweeper, and they were revoked when my appointment to act as chair came into effect on 15 March. So at the moment the only decision maker can be the chair. But that decision at the time, now an historical decision, again is a factor in this: whether there was any real operational understanding or appreciation of the sensitivity of that material.

You've said much—this morning there's been evidence about the risk management practices and strategy in the commission. My view on that is that we have a very good risk management framework. We have an excellent risk management committee and we have an excellent external chair. We've taken some significant steps in that regard, particularly going back to the time when Judge Moynihan was the chair. He had a real focus on those issues. What the evidence depicts, however, is a gap between the framework on the one hand and people's understanding and compliance in practical terms with the identification and reporting of risk. And that's again a factor which I think has contributed to the present situation.

We have given preliminary thoughts to some of the issues that need to be addressed and again I would add that these are developing thoughts and in no way intended to be pre-emptive of your report, but they appear to us to be issues that require some addressing. One is the structure of the information management area. It was thought—my understanding of aligning information technology, your computing business, with your records management area, is that there is a synergy between the management of electronic and physical records all directed towards the same type of activity. I think these events require us to revisit that issue. Was there an appropriate technical understanding of the records management side of the business; can that all exist in the one senior officer; is the current structure effective in combining those two areas in a single business unit or do we need stand-alone entities that each have a direct report to the executive general manager?

In looking at our records management team, have we got the right people at the right classifications; do we have enough people in that area to ensure compliance with our obligations, the relevant legislative and information standards—I'll say a little bit more about that team shortly—what are the qualifications and experience in light of this event that's necessary to lead that team and ensure that we have no further issues of this type; and what knowledge gaps are there that need to be addressed in practical terms for staff; what are the learning and development lessons that need to be actioned? I've touched upon the issue around delegations and that authorisation going back some years. I think we need to look at our existing delegations and our processes for the issuing and maintenance of delegations and ensuring that they are at an appropriate level. It is a balancing exercise. I spoke about a balancing exercise in terms of record keeping when I was here last time and again delegations are like that area. We can't push everything up to the highest position and that's often a fairly knee-jerk risk management strategy just to lift the delegation level, but that impacts upon our capacity to get our work done and particularly those timeliness issues which are of interest always to the CMC and to the committee and to the public and all of our other stakeholders.

The issue raises some things to look at in terms of managerial responsibilities. I won't dwell on that other than to note that you've addressed this morning the direct reporting issue. Again it's a balancing exercise of empowering people who should have relevant skills and abilities to do their job and placing reliance upon them and not funnelling everything up to the two or three most senior people in the organisation. But we need to ensure that we're managing risk properly in that regard.

We need to be clear about articulating responsibility to report risks: how that's to happen and what's to be done and following up on those issues. We need to look at—I think there's perhaps some fragmentation at this stage in the corporate governance area. We need to look at centralisation of those issues to ensure that we have a common understanding of who's responsible for what and can address what issues, who's making decisions and who's reporting to whom about those issues. Everyone needs to be clear and on the same page.

We need to have a look at our records management policies and procedures and practices at a business unit and functional level and particularly around the document retention and disposal schedules in light of the shredding issue. That links to the delegations: who's making the decisions about those issues. We need to come to a longer term view about whether the holdings remain with the State Archivist and I think there is work to be done on understanding that relationship and those obligations and clarifying the arrangements and at what level do we put the decision making about future access issues and related issues.

I've spoken before about the risk management arrangements, the culture and the practices as opposed to the framework. My sense of this is—this incident—I've used the word in recent days that it blindsided us. We deal with issues of considerable risk in our operational work. Witness protection is an obvious example. Twenty-four hours a day, seven days a week they manage very significant risks and they have an impeccable record. The operational areas, misconduct and crime, manage significant risks all of the time in terms of how we handle human sources, how we handle investigative strategies, how we handle very sensitive information. All those areas do generate records and our records management and IT people have always looked after those records. They've maintained continuity of property and records underpinning all of our operational areas and I do have a view that in those operational areas the record keeping is excellent. In my current role acting as chair I've had significant exposure to the crime side of the organisation, which I normally don't in my role as Assistant Commissioner, Misconduct, and their process around the committee of—the crime reference committee, the decisions that they make to accept referrals and investigations is extremely well documented, frequently subjected to challenge in the Supreme Court and in recent times usually withstands such challenges on the basis of their record keeping.

So those issues for me go to perhaps putting what's happened in a proper perspective. The records in issue here were historical ones rather than ones that related to current operational matters and I do think that was a factor in terms of what's happened here and the attention that was given to them. As I've said, my view around the operational side of record keeping is that it is very robust, there are good practices. The records and the practices are audited regularly by the Parliamentary Commissioner who on occasion has identified minor issues, but I'm not in recent years aware of any major concerns that have been brought to light by way of that audit process.

As I have said, what has happened was a failure to appropriately manage these documents. Beyond that—which we admit—I think a sense of perspective must be retained in relation to the good work that the commission does and the many good results that it continues, through the efforts of its staff, to achieve. What has happened here, as I have said, is a cause of great dismay to us, but I would ask that the committee keeps in perspective the considerably impressive results that the commission has achieved in recent years and the good practices that it adopts in the majority or, I would say, all of the other areas beyond this.

CHAIR: Thank you very much. Peter, do you have any questions?

Mr WELLINGTON: No, I'm fine thanks, Liz.

CHAIR: I have a couple of issues. I understand your comment back to me in relation to this delegation that Mr Duell and Ms Sweeper exercised, the delegation under the Public Records Act. I would still ask for clarification from you whether they had the power within the CMC, under the CM Act, to actually exercise that delegation, albeit you are saying that externally it is under the records act, but internally do they have that delegation?

Mr Strange: They don't have the dissemination authority under—you mentioned section 62 and the two limbs of section 60. My understanding, without having the register in front of me, is that that is with the chair and it is with the two assistant commissioners and there are limits, I know, upon what I can authorise the dissemination of in relation to misconduct, but perhaps not other areas of the CMC. I think there are some legal issues, perhaps, as to the interplay between that delegation and the public records authority, which I have not fully worked through at this stage.

CHAIR: Thank you. Mr Strange, there are two other requests that I have. There has been reference made to the Jameson report. I would like you, if you could, to provide the committee with the copy of that and the status of that report, whether it was created in confidence or not. Also, Ms Mendelle was going to provide us with a folder that she referred to here. We would need both of those documents today, to allow time for us to take any information out for the purposes of our reporting.

Mr Strange: Right. The Jameson report: I know there will be staff listening to this who can put that in place while we are talking here. I'm not sure—I couldn't tell you without looking at the work reports—whether that was provided to a previous committee. I think it may have been certainly spoken about, but we can obtain a new copy and ensure that that gets to you today.

CHAIR: I will allow for the secretariat to liaise with the CMC if there is material that we have not yet received.

Mr Strange: I am not aware of the folder of documents that Ms Mendelle had and what you're specifically seeking there. I presume she is, so—

CHAIR: Thank you. Can I just say in closing, and thank you for your participation, that the committee appreciates the perspective of all the commissioners, both collectively and separately. We have certainly enjoyed your perspectives during our joint meetings. We also accept that the work of the CMC is critical to crime, misconduct and integrity issues throughout the state. I would be disappointed if you walked away thinking that we did not appreciate the work that was done in that area. As I said, we value the commissioners' perspectives, both collectively and separately.

We do recognise that this is one event in the organisation's operations, but it is an event that indicates areas for review and, if it is necessary, re-establishment, for want of a better word. It could be that change will be needed within the CMC and, indeed, it could be that change will be needed in the operation of the PCMC. As a committee, we must remain open to both of those options and opportunities when it comes to reporting.

Whilst the committee has had to endeavour to digest a lot of information in a very short period, we recognise that the CMC has been asked to provide a lot of information in a very short time. We appreciate that and hope that you can appreciate our need for asking for that information, often with very little time and with what seems to be onerous demands.

Mr Strange: I understand that, Madam Chair. It is probably appropriate that I place on the record my thanks and that of the commissioners for the efforts of CMC staff, particularly people like Mr Cliff Horwood, the IT manager, the efforts they have made to comply with those many requests. They have simply worked around the clock, at times, to ensure that your requests have been met in as timely a fashion as possible.

CHAIR: Because of our reporting timelines, if there are any additional comments that you or the commissioners would wish to make, we would like that by close of business today. I apologise; that is short. However, we have obligations in relation to drafting a report, with Easter in the middle as well. Again, I thank the CMC. I thank the commissioners. I thank all of the staff here, Hansard and all who have contributed to this hearing. I thank the committee too and declare the hearing closed.

Committee adjourned at 1.05 pm