PARLIAMENTARY COMMITTEE FOR CRIMINAL JUSTICE

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THREE YEARLY REVIEW OF THE CRIMINAL JUSTICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

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TUESDAY, 23 AUGUST 1994
Brisbane

WITNESSES

The Committee resumed at 10.01 a.m.

The CHAIRMAN: I reconvene this public hearing of the Parliamentary Criminal Justice Committee. Before I do, I acknowledge the presence of the previous parliamentary committee chairman, the inaugural parliamentary committee chairman, Mr Peter Beattie. This public hearing, as I said yesterday, is being held pursuant to section 118 of the Criminal Justice Act 1989-93 and under section 118 of the Criminal Justice Act 1989-93, the Parliamentary Criminal Justice Committee is obliged to conduct a three-yearly review of the operations of the Criminal Justice Commission. In due course, the Committee will report the results of this review to the Legislative Assembly. The Committee's report on reviewing the operations of the Criminal Justice Commission will involve an objective and comprehensive analysis of the full scope of the CJC's activities and functions.

The first witness that we have this morning is Mr Peter MacDonald, manager of policy and development for and on behalf of the State Council of the Queensland Justices and Community Legal Officers Association.

The CHAIRMAN: Mr MacDonald, we are not swearing witnesses, as I noted in my introductory comments yesterday, but obviously you are obliged to answer the questions truthfully and honestly as it is a proceeding of the Parliament. The other rules which I outlined yesterday apply to these proceedings. I will say specifically that I remind members of the public that in accordance with Standing Order 200 of the Legislative Assembly Standing Rules and Orders, strangers, that is, the public, may be admitted or excluded at the pleasure of the Committee. I trust that those present will respect the Committee's intention that witnesses be permitted to present their evidence without interruption and these proceedings should not be confused with a public forum.

With those opening comments, Mr MacDonald, you have made a submission to the Parliamentary Committee in relation to the three-yearly review. What we want to do today on behalf of your constituency is to give you the opportunity to speak to that submission and also to answer any questions that the Committee may have. So firstly, would you like to speak to your submission?

Mr MacDonald: Thank you, Mr Chairman, for the opportunity to address the Committee. As you are aware, the QJA's formal submission deals with two specifics and they are proposals to your Committee for what we call the restoration of the political integrity of the CJC. We do not in any way stand back from those two propositions, one being that your Committee should look at the possibility of asking Parliament to impose, through amendments to the Criminal Justice Act, a requirement upon the CJC which mirrors the requirements of the Queensland Electoral Act to provide the people, who are the constituency of the entire Parliament, with a basis for strong belief in the integrity of the CJC. Our second proposition was that you as a Committee should invite Parliament again to consider amending the Criminal Justice Act to enable you, on behalf of the broad constituency of Queenslanders, to end the Star Chamber approach, which is quite dramatically admitted and confessed by the CJC in its voluminous submission to this hearing. We believe that those two active propositions should, in fact, only be the beginning of a process which should basically be aimed at winding back the enormous power and intrusiveness into Queensland of the CJC.

I briefly wish to refer to the NCA submission, which appears in the papers attracted by this inquiry. I wonder whether any of us can afford to take such a submission seriously because could we expect the NCA to take any other view? Of course, it supports the continuance of the CJC because to do otherwise is to allow itself to accept the fact that one day, the NCA itself might be forced by a similar process, as is occurring now, to accept change to its structure and its charter. I wonder should we take so seriously an attitudinal expression by the NCA, particularly when it makes much of the intelligence-gathering process in which it is involved with the CJC, yet it could not gather enough intelligence to forewarn it about the attack on its own office in Adelaide earlier this year.

We think that the Queensland Council for Civil Liberties makes a very telling point. In Australia, we have in every State and Territory no fewer than five policing agencies in addition to the local police force. I refer you to page five of the Council for Civil Liberties' submission. Mr Chairman, we believe we have been mightily conned in this country—conned into accepting and paying for layers of policing that may well be unique in the world. The problem is they are self-

perpetuating. Also, they are to all intent and purpose unaccountable. They are secretive, competitive and, on a results basis, it might well be said that they are useless.

Four years since it began, the CJC—if you look at its 322-page submission to this investigation—is still trying to define itself, is still trying to define its place, and it is certainly still trying to define its value. We are asked as a community—and you as a committee representing the community—to accept rather broad and sweeping statements by the CJC in its own defence. We do not accept that position, and we think that this investigation is very much overdue. We wish you the very best in looking at the nitty-gritty and the realities of a nation allegedly free and democratic that is bringing upon itself such a mass of weight of policing and unaccountable activity such as appears within the operations of the CJC.

Unlike virtually any other new bureaucracy, the CJC seems to have lived up to all expectations. I suggest to you that an early fear was that the CJC would become just another policing layer. I suggest to you also that it has; it has lived up to that expectation. Another early fear was that the CJC would become selective about what it wants to investigate. It certainly has, and the evidence is legend for that. Another early fear was that the CJC would provide politicians with a cover to avoid their responsibilities and their political promises. It has, and the perfect example is the present Attorney-General, who for years has fobbed off his personal promise of 1989 for a Queensland miscarriage of justice unit by saying that it is the CJC's job. Apparently, the CJC is not so sure, and now has a most unenviable record of reviewing cases of miscarriage of justice. The record of the CJC's capabilities in this regard, I think, speaks for itself.

As recently as late 1993, a royal commission in the UK—and this is referred to by the Queensland Council for Civil Liberties—recommended a miscarriage of justice unit separate from any existing law enforcement agency in the UK. Do we suggest that in Australia, with its vast array of other policing agencies, we are unique and we do not need what has been found through a royal commission in England to be very vital in that part of the world from which our original attitudes and basis of justice emanated?

Another early fear was that the CJC would threaten natural justice and threaten something that is very little considered today, the rule of law. Now, it should not be necessary for me to explain the rule of law to any learned Committee members, but I will take that presumption. The rule of law means that every citizen, regardless of race, creed, colour, or any other condition, will be recognised as being equal within the eyes of the law. We submit that too much evidence of disregard for the rule of law exists to allow any citizen to be satisfied with the CJC. You can find your own examples readily enough. You might start with pages 2 and 3 of the Criminal Law Association submission to this hearing. We submit that every closed inquiry by the CJC constitutes a breach of the fundamental rule of law and thereby constitutes an officially sanctioned threat to the basic rights of every citizen.

For evidence of the remarkable picture of the CJC operating in secret, please refer to page 57 of the CJC's submission to this hearing. That page and the following page of self-justification by the CJC are, in our submission, a grave aspect of serious concern to our society. In many ways, the interest of the QJA in the CJC has developed very quickly and strongly in recent times as a result of the QJA's association with Queensland whistleblowers. The political system in this State is dancing around the issue of whistleblowing, and it looks as if it is dancing in totally the wrong way. But the CJC is in deep and dangerous waters on this issue. The CJC has no basis whatsoever for self-congratulations in regard to whistleblowing and whistleblowers.

In its 322-page submission to this hearing, the CJC makes only two references to the whole social phenomenon of whistleblowing. Yet it was the father of the CJC, Mr Tony Fitzgerald, QC, who elevated whistleblowers, at least in the public sector, to remarkable prominence with these words from the 1989 Fitzgerald report—

> "Honest public officials are the major potential source of the information needed to reduce public maladministration and corruption. They will continue to be unwilling to come forward until they are confident that they will not be prejudiced."

They are prejudiced in this State today and they are further prejudiced by the attitude, activities and insensitivity of the CJC. Basically, on its record, the CJC cannot be trusted with the serious issues of public concern that are embodied in the whole issue of whistleblowing.

I seek leave to table two letters and two replies from the QJA to the Queensland Chief Justice. The first is dated 20 July 1994, and the reply from the Chief Justice to the QJA is dated 22 July 1994. Also, a letter from QJA to the Chief Justice is dated 21 July 1994, and an acknowledgment from the Chief Justice is dated 22 July 1994. These letters relate to a quite extraordinary appointment on 14 July 1994 of a person to the magistracy of Queensland when that person was, and remain's, a subject of two incomplete matters—an incomplete Senate select committee inquiry and a Queensland police fraud squad investigation.

The CJC connection is simple and easy to follow. The CJC employed Queensland's latest magistrate last year as a contract case reviewer. The case involved is one of the most serious whistleblower cases brought to light in this State. It is a case that strikes at the absolute heart of the whole rationale for the existence of the CJC. I seek leave to table also a copy of the statutory declaration relating to this matter. It is declaration under the hand of a Mr Kevin Lindeberg of Brisbane. The declaration is dated 22 August 1994. What hope is there for whistleblowers?

The CHAIRMAN: Mr MacDonald, you have asked for leave to table those documents. I would like to review the documents before we actually receive them as a committee. On the surface of it, it sounds like they are okay, but the Committee has a policy of not allowing any material to be tabled that is defamatory. So we would like to review those and, as long as they are in order, we will table them.

Mr MacDonald: Excuse me, Mr Chairman, I am recovering from a bout of the flu.

The CHAIRMAN: As they from the Chief Justice and from the QJA to the Chief Justice, it sounds like they will be okay, but I would like the opportunity to review them first.

Mr MacDonald: We ask the question: what hope is there for whistleblowers under the CJC when not one of at least 100 documented whistleblower cases, some involving the most serious forms of corruption and perversion of justice—and all since 1990 in Queensland—has been resolved? Not one whistleblower with experience of the CJC will go back to the Commission willingly.

Additionally, I seek leave to table a copy of the most recent edition of the QJA members' journal. There are two articles on page 7 of this edition that we seek to draw to the attention of the Committee.

The CHAIRMAN: Leave is granted.

Mr MacDonald: I am going to cut my statement a little short, because of the state of my throat. I repeat the statements made at the outset that we believe that the two propositions we put formally to your Committee should be just the beginning of a determined and serious process to begin to wind back the $20m monster overlaying policing and justice in this State that we call the CJC.

We could well be taken to task for the fact that in our formal submission we draw attention to an article in our journal in November of 1993, when we suggested that people should be warning the State Government to get its hands off the CJC. We fully admit that at that time we were not in possession of many of the facts that we now face, along with the rest of Queensland, in regard to the actions and attitudes of the CJC in its operations. We therefore make our statement clearly and repeatedly: it is time to begin to wind back the CJC and its pervasive power within our justice system. There are unquestionably other areas of the justice system which require exactly the sort of attention that this Committee is giving now to the CJC, but none of those other areas of the justice system requires the looking over the shoulder that now takes place because of the CJC's involvement virtually in anything that it elects to involve itself in.

The CJC has had time to do its primary post-Fitzgerald task. Mr Le Grand of the CJC claims—and I would draw your attention to the *Courier-Mail* of 9 March 1994, page 1—that the CJC has cleaned up police corruption. He did prevaricate a little, but only a little, and certainly left the impression that he was meaning to leave, and that was that the CJC has cleaned up corruption in the police force. I ask: where does Mr Le Grand live and hide his head? One has only to talk to any police officer anywhere in Queensland to be told that corruption continues to exist in the force. They will concede with great pride that the endemic, systemic corruption which led to the gaoling of former commissioner Lewis is no longer part of the police culture; but they laugh at any suggestion that corruption has been eradicated from the police force. It would be an unwise individual or citizen to accept such a sweeping and insupportable statement by Mr Le

Grand. It is that sort of grandstanding, permitted by a compliant media, that gives people the wrong impression and causes the great confusion that exists in the community about whether the CJC is doing its job or whether it is trying to pinch other policing agencies' jobs and then take credit for it.

We have to stop the CJC's duplication of crime data development. We have the NCA, we have the Institute of Criminology, we have the AFP and we have other agencies, all well resourced with taxpayers' money. Why do we need the CJC overlaying it? As an example of the CJC's own concern about the legitimacy of its operations, surely we should look at the enormous hullabaloo the CJC makes—with again a compliant, willing media, an unquestioning media—about its work in crime statistical reporting, modelling and all of the other processes involved in its criminal intelligence gathering networks.

We should give the job of intelligence gathering in relation to crime back to a better resourced police force. That is where it belongs—certainly not in another Queensland parochial arm of organisations such as the NCA, the Institute of Criminology and the AFP. We should stop the Star Chamber, secret CJC inquiries that strike at the most basic rights and freedoms of our society. I do not know about you and your Committee colleagues, Mr Chairman, but I find it personally fearful every time I hear of another secret inquiry in this nation, and the people running the most at the moment certainly would appear, on their own admission, to be the CJC—and to what advantage to the policing of crime in our nation? I do not believe they can point to one advantage, but we can point as citizens to the destruction of one of our basic human rights.

We have to give the people a go. We have to make Parliament more responsible for the CJC. The people can get a crack at politicians every three years. No-one can get a crack at the CJC—at least not, in our opinion, a fair crack at it. The dollars saved in scaling back the CJC should be poured into police resources, which any operational officer will tell you are desperately needed. We criticise the police for not making our homes and our businesses safe. We have underresourced the police because of the fear of the police generated by the findings of the Fitzgerald corruption inquiry. But we are five years down track from that. There is a new police culture.

The CJC has played partly its role in rooting out and prosecuting corrupt police officers. It is time for us to get back to the basics of making sure that our police force, our Police Service, functions the way it should and has its own internal checks and balances, which seem to be working in most other democracies in the world, but we seem to need—or at least, if we take the CJC's view—the CJC to act as the mother of all policing agencies to keep us all safe in our beds at night. It is rubbish; it is pure, manufactured hype.

We in the QJA have had some experience of bureaucracy going over the top. We do not doubt the sincerity and the integrity of the CJC's Commissioners or the senior career staff such as Mr Le Grand. But on our experience they are out of touch with the real world. We believe they do not know what is happening at street level in this State. We do not believe Queenslanders should be paying $20m a year for career royal commission officers to keep building castles in the air out at Coronation Drive or anywhere else. It is time that we got out of the reaction mould of 1989 and got back to the basics of making the State work, saving some money where it should be saved and putting it to where it can be best used. I thank you very much for the opportunity to make this address.

The CHAIRMAN: Thanks very much for that comprehensive address. Now I would throw it open to the Committee to ask any questions that they may have. Before we proceed, could I just advise that those documents have now been received and tabled.

Mr MacDonald: Thank you very much. No-one has taken the copy of our journal.

Dr WATSON: I think we all have copies of that. May I follow up on the issues you have raised with respect to the two specific proposals you put forward? I presume specifically they are the ones on page 6 of your written submission.

Mr MacDonald: Indeed.

Dr WATSON: With the first one, I ask: what sorts of criteria do you believe might be acceptable for being able to undertake closed inquiries? You have recommended that closed inquiries by the CJC be undertaken only with specific, case-by-case authority of the PCJC. I was wondering what sorts of criteria you might be thinking about. Secondly, one of the things that has

been put forward to the Committee in other areas is that the PCJC should issue policy guidelines that would have to be complied with by the CJC. I was wondering whether or not you would see that as a way of allowing the CJC to continue to hold those inquiries, but under the auspices of strict policy guidelines issued by the Committee?

Mr MacDonald: No. Firstly, the only criteria that we could suggest—and bear in mind that I am not a lawyer and I do not represent the legal profession—could be reasonable is the strongest possible evidence that to hold such an inquiry would prejudice the outcome of a serious criminal case. Because if you are not satisfied with the holding of an inquiry in a reasonable manner protecting the rights of individuals in our society, then you are agreeing to go along with the continued frustration of those rights. So, either the CJC or any other agency can establish to the satisfaction of a group such as this that to do other than hold a secret inquiry would prejudice the outcome of a serious community criminal process, you cannot go along with it. Because to us we are fiddling at the edges, and what we are losing in this country while we fiddle at the edges—and we do not blame just politicians, the whole community has a responsibility in this area—but while we are fiddling at the edges of issues, basic human rights in this country are going down the tube. Now, I think I have made a reasonable statement to support that in my opening remarks.

Dr WATSON: I am not quite sure I heard you correctly or whether you said it correctly. In this submission you say "a requirement that closed inquiries by the CJC may be undertaken". The argument you seem to be going along now is that open inquiries were a problem. Are you arguing that open inquiries are——

Mr MacDonald: No. It is my fault, I am not expressing myself properly.

The CHAIRMAN: In your address you argued against closed inquiries, as I understood it.

Dr WATSON: Just a moment ago it seemed like you were arguing the opposite.

Mr MacDonald: We do not believe that there is any case for closed inquiries—Star Chamber inquiries—in this country except while you have got the Criminal Justice Act as it exists. We believe that to make that workable with a view to preserving the fundamental rights at law of citizens, you have to take a responsibility. That is why we suggest your Committee has to take the responsibility. You will decide, and not on the basis of some code of conduct that you might whack together over a sabbatical weekend at Kooralbyn—I am not suggesting that you would—but according to your honest beliefs around the table with the CJC arguing its point of view.

Dr WATSON: But the argument against open inquiries as against royal commissions is that they have the capacity to destroy individuals because of the openness of the inquiry. They have the capacity to destroy reputations and destroy individuals because they are given privilege, etc. Even though later on in an inquiry there may be other evidence to come up to support that individual, it is too late. An argument for closed inquiries is that it actually protects the individual rights of the people who are perhaps being accused.

Mr MacDonald: I do not think it works that way. We could spend all day arguing it. Our attitude—I reflect the attitude of my State councillors—is that we are more concerned about the predilection of organisations such as the CJC towards Star Chamber inquiries than we are concerned about the matter that you have just raised. Some of us take a less urgent view about the matter you have raised because some of us have been through these things and we have found that at the end of the day we still had whatever integrity we had at the beginning. So the open inquiries to us are not nearly the concern of this Star Chamber approach that we find so worrying. It is a drift in our community, if you like, that worries the hell out of us. Now, we say it should be your Committee because, as I said in the introductory remarks, we can have a go at you people—it does not matter what party you represent, the people have to vote; you have to let us vote every three years; we have a chance to have a go at you—but what does the ordinary citizen do if he has a beef against the CJC? I mean the ordinary citizen. Some of us have had the opportunity of being able to work in the rarefied atmosphere of politics and business; we can find our way through it, but ordinary people out there who do not immediately get a Legal Aid lawyer who tells them the truth, they can have a lot of difficulty accessing justice at the very lowest level of the justice system. We say we should be able to get at you people; you should be responsible for the decisions that allow the CJC at any time to go ahead with the Star Chamber approach. Does that help you understand our position?

Dr WATSON: I just wanted to hear what you had to say on that.

Mr BRISKEY: While we are on closed hearings, could I ask a couple of questions please? Could I refer you to pages 57 and 58 of the report? Have you got that there in front of you? I have a copy for you here. It makes it a lot easier. Look at the last sentence on page 57. That paragraph goes on on page 58 to outline the reasons of the CJC for having closed hearings. Could we just go through that? I would like your comment on some of those reasons. It states—

> "The Commission determined that a closed hearing was necessary in the public interest to prevent premature disclosure which may have prejudiced the Commission's continuing investigation and alerted certain people involved in the conduct in question to issues that had yet to be investigated."

What about that reason for having closed hearings?

Mr MacDonald: What does this relate to?

Mr BRISKEY: To closed hearings.

Mr BARTON: Particularly dealings with organised crime.

Mr MacDonald: No specific hearing?

Mr BRISKEY: No, just a reason for having closed hearings, preventing premature disclosure and prejudicing continuing investigations. Is that a fair reason to have closed hearings?

Mr MacDonald: The problem as we see it is that that is just an excuse to continue the imbalance of closed versus open hearings that the CJC admits to in its submission to this Committee and, as I said to Dr Watson, we fear the increasing incidence and use of the closed hearing process as we fear it as an attack on the basics of our justice system. We therefore do not accept that in such a bald context. If it were related to specific cases—and I guess the CJC certainly did not feel it could—then you might find that we have to come to that point of view in regard to that issue, which is why we are saying that you should make the decision on behalf of the people of Queensland because we do not think that, on its record and on its lack of results, the CJC can be trusted to just go along willy-nilly, having I think it is something like six times the number of closed hearings versus open hearings.

Mr BRISKEY: So your submission states that the PCJC should look at every case that the CJC handles and decide whether there should be a closed or open hearing?

Mr MacDonald: Every case in which the CJC seeks a closed hearing.

Mr BARTON: Could I follow that up a little bit? What would your view be if they were about something we could probably all easily identify, such as organised crime? Do you have any difficulty with there being closed hearings around their job at least at this point in time of following up organised crime?

Mr MacDonald: Yes, I do, sir. I am not an expert in organised crime, but I do not think the CJC is either. We have expertise in this country, and they are mentioned particularly by the Queensland Council for Civil Liberties in its submission. In regard to organised crime—our position is that there is a lot of hype about organised crime and very little action that we as the people of the State can see. Now, why cannot the CJC conduct itself in accordance with basic rules of justice, and I go back to the rule of law? Why cannot the CJC be obliged to conduct itself in that manner, just as all of those other agencies, and particularly our police forces, are obliged to? When was there ever enough evidence of a mass of intrusive and debilitating organised crime in this country to warrant granting the CJC, or for that matter any other agency, carte blanche against the basic rights of the individual at law and in front of the justice system? You and I may never know because—well, you will because you are on this Committee, but I certainly will not. I may never know the sort of issues and evidence that the CJC could put before you as a Committee to encourage you to agree that they should have a closed hearing about some certain aspect of this alleged—and until proven it is alleged—organised criminal activity. But it gets back to our argument that you should be making the decision. We have got a problem with the CJC's power today, the exercise of it and any suggestion from the community which you represent that the CJC should go on its merry way. We say you should be beginning the process of winding back the massive bureaucracy that we overlaid on policing in Queensland as a reasonable response to the Fitzgerald inquiry.

Mr BARTON: Could I follow that a little further? It is a question of trying to find that right balance between police powers—whether it is the Police Service, the CJC, the AFP, the NCA or any other agency—and civil liberties. I think your members would agree that there is a great deal of concern about crime in the community; but do you believe that the Queensland Police Service could adequately handle the organised crime issues that are currently followed through by the CJC?

Mr MacDonald: Yes, if you resource the police force, yes.

Mr BARTON: To follow that through further: would they need the intrusive powers that the CJC has to be able to follow through the organised crime issues?

Mr MacDonald: No, and certainly not a Star Chamber capacity. We would never propose that that be granted to a standing police force.

Mr BARTON: Or the requirement to answer questions?

Mr MacDonald: No, nor the requirement to answer questions. Let's face it: if you have the evidence, you can put the people before a reasonable, structured justice system in the open and have them obliged to answer the questions. This attitude—and I am not suggesting it is yours, Mr Barton—but this attitude creeping into our society of giving enormous unaccountable authority to a group of individuals, whether they be the CJC Commissioners or my State council or the local authority, we believe that is a very dangerous drift in our society—dangerous particularly when we are looking at facts such as the information super highway. Even the gurus coming out of Silicon Valley today admit that they have not any idea how they are going to control—how we as a society globally are going to control the information super highway. You will be able to steal material off that super highway if you can afford a PC and a modem. I know we do not have to place the CJC's operations in the same context as a global super highway of information, but you have to bear in mind the society we are heading towards in the twenty-first century.

Our submission is that you have to ask yourself: do we want to go down the road of more and more layers of policing and the intrusive authorities such as you have mentioned? We say no, we do not. We are losing enough basic human rights now. We also say that you cannot look at these things in isolation from the whole dilemma of the legal system and access to justice in this nation. It is a tragedy and, to some extent, a shame upon us in late twentieth century Australia that access to justice is denied to the most needy in our society. It is a fact. We think you have to look at things like the CJC—creatures like the CJC—not in isolation from that context.

Mr BRISKEY: What would you say then to the argument that worldwide we are losing the battle against organised crime and that we need some force with some special powers to fight that organised crime and to keep it under control in Australia?

Mr MacDonald: I would say two things to you. Firstly, I am not an expert. I hesitate to venture a firm opinion. But I will venture this one from my own personal reading. I believe one of the serious problems that the world faces in regard to potentially losing the battle against organised crime is the totally unnecessary competition between law enforcement agencies. The AFP in Australia hate every State police force. Every State police force in Australia hates the AFP. All the State police forces think the NCA is a load of rubbish. The NCA has no capacity to deal effectively through and with State police forces.

If you want to take the United States for example—what a hell of a mess with their elected Sheriffs Departments, the FBI, the CIA and anything else you want to lay over it. The Star Chambers of allegedly political inquiries in that place have been watching the development of organised crime in central and South America through the drug cartels for 50 years. What have they achieved? Absolutely and utterly nothing. I think one of the problems is that you have so many layers of police enforcement that they are fighting with each other, they are frustrating each other, and they are certainly—and I believe it can be proven, because in my reading I have come across it—they are certainly keeping from each other vital information that could help with investigations and criminal charges.

Mr BRISKEY: So what you are saying is that the criminals are organised and the law enforcement agencies are not?

Mr MacDonald: You did not need me to say that, but thanks for the opportunity.

Mr BRISKEY: So we need law enforcement organisations which are organised to fight the organised criminals?

Mr MacDonald: Yes.

Mr BRISKEY: The CJC would seem to be working well with the Queensland Police Service on joint organised task forces with the NCA and other police forces in Australia. If they can get their act together, does that help the fight against organised crime?

Mr MacDonald: I am sure it would, but we do not believe they are going to get their act together. We believe that they have already fallen into the trap of being just another competitive layer.

Mr BRISKEY: What I am suggesting is that they have shown us on a number of occasions that they have got their act together with those other law enforcement organisations and have become organised to fight organised crime. On a number of occasions they have had quite successful operations going on with other criminal agencies or law enforcement agencies in Australia.

Mr MacDonald: Yes.

Mr BRISKEY: That is a beginning. Then the more organised our law enforcement organisations in Australia can get, the better they will be able to fight organised crime which does not look at State boundaries or even international boundaries.

Mr MacDonald: How much time, how much money and, more importantly, how much of our basic human civil rights are we prepared to give to enable that sort of organisation to come to fruition when we hamstring it with the enormous number of layers?

Mr BRISKEY: That is the balance that we as a society have to draw, is it not, or make: just how much of our own rights to give away to fight something that is worldwide and is a real and ever-increasing problem?

Mr MacDonald: Yes. I would just like to take you up on one situation. You have the benefit of being the PCJC and being party to—privy to—information from the CJC about its work that will not ever become public. But I would bet that if you went across to wherever he is being held now, former Commissioner, former Knight of the Realm, Terry Lewis, would be able to give you instances where his corrupt force in the mid/late eighties was working very well with other Australian agencies on specific crime activities.

I do not know what I am really putting in front of you except to say that we have to be extraordinarily careful in our society not to go that step further just because the CJC or the NCA or the Federal Attorney-General's research department tells us to. We have to take some personal views and stand up for them, particularly when there is clear evidence of an intrusion into our basic rights as human beings. We pay all the bills. We have to have some rights left at the end of the day.

Organised crime exists. You and I know that. It exists a couple of blocks from here, because if you talk to the police about Fortitude Valley—I have not talked to the CJC about it—if you talk to the police about Fortitude Valley, it certainly is an eye-opener and quite fearful for an ordinary citizen such as myself. You will have other information. You might have gone through the pain barrier in regard to just what organised crime exists around us. But we fear that we are just taking a knee-jerk reaction five years after the fact—five years after Fitzgerald told us basically in framework what we should do in Queensland. We reckon we have done it. You reckon politically you have done it; you have made the political reforms that were recommended by Fitzgerald. The reason why so many Queenslanders beat the old Joh gerrymander and put Labor into power was because you were going to make those changes. I refer you to some of my opening statements in regard to the CJC. Four years since they started, they are still trying to define themselves, they are still trying to find out where their place is and they are still doing everything they can to justify themselves. That is a rather worrying situation, in our submission.

I realise that I am probably taking up more time than you would like. We think that it is time to start winding them back and looking to post-post-Fitzgerald, when we will put our trust back into a properly resourced, safe police force that is going to serve us the way police forces have done since they were organised.

The CHAIRMAN: Mr MacDonald, can I follow up with a couple of questions? You have said a couple of times, probably three times, that it is time to start winding them back. Do you have any suggestions? Where would you start?

Mr MacDonald: Firstly, we say wind them back by taking away their Star Chamber capacity. Give it to yourselves; take on that rather onerous task. I have explained why. We certainly believe that you should adopt the principles of the Electoral Act and get political integrity into the CJC—at least as a perception by the people who pay the bills, because it will be disputed, certainly by the CJC and perhaps by some on this Committee.

I have had the privilege for 10 years now of working amongst justices of the peace. I have attended hundreds upon hundreds of meetings. I have literally talked with thousands of JPs. It sounds like a political campaign speech, I know, but it is not. That is the basis under which we are able to make such firm assertions without a huge backlog of evidence about the perception of the CJC in its marketplace. So we say take on the job of being the buffer between a CJC that is bent on a Star Chamber approach—it has proven that in its own submission to this Committee. Secondly, introduce political integrity in a very simple way, because if it can work in the Electoral Commission, there is no reason why it cannot work in the CJC. Thirdly, we seriously suggest to you that there is no need for the CJC to have, and be funding with taxpayer funds, its growing crime data collection research program. Why can it not be linking in, as our police force has to, with all the other databanks around the country? Why can we not use the CJC to end this competition between layers of law enforcement? We believe that the CJC should not be involved in so much field work. Should not the CJC be in the driver's seat for police investigations, rather than being the total managers of such an operation? I am losing my way. That is how I can answer you at this stage.

The CHAIRMAN: As a result of what you just said, I have a second question. Commissioner O'Sullivan was here yesterday. You probably read the media reports this morning, which reasonably accurately reflect what he said to us in a prepared statement yesterday—that he is extremely supportive of the CJC and argued strongly for its retention. Bearing in mind the comments that he as the Commissioner of Police has made, how would you reconcile those with the comments that you have just made.

Mr MacDonald: I certainly do not seek to demean the Commissioner.

The CHAIRMAN: Given his history with the commission of inquiry, flowing right through——

Mr MacDonald: Given his history, given his position, given the position of trust that he holds with obvious good right, I would suggest to you that it is not unlikely that a Commissioner at this stage in the history of the Queensland police force would be likely to say that he is quite comfortable with the layer of protection for his administration of the Police Service that may be found in the CJC. I think in different times that Mr O'Sullivan might have come here and said to you that he does not need the CJC, but he may not be ready to say that in the political climate, in the climate of the Police Service at the moment, but he would have to answer for himself.

I am reflecting to you a view that has been considered and put together by my State council of very ordinary citizens who also happen to be statutory office holders within the legal system of the State. It is a view borne also of all those meetings and talks that I mentioned earlier. I am coming from a different place than Mr O'Sullivan. I respect his position and his management of the Police Service.

I will make this comment—if he talked to a lot more of his ordinary police operational officers, he might find that he has a serious problem of overgoverning, overmanagement of the police force itself to date. That has been a direct response to what the Fitzgerald inquiry produced. I would not care to be Mr O'Sullivan at the moment. I would have liked to have been either the Commissioner before Lewis or the Commissioner two from now, when the police force will be a totally different animal than what it was and what is has been in these last few years. I respect what he says. I do not think it is terribly unlikely that he would come in this present climate and say that yes, he is comfortable with the buffer zone that the CJC provides for him. He can flick a lot of the problems in the police force to the CJC. That is putting a bald attitude on it.

The CHAIRMAN: I appreciate your frankness. Mr Lester?

Mr LESTER: Obviously, we have to have law enforcement agencies and we have to have effective ones; there is no doubt about that. However, I cannot help thinking that now we are losing a lot of business in Australia because we seem to have organisations in addition to our justice system, such as those that relate to anti-discrimination. We have the Bill of Rights, the Human Rights Commission, equal opportunities commissions and various others. There is a Business Surveillance Authority that seems to be literally expanding at an incredible rate. All of those bodies are expanding extraordinarily and people can lodge the most insignificant complaints. I have had a couple of examples in my electorate where one particular organisation and ordinary people—people on football committees and others—have been held to ransom. I wonder what all this is doing for our society. Should we reapproach it? Do you have any suggestions as to how on earth we can come back to a little bit of commonsense in some of these things and get real criminals, and not have somebody that says something about somebody put to the same scrutiny?

Mr MacDonald: I am absolutely staggered, on your past record, Mr Lester, that you would intrude the slightest element of politics into this discussion.

Mr LESTER: Politics? It is people who are upset.

Mr MacDonald: Let me say that, whether some of your colleagues like it or not, you are in fact reflecting a very, very firm view in much of the community. I did not go into it; it is not the place. You have opened up the issue. We are saying to you that something like the CJC and, in fact, the CJC in Queensland, has become one of those multiple layers upon our society which is, in fact, inhibiting our rights as citizens. As to anti-discrimination, human rights and the Equal Opportunity Commission and so on, all I know is that in the cases I have had any involvement with, they do not work unless you are a particular privileged member of our society, and that does not include women.

I believe that the issue for us today is the question of whether we want the CJC, which in our opinion was never given—in the view of Commissioner Fitzgerald and in the view of Queenslanders of the day—the CJC was never given an absolute, unfettered life. The view that abounded in this State in those days, apart from those of us who were naive enough to be surprised at the levels to which corruption could be traced—the view that abounded was we would go with Fitzgerald to clean it up but then we will get back to the basics of living in Queensland, what we saw as Queensland. What we have got to today is a continuance of the quite reasonable reaction but in a different circumstance five years later. It is an overreaction. We are not allowing that the police force has been cleaned up in any way. We are not allowing that which we can put into place, through new managers such as Mr O'Sullivan, a new regime and a new culture in our police force, not to mention the fact that all these five years since Fitzgerald we have been upgrading the training and the ethics training of police as they come through the academy. We are denying all that and allowing the CJC to convince us that it is absolutely essential five years down the track that we have exactly the animal that we formed to clean up the problems of the moment and that we need to continue their quite extraordinary power. Our attitude, Mr Lester and other people on the Committee is, "No." It is time to say, at the simple level of the CJC, "We need another look at it." I know you will say that you are doing that but I am not sure that that is what you set out to do. We are suggesting that that should be the top of your agenda. This is, in fact, the beginning of getting back to a more simplistic approach—a more trusting approach, perhaps—but we would suggest to you that the evidence says that we should not be any more trusting of the CJC, the way it operates and the powers it has and, to some extent, we believe the powers it abuses. We should not be looking any more trustingly towards the CJC today than we did towards the Queensland Police Service of 1985-86.

In regard to the others, Mr Lester, we as a society are going to come to an accounting, a pure, dammed financial accounting and politics will have nothing to do with it. This country is now living on the backs of too few productive citizens. The figures say it all. It has nothing to do with politics. That is the fact of this country. We cannot, as a country with so few people, so few productive people, maintain the wonderful life we have had. Some of us believe we should be setting out to maintain that for the children we have and the grandchildren—"Why should they get less than we had?" But they are going to. They do today than we had if you grew up, as some of us, in the Hugh Lunn era of the fifties. We are bequeathing less of a country to our children. Do we have to stay on this path of denying more and more civil rights, of paying more and more money to govern ourselves?

The CHAIRMAN: Thank you, Mr MacDonald. Are there any further questions? We are starting to run a fair bit behind time.

Mr TURNER: I have just one question, or statement. In a sense, I take it that you are saying that the CJC as an ongoing type of royal commission is virtually answerable to no-one and voted in by no-one. You seem to have some concern, and some of the community at large have it as well, that the CJC as times can and do use their powers to achieve the results that they seek.

The CHAIRMAN: Do you want a "Yes" or "No"?

Mr MacDonald: Do you want a "Yes", or "No", or a "Maybe", because you are beginning to put words in my mouth.

Mr TURNER: I did not try to do that.

Mr MacDonald: Do you want the lolly back, or are we still friends? The situation is that we are convinced that the CJC deliberately or otherwise—and I said we do not doubt the integrity of the individual Commissioners and the career people who run it like Mr Le Grand, and I am only mentioning Mr Le Grand because I saw the newspaper cutting of his statement from March so his name is fixed in my head; I know there are others out there—we do not doubt their personal and professional integrity but we believe that the whole animal called the CJC is overpowered—over empowered, I should say—that it is no longer specifically relevant to the Queensland culture five years after the bringing down of the Fitzgerald report and that there is very worrying evidence brought by the identified whistleblowers of Queensland that the CJC cannot be relied upon to act with integrity in all of its investigations and its activities.

I caution you as a Committee—very presumptuous of me, but I caution you as a Committee—not to take lightly the question of whistleblowing, the phenomenon of whistleblowing in this State at the moment. If you afford yourselves the opportunity of looking at evidence provided by whistleblowers, as honourable individuals you must come to a similar grave concern as we have come to in the QJA. The bottom line, Mr Turner—the CJC is not accountable enough and we suggest that the first step should be that it is accountable to you before it conducts one more secret inquiry of any kind.

The CHAIRMAN: Mrs Bird?

Mrs BIRD: Just one point of clarification, Mr MacDonald; you fly to the protection of Mark Le Grand, the Commissioners and the directors of the CJC, but at the same time criticise the CJC. Who is the "CJC", as you constantly refer to?

Mr MacDonald: I could, of course, throw the question back at you and be rude, but I shall not. I do not know who the CJC is because I do not know who makes the daily decisions which end up with some of the debacles that we can point to from evidence provided by whistleblowers—at least by whistleblowers. I do not know how the CJC functions on a daily basis, nor do I believe that the CJC has a working operational plan that is effective. I do not fly to the defence of Mr Le Grand and the Commissioners. I just will not use their tactics on this occasion to try to destroy people whose integrity I have no basis to impugn. I am saying to you that even a creature like the CJC as a total can be staffed and filled by the best meaning, and the people of the greatest integrity, but things go wrong in any system and when that system is overempowered by the Criminal Justice Act, it will use those powers. You, as a member of Parliament, will use any powers granted to you. I would, as a citizen, use any powers granted to me. In our submission, we are talking about restoring citizens' rights, which is a form of power, I guess.

You asked whether I can identify who runs the CJC. No, I cannot. How often does the Commission meet and how detailed are the issues that the Commission goes over? This Committee is getting down to some nitty-gritty in its investigation, but I could not expect—and I would not expect—that the commissioners of the CJC at every meeting get down to the nitty-gritty of cases before the CJC. There has to be a flow factor. There has to be a management process. You have it with your Committee. I have it in my own little office.

My work in the QJA is run by my elected council of 10 people. I maintain a constant flow of contact and feedback with that group. But if I had a 20-member council and half the staff I have now, I would never be able to maintain that, so I would probably quite rightly be accused of manipulating the organisation. I have been in the past, but that is another point.

The CJC has 230-odd people on staff. I do not know how they clock in every morning. I do not know what briefing meetings are held. I do not know the levels to which the Commission is briefed on a current, active investigation. You would really have to ask the commissioners. We do not doubt that there are good people in the CJC. We believe it has too much power. Human beings will exercise whatever power they are given and they will sneak a bit more. We saw that in the Queensland Police Service. You can see it anywhere you like.

Corruption includes the attendant at Parliament House who takes home a half a ream of paper so that his children can enjoy some drawing. You know that as well as I do, and I do not know where you draw the line in attacking it.

The CHAIRMAN: Mr MacDonald, we are way over time, but we appreciate your comprehensive verbal submission, your written submission, and your preparedness to answer without notice quite a number of questions from the Committee. Once again, thank you very much for your time and your presentation.

Mr MacDonald: I thank you all. You have a hell of a job. We wish you well with it.

MARGARET HARVEY, examined:

CYRELL JAN, examined:

ERIC THORNE, examined:

The CHAIRMAN: The next group represented is the Whistleblowers Action Group. Mr Thorne, would you like to speak to your submission and then take any questions from members of the Committee?

Mr Thorne: Certainly, Mr Chairman. Firstly, I would like to thank you and your Committee for inviting the Whistleblowers Action Group (Qld) Inc to be present at this hearing. I would also like to apologise on behalf of Mr Colin Dillon, our president, who unfortunately is not able to be present today.

Cyrell Jan, from the University Queensland is the research coordinator of the Queensland whistleblowers study. She is also the resource coordinator for WAG, and she has interviewed well over 100 whistleblowers and thus has first-hand knowledge of their day-to-day experiences.

On the other hand, Mrs Harvey is a whistleblower in her own right and she can testify to her own experiences should your Committee so desire. I am a former town and shire clerk. I have been lecturing in local government, holding the position at one point as the head of program, in the School of Management at the University of Southern Queensland. I, too, am a whistleblower in my own right, having had several experiences with the Criminal Justice Commission.

In 1992, I was asked by the central Queensland branch of the Institute of Municipal Management to deliver a paper on local government and the CJC. I did circulate a copy of that paper to all members of the PCJC on 7 May 1993. I thank you all for sending us the copies of the various submissions made, although I understand from others that we did not receive all of the copies. It is regrettable that, because we only received these copies on Thursday last, we were unable to go through with a fine-point pen, so to speak, to study these submissions in detail. Had more time been available, we believe that we could have provided more beneficial information to your Committee.

I realise that time is of the essence. However, because of developments, it is essential that I brief the Committee so that you are better able to be aware of some of the many problems that we see. As I mentioned, WAG originated from research conducted by the University of Queensland. WAG is also an incorporated association and has been in existence for over 12 months. The first research report has been produced by Dr Bill De Maria, which I would like to table and have incorporated in the record of proceedings.

The CHAIRMAN: I don't know that we can incorporate it in *Hansard*, but we can certainly receive it.

Mr Thorne: Thank you very much, Mr Chairman. The submission by WAG on 16 June demonstrates that in the areas in which we are vitally concerned—that is, official misconduct and whistleblowing—we submit that the CJC has failed miserably. It has used a very broad brush in its reports and in its submission to you and to your Committee, to such an extent that we would argue that the information contained therein is misleading.

The WAG membership is firmly of the belief that the CJC cannot be trusted in its dealings with whistleblowers. I would like to table also a statutory declaration made by one of our members to the effect that a tape in the possession of the CJC has, in fact, been tampered with whilst it has been in its possession. Let me just give another example now of the point that I made regarding misleading——

The CHAIRMAN: I would like to have the opportunity to review that before it is received and tabled. Proceed please, Mr Thorne.

Mr Thorne: In relation to this point that I want to make about the misleading reporting, in pages 70 to 72 of the CJC submission to your Committee great emphasis has been placed on the Whistleblowers Support Program. However, nowhere in this submission does the Commission indicate to you or to the public that this program consists of only one person—the manager. There is absolutely no way that one person can discharge all of the duties and functions listed in the CJC's submission either effectively or efficiently, or for that matter any one of them.

WAG admits that it has been very critical of the CJC in this regard, and it does not resile from that position. To give some balance to what has taken place between the CJC and the

Commission in respect of the whistleblowers program, I will table eight letters that have passed between the Commission and WAG on that matter.

The CHAIRMAN: That is fine. The Committee will receive those.

Mr Thorne: The objectivity of the CJC must come under question with the language used in its submission when referring to WAG. The CJC carefully ignores the fact that WAG is an incorporated association. Another conclusion that can be drawn from the language used—intemperate language, I might add—is that it does not take too kindly to constructive criticism. This is a very serious matter when one appreciates that the Commission is exercising royal commission powers on a day-to-day basis.

The CJC in its annual report as well as in its current submission to your Committee has endeavoured to demonstrate its concerns and its successes for its protection of whistleblowers. I refer, of course, to the leading case of the shire clerk of the Whitsunday Shire Council. Again, I am suggesting to you that what is not contained in that report and submission is of greater significance than that which actually has been reported. For instance, has the CJC fully investigated the wrongdoing reported by the shire clerk? What has been the outcome of those investigations? Has anybody been charged? As the shire clerk has been under a statutory obligation to report these wrongdoings to the CJC, she has incurred major financial outlays as a direct consequence of the legal obligations placed upon her by the Parliament of Queensland and also whilst acting in the public interest. What action has the CJC taken to ensure that those large personal outlays have been reimbursed to that shire clerk?

The CHAIRMAN: What you are presenting to us now, is that on behalf of this particular whistleblower?

Mr Thorne: No, it is not, but the CJC has raised this as its success story. WAG believes that the evidence that we have is significant to disprove that the CJC is efficient or effective in the area of protection of whistleblowers.

The CHAIRMAN: I will allow you to proceed and just mention that the Criminal Justice Commission will be addressing the Committee this afternoon. They are in attendance here, and I guess they will put their side of the story if they wish to do so.

Mr Thorne: I have no doubt that they will, but we will still stand by what we are saying. The question is asked: has the CJC required the local authority concerned to reimburse the shire clerk not only for the legal expenses but also for the medical expenses, which have been very, very heavy? If not, why not? Has the CJC taken the necessary precautions to ensure that the future career prospects of this whistleblower have not been permanently impaired, as we know has been the case in other situations? What action, if any, has been taken against the persons who initiated the reprisals against this person, who was merely doing her duty?

When compared with another case—and I refer to it as the Kirby case—it would appear that the CJC is being very discriminatory in which job it elects to protect. The question needs to be asked: if the CJC were discharging its obligations in accordance with the spirit of the legislation, it would have made recommendations to your Committee to have the Act amended to change the onus of proof as distinct from forcing the onus of proof back onto the whistleblower, who has statutory obligations. WAG respectfully submits that the maintenance of the Whitsunday shire clerk's current position has more to do with the 1994 council elections than with the CJC's success. But what happens in the 1997 elections? The council could change, and it is realistic to suggest that the next council may not be too sympathetic to this clerk. What then? We believe that the only success that the CJC has had in this area has been in getting a Minister of the Crown to do his duty. Really, one must question whether that is a noteworthy accomplishment.

I now ask that further letters be incorporated, because they demonstrate the inconsistencies of the CJC. Firstly, there are two letters, one dated 20 December 1991 and another dated 13 April 1992. The first letter indicates that the CJC has no——

The CHAIRMAN: Could you identify the letters—from whom to whom?

Mr Thorne: The letter dated 20 December 1991 is to the Executive Committee, Griffith University Student Representative Council from the CJC. The letter dated 13 April 1992 is to Mrs Harvey from the Commission. In the first letter, the Commission indicates that it had no jurisdiction to investigate certain matters. In the second letter, it indicates that it has investigated those matters complained of. I also would like to table a letter that I referred to earlier. It is a letter from

the Criminal Justice Commission to Mr Kirby dated 25 February 1994, where WAG is of the opinion that the CJC has been somewhat selective in which job it protects and the need to change the legislation. There are three other letters that I would like to table.

The CHAIRMAN: Just identify them, please.

Mr Thorne: The first letter is dated 23 October 1991 from the Criminal Justice Commission to myself in regard to a certain matter, which I will refer to in a moment. The second is a letter from the CJC to myself dated 17 June 1991 indicating the outcomes of certain aspects of a complaint. The third is a letter of the CJC dated 4 December 1991 to Mr J. D. Bell, the Chairman of the Miriam Vale Shire Council, which indicates the outcomes of an investigation made into myself. I want to refer to a couple of those matters, because they demonstrate the fact that the CJC does not really know what is going on within its own organisation.

In one particular letter, that of 17 June 1991, the Commission actually said that, as a result of a complaint lodged by me, having discussed the matter with an officer of the Auditor-General, there was official misconduct. The CJC reported in that letter that, having investigated the matter, there was no official misconduct. When being pushed in a verbal conversation between a senior officer of the CJC and myself, that officer admitted that there was in fact official misconduct, but because the evidence was difficult to substantiate in a court of law, they decided to take no action. I submit that that is a deliberate lie on behalf of the Commission.

In regard to the third letter, dated 4 December 1991, that was the outcome of a CJC investigator—and because I am under privilege here, I will name the person—Inspector John Joyce, who issued a royal invitation to a police inspector to issue a summons against a council employee, when the police had previously indicated that there was no substance to that complaint. As a result of that royal invitation—and John Joyce told me that it was in fact a royal invitation—they did issue a summons complaint against that person. When the case came on for hearing at the District Court, the Crown Prosecutor decided not to proceed, because there was no way that it could be substantiated.

The CHAIRMAN: I would like to clear that up. Are you speaking on behalf of Mr Joyce?

Mr Thorne: No, I am saying that Inspector John Joyce told me that he had issued certain words of advice to a senior member of the Queensland police force and, as a result, the Queensland police force did something that it was not prepared to do simply because it was not prepared to be investigated by the Commission. This flies completely in the face of a recent letter to the paper by the Chairman of the Commission, which says that they do not operate in that way. There is clear-cut evidence that they did operate in that way.

The WAG membership has great concerns about the operation of the CJC. The perceptions gleaned by whistleblowers is that the CJC is not politically independent. This perception has resulted from the fact that potential conflicts of interest have not been recognised, as in the closed investigation of the foxtail palm affair. It has also arisen in the Heiner inquiry case, both of which are referred to in WAG's submission. This particular case is well documented and clearly establishes prima facie cases of official wrongdoing.

In so far as whistleblowers are concerned, it is essential that they know that the body to whom they are making a complaint has no bias of any description. That body must have a totally open mind on the subjects, otherwise it will not attract the confidence of whistleblowers, and the whole concept of the Commission will be neutralised because whistleblowers will not be prepared to go to that body.

The manner in which whistleblowers have been treated and the lack of trust whistleblowers have in the Commission, based solely on their personal experiences, the fact that any whistleblowing support program conducted by the Commission cannot be successful simply because of the problems of the organisational structure and functions of the Commission, the lack of job protection given by the CJC to whistleblowers, including its inability to protect future careers—and at this point I can say that one of our members now has hard data to indicate that he has been black-listed. Due to the inherent conflict between investigation of complaints and special needs required by whistleblowers, the Commission is not the appropriate body in the opinion of the WAG membership to implement any proposed whistleblowing protection legislation that the Parliament may introduce.

The Commission is handing over much of its investigatory function to other bodies which, given the circumstances, WAG believes is totally inappropriate, and that point can be elaborated on later. In so far as the Lindeberg case is concerned, WAG believes that this is a litmus test of the integrity and of the political impartiality of the CJC. To date, WAG submits that they have failed. Cyrell has a few points that she would like to add from her personal experiences.

Ms Jan: In my capacity as both researcher with both the Queensland whistleblowers study and as resource coordinator with the Whistleblower Action Group, I have interviewed over 100 whistleblowers and their families. I have asked many of them what they think about the CJC's newly established whistleblowers support program. This is what they tell me—"I don't want counselling, I want my job back"; "I don't need a psychologist, I need my legal fees paid"; "I don't want counselling, I want justice". What whistleblowers want from the CJC is simply that it does the job it was set up to do. They want proper investigation of their complaints. They want to see justice done in the public interest. They want the wrongdoing to be remedied and the wrongdoers brought to account. They want to know that, if they expose wrongdoing in the public interest, their job will be secure, or at least that their career will be protected from black-listing. They want assurance that, if they have to go through the legal system in order to bring the wrongdoer to justice or to secure redress for the reprisals that they have suffered, they will not personally be liable for exorbitant legal expenses. They want to know that they will not have to defend themselves in court through having been denied legal aid. Finally, they want to be treated with dignity and respect and not summoned for an interview with only an hour's notice when they are on holiday and then subjected to a lengthy interview, as has happened to Margaret. For some whistleblowers that interview is more like a Gestapo-type interrogation, as happened to Eric.

What whistleblowers really want from the CJC is very simple. They want honesty to prevail and corruption to be eliminated, and this is precisely what the CJC was designed to provide. Whistleblowers complain to me continually about the CJC. They complain about the inexplicable delays, the inaction, the quashing of investigation into their complaints. They complain about the lame excuses for the resulting inaction, such as the discovery that a case which has been under CJC investigation for months is now suddenly regarded as being outside CJC jurisdiction. They complain about the investigation being turned back upon themselves so that in the eyes of the CJC the whistleblower has suddenly become the one with the problem, as has happened to Margaret.

It is true that whistleblowers do need counselling because they are truly suffering, but the reason their lives have fallen apart is because the CJC has fallen down on its job. If the investigations had been conducted in a proper manner, many whistleblowers would be walking tall, their self-esteem intact and no need for counselling. Having the CJC offer counselling to whistleblowers is like an arsonist bringing a bucket to the raging fire he himself has lit. Whistleblowers are more likely to seek the support they need from somebody or some organisation which understands not only what they are suffering but also what has caused that suffering. But how can you really offer counselling to someone for the shock they suffer when they finally realise that our legal system does not provide justice, that our investigatory bodies do not investigate properly, that our anti-corruption agencies do not fight corruption, even when the evidence is placed before them? How can you mitigate the suffering of honest workers who simply believed they were doing their job and then they are regarded with suspicion and treated as though they are the wrongdoer? How do you counsel for the grief whistleblowers feel when they discover that they do not live in a democracy, that they cannot even speak the truth without fear of reprisal?

The Queensland whistleblower study reveals that only 25 per cent of our sample of Queensland public service whistleblowers actually bothered to take their complaint to the CJC. When I ask them why, they tell me it is because they do not believe the CJC will provide them protection. Of that small number who did go to the CJC with their allegations, only a very few felt that the CJC had been effective in dealing with their disclosures. You have a copy of our research report No. 1. I refer you to page 32. Only 22 people of our sample actually went to the CJC and of those, only four believed the CJC had been effective in dealing with their complaint. That is a very small percentage.

I would like now to tell you the story of one of our local government whistleblowers. He exposed corruption within a local shire council and lost his job for his trouble. He went to the CJC with his allegations, which included significant breaches of building regulations. After a delay of

three and a half months, during which he heard nothing, the CJC finally responded that the matter had been investigated and had been found to be of little significance, warranting no further investigation. During the following six months, this whistleblower provided additional information to the CJC. Twelve months later, the CJC is apparently still "investigating the matter", although the whistleblower has heard nothing. On the Queensland whistleblower study questionnaire he rated the CJC as not only totally ineffective in dealing with his disclosure but also as totally unconcerned in its attitude to his allegations.

In his submission to the Senate select committee on public interest whistleblowing in March of this year, this whistleblower reported that he had in fact received "protection" from the CJC. However, that protection was an offer to relocate his family to a sheep station in outback Queensland. He asked what he had done to deserve this protection, or was it punishment? He told me what he really wanted was an income.

When I first interviewed this whistleblower a year ago, he was already in dire financial straits and in a very bad way emotionally. His family life was in tatters. A year later, he still has not been able to find employment, in spite of being highly skilled and in spite of having applied for dozens of jobs all over the country for which he was eminently suited and highly qualified. He now finally has proof that he is being black-listed by his former employer. He told me just a few days ago that he was going to leave his family because he felt as though he was on the verge of killing someone and he would prefer it was not one of them. Had the CJC properly investigated this whistleblower's case and given him the career protection he needed, he and his family would still be together. I will now hand over to Margaret Harvey who has had personal experience of the CJC as a whistleblower.

Ms Harvey: Thank you, Mr Chairman and Committee members. I wish to support the statements made by Cyrell and Eric. My own personal experience with the CJC has resulted in my having no faith in their integrity or in their ability to discharge the obligations placed upon them by Parliament. In my case, I was told that the CJC had jurisdiction to investigate a complaint. They encouraged me to provide them with information. As a law-abiding citizen, I felt that I was compelled to do that. Some three months later, and after providing the Commission with all the information that they sought, I was then told that they had no jurisdiction to investigate the matter. From information given to me, I believe that they did have the jurisdiction. This has created a quandary, because CJC officers themselves did not appear to know whether they did have the jurisdiction or they did not have the jurisdiction. That is stated in some of the letters that have been tabled before you.

I still believe that the CJC did have the jurisdiction to investigate this matter, and I cannot understand why they did not carry out their investigations themselves instead of passing it over to somebody else. I believe that if they had investigated the matter that was complained of themselves it would have only taken one person perhaps to look into it; there would have been a certain amount of authority that went with that investigation, and things would not have turned out the way that they did. But I felt, as a law-abiding citizen, that I was compelled to comply with any request that the CJC made of me and, in so doing, I found myself then being the meat in the sandwich. I was employed to do a job. I was trying to do that job. I was also trying to do anything that I was asked to do by the CJC.

Finally, I found myself being the target of the CJC's investigations. Rather than me assisting the CJC, I then found that I was the one that was being investigated, and I just do not think that that is good enough. So, Mr Commissioner and Committee members, that is all I can say to you so far as my case is concerned, but I know that I am No. 1 amongst many other whistleblowers who have suffered the same sort of actions from the CJC's hands. Thank you.

The CHAIRMAN: You said that you were told that the CJC had the jurisdiction to investigate?

Ms Harvey: That is correct.

The CHAIRMAN: This involved yourself. So do you work for a unit of public administration or, to put it another way, do you work for a State Government body?

Ms Harvey: I do not work for a State Government body. I believed it was a unit of public administration, and I am still at a loss to know why it was not, because it was covered under an

Act of Parliament, and the organisation that I worked for was a statute of that Act of Parliament. Not being a lawyer, I am afraid I cannot understand why it was not covered.

The CHAIRMAN: The CJC has the opportunity to respond this afternoon to any matters that arise during the course of the day; so undoubtedly they will respond and explain why they did have not jurisdiction. Is there anything else before we proceed to questions, Mr Thorne?

Mr Thorne: No, Mr Chairman, we are open to any questions you or your members may care to ask.

The CHAIRMAN: I have one. I think you said, Eric, that the CJC is not the appropriate body for overseeing or being in control of—I cannot remember the exact words—the whistleblower protection legislation that is currently proposed. What, in your view, would be the appropriate body to oversee that legislation?

Mr Thorne: WAG has given this a lot of consideration. We have also heard what the Honourable Vince Lester just asked of the previous person. We are very cognisant of that. Given that the Parliament of Queensland is a unicameral organisation as distinct from a bicameral situation, we have been forced to the conclusion that we need a model that is similar to, for instance, the Queensland Building Services Authority, which will be independent and also, as a separate arm, has a tribunal. Now, we are being forced to that conclusion simply because we believe that the power of Parliament is, in fact, not able to be operated in the manner in which it ought to be simply because of the fact that it lacks the bicameral system where checks and balances could flow and, because of that lack, we need these layers of bureaucracy which we are not terribly happy with. But we certainly want an organisation that is independent and separate from the investigatory body, because on one hand you cannot have an investigatory body that is then charged with protection, especially given the track record of the CJC. We are currently working in more detail on such a model and how it can be funded and the mechanisms and this type of thing.

The CHAIRMAN: Members of the Committee?

Mr BARTON: What was the statutory body you were employed by?

Ms Harvey: It was the Griffith University Students Representative Council. Griffith University was set up after an Act of Parliament, and the SRC, as it is colloquially known, is statute 2.9 of that Act.

Mr BARTON: That is the Student Representative Council?

Ms Harvey: That is correct.

Mr BARTON: You indicated that it was your belief that you had become the person being investigated?

Ms Harvey: Yes.

Mr BARTON: Can you give me an example of what sort of steps were taken that led you to that belief?

Ms Harvey: Inevitably, I lost my job. I am not laying all of that at the doorstep of the CJC; I just want to make that quite clear. I do not think it helped one bit; but, in the course of losing my job, I complained back to the Criminal Justice Commission. I eventually received a letter from the Criminal Justice Commission virtually saying that it was my own fault that I had lost my job.

I would like to just explain, if I may, to you, Mr Barton, that when the investigations by the Criminal Justice Commission were taking place, I was actually told by the chairperson of this organisation that I worked for that I was not to obey the Criminal Justice Commission, that I was to obey the executive of this organisation and that the Criminal Justice Commission had no jurisdiction to actually investigate. I then took that hypothesis back to the Criminal Justice Commission officer that I had been dealing with, and he said, "Don't we have the jurisdiction? Hell, you get off this phone", he said, "and I will ring you back in five minutes' time." He said, "I will show you how much jurisdiction we have got." He actually directed the university to do what he had recommended that I do.

The quandary to me is that that executive actually put in their student newspaper, the *Graffiti*, the fact that they had been investigated by the CJC and cleared. It was quoted to me by that chairperson that the CJC had no jurisdiction. But the CJC did not write a letter and inform the

executive of that organisation of the fact that they had no jurisdiction until 20 December 1991, which was almost three months after they had made these allegations to me that the CJC had no jurisdiction to investigate. Upon the executive receiving that information—and I do not know where it came from—they acted then as if they were above the law completely, that there was no-one who could touch them. I think that was a very sad situation.

Mr BARTON: When you say "they" acted above the law, do you mean your previous employer?

Ms Harvey: Yes, the executive of my previous employer. I think that is a very sad situation, because there were a lot of students' funds involved—there is in any student organisation. For one student organisation to frame the opinion that they are above the law, I think it is quite possible that all student organisations throughout Queensland could then take the same view.

Mr BARTON: Could I come back to the action that the CJC took that you believe disadvantaged you? It is more a question of them exposing to your previous employer the fact that you had been to them without being able to back you up; is that what disadvantaged you?

Ms Harvey: I think what disadvantaged me in the first place is the fact that the CJC did not do their own investigation. They left it to the internal auditor at Griffith University. I had already reported matters to the internal auditor at the Griffith University three months beforehand and nothing had been done. There had been no investigation.

The CHAIRMAN: I take it that the CJC will probably respond this afternoon to this particular matter that you are raising with the Committee. But I am fairly confident in saying that they do not have jurisdiction over a student union.

Ms Harvey: They do not have jurisdiction, Mr Chairman?

The CHAIRMAN: I do not think so. I will not say that definitively. I will allow the CJC to respond to that this afternoon.

Mr Thorne: In that case, why did they indicate in that April letter that was tabled that they had investigated the matter? I will leave that to your Committee.

The CHAIRMAN: We will leave that to this afternoon when the CJC responds. Any other matters that you want to raise with the Committee you could do by correspondence and we will endeavour to get answers for you. Are there any further questions?

Dr WATSON: Ms Jan, I will ask you a question because it is a concern. I would like to know whether you have any ideas, in the final analysis, as to how to ensure that someone's future career is not jeopardised in any way. I understand the arguments that you put forward and what people feel—they want to make sure that their career is not interrupted. If they lose their job, for their own self esteem and other reasons they want to make sure that they actually have a job and a permanent income. In my own mind I have some difficulty as to how the Legislature, in the long run—going down the track— can ensure that it does not jeopardise someone's future career?

Ms Jan: Whistleblowers tend to discover that there is a pattern of rejection of their application for jobs, which has a fairly common thread in all of them, that is, they go to the interview and they appear to be well received until their references are checked up on. All of a sudden, they are no longer in the running for the job. When this happens to whistleblowers over and over and over again, they become very suspicious. We have now just reached the point where the one whistleblower that we referred to earlier has proof that he has been black-listed. This black listing by previous employers in the whistleblowing workplace is something that whistleblowers suspect happens to them all the time, because they have such trouble getting back into the workplace. Whistleblowers, by and large, are highly experienced, highly skilled, middle-management-status employees; they are not lower-status employees at all. These people should not find it difficult to get back into the workforce. The fact that they do, the fact that they remain long-term unemployed, continually following this same pattern of getting to the point of the interview, getting to the point where the previous references are called upon and then all of a sudden they are no longer in the running, certainly looks as though black listing is alive and well in these people's careers. How that pattern can be legislatively changed is a matter for the Parliaments.

Dr WATSON: I understand that. I am trying to get a handle on what you see may be a solution. The Legislature cannot force somebody to employ somebody. It cannot force somebody to disregard information that is presented to them. That is the difficulty I face. I understand the problem. I am extremely sympathetic to the problem. I do not know what the practical solution is.

Mr Thorne: Perhaps, Mr Chairman, and Dr Watson——

Dr WATSON: I did read your paper and I thought it was quite good.

Mr Thorne: Thank you very much. It was not of my normal high standard, however.

If action was taken by the CJC immediately on any form of reprisals of which there are documented cases throughout this whistleblower study, that would make the employers realise that they need to change their attitude. Whistleblowing, or the symptom of systematic corruption, is really a management problem when all is said and done. I do not believe that we are looking at it from that perspective, which is something that WAG has been examining for quite some time.

I acknowledge the practical problem that you have raised. I would suggest that the burden of proof should be on the employer that any dismissal is not, in fact, connected to the whistleblowing activity; whereas, at the present time, the poor old employee has to try to mount some form of action for which he is not equipped—he does not have the financial resources against an organisation that has. I believe that legislation indicating that where a whistleblower has hard documentary evidence down the track that he has been black-listed that that be made a serious offence. In the case of the particular whistleblower to whom we are referring, he now has that documentary evidence. He is not prepared to take it to the CJC simply because of his own experiences with the CJC.

First of all, action should be taken against those effecting the reprisals immediately. Secondly, the onus of proof should changed to the employer to demonstrate that any termination of employment or suspension has absolutely nothing to do with that. We should look at the standard of that proof that is needed. Thirdly, legislation needs to be introduced that when hard data can be produced down the track then that is an offence. Apart from that, especially with that latter one, I acknowledge that it is very difficult.

Dr WATSON: In relation to the chairperson of Griffith University, what year was that?

Ms Harvey: 1991.

Dr WATSON: Who was that?

Ms Harvey: The chairperson was Mr Steve Mitchell.

The CHAIRMAN: Any further questions? If not, on behalf of the Committee, Mr Thorne, Ms Jan and Ms Harvey, I would like to thank you very much for the time that you have put into forwarding your submission to us in the written form, the verbal presentations that the three of you have given us and answering the questions from the Committee. Thank you.

Mr Thorne: Thank you.

ROBERT McDONALD, examined:

The CHAIRMAN: Mr McDonald, could you identify yourself and the organisation that you represent.

Mr McDonald: My name is Robert McDonald. I am currently the national President of the Institute of Internal Auditors of Australia.

The CHAIRMAN: The Queensland branch of the Institute of Internal Auditors' submission to the Committee is dated 19 July 1994. We would like to give you the opportunity to speak to that submission and take any questions that the Committee may have. Would you like to speak to the submission of the Institute of Internal Auditors?

Mr McDonald: Yes, thank you very much. I would like to give you a little background on the institute itself. The Institute of Internal Auditors is a worldwide organisation. There are in excess of 150 chapters throughout the world and in excess of 50 000 members. Within Australia, we are represented as a national institute with seven branches made up of Queensland, New South Wales, Canberra, Victoria, Tasmania, South Australia, Western Australia. The Northern Territory interests are looked after by South Australia. Papua New Guinea members are looked after by the Queensland branch. The institute provides a qualification by examination, which is an international qualification titled Certified Internal Auditor. Why they ever gave it the initials "CIA", though, I am not sure.

The institute also has a set of standards for the professional practice of internal auditing, which can be provided to the Committee if they would like to look at those. The concept of internal audit is probably an issue that might well be addressed in terms of what is it that internal audit is responsible for within an organisation. Internal audit is an independent appraisal function and lives within the organisation, that is, generally internal auditors belong to the organisation for which they work. The role of an internal auditor is to examine and evaluate the entire operations of the department. So the old concepts of a tick-and-flick auditor or having to be an accountant to be an internal auditor are very much in the past. The role of internal audit today is very much into value-for-money auditing, performance auditing, environmental auditing and quality-system auditing. So whatever tag you would like to give that, there really is a continuum starting with the old definition of financial compliance, or tick and flick, that continues right up to what we call program evaluation, or examining the outcomes of the organisation. So then the role of internal audit is to assist all members of the organisation and, in particular the chief executive officer, to carry out their duties efficiently and effectively.

While I am clarifying the issues, one of the things that I would like to make an issue of, because I think that it is useful in terms of the role of the Criminal Justice Commission, is the role of the internal auditor for the deterrence, detection, investigation and reporting of fraud. I would like to refer to the institute's standards and, in particular, an item called Statement on Internal Auditing Standards No. 3, which is about deterrence, detection, investigation and reporting of fraud. The definitions given—and these are only the summary ones—are that the deterrence of fraud is the responsibility of management, not internal audit. Internal auditors are responsible for examining and evaluating the adequacy and effectiveness of actions taken by management to fulfil this obligation. The detection of fraud is again not the prime role of auditors. Internal auditors should have sufficient knowledge of fraud to be able to identify indicators that fraud might have been committed. If significant control weaknesses are detected, additional tests conducted by internal auditors should include tests directed towards identification of other indicators of fraud. So what it is saying is that internal auditors need to be aware of the red flags, or the indicators for fraud.

Internal auditors are not expected to have knowledge equivalent to that of a person whose primary responsibility is to detect and investigate fraud. Also, audit procedures alone, even when carried out with due professional care, do not guarantee that fraud will be detected.

The investigation of fraud—fraud investigations may be conducted by, or involve participation of internal auditors, lawyers, investigators, security personnel and other specialists from inside or outside the organisation—hence the connection with the Criminal Justice Commission. Internal auditing should address the facts known relative to all fraud investigations in order to determine if controls need to be implemented or strengthened, design audit tests to help disclose the existence of similar frauds in the future and help meet the internal auditor's responsibility to maintain sufficient knowledge of fraud.

Reporting of fraud—the final point—a written report should be issued at the conclusion of the investigation phase. It should include all findings, conclusions, recommendations and corrective action taken.

So it sets the scene about where internal audit fits and I think that is useful in some of my further comment. I believe that that statement on internal auditing standards highlights the major points for the institute and its relationship with the Institute of Internal Auditors.

The two functions of the Commission that I would like to speak about most are the Official Misconduct Division as it relates to the public sector in general, excluding the Queensland police force because we do not have a great deal of expertise or knowledge in that area, and the Corruption Prevention Division, which we have had a lot of input with. I believe that the Official Misconduct Division is providing that independence and is able to conduct in-depth technical investigations that the internal auditor currently does not have the expertise to do. I can relate to some particular cases if you would like me to do that later on. I think the issue with the Official Misconduct Division is that it, with the resources, the experience and particularly the multidisciplinary teams that they have at their disposal, is able to look behind the allegations of the official misconduct. I am not just talking about fraud but the other definitions—breach of trust and dishonesty—that are also captured by the definition.

With relation to the Corruption Prevention Division, the institute has had a lot of dealings with that area over the last few years and, in particular, the corruption prevention manual. I personally authored one of the chapters of the manual and also helped to overview that, so I am fairly familiar with its content and with what it was trying to achieve. If we are talking about change for the future and things that might make the organisation work better, some of the things that I would like, or the institute would like to see—and this is gathered from members' comments over time—is in relation to investigations. I noted in the Commission's submission that they had set up a situation with the Queensland Police Service for certification training for particular officers and procedures for internal investigations for allegations. I think that same thing placed in a large number of Queensland Government departments would probably be useful as well in that the internal auditors, or the areas investigating, would see what is going on within their departments, would learn new skills and, I think, would take the sting out of one of the issues that is mentioned a number of times, and that is the issue of timeliness. So I think that there is a long way to go down that track.

From an internal auditor's point of view, we think that the Corruption Prevention Division could provide more feedback on two issues: cases that have been investigated and resolved by the Official Misconduct Division, and the management audits that they are conducting themselves. The issues that we would like to look at there are the red flags. What were the circumstances that related to the allegations? What was it that was alleged that was being done wrong? What were the controls that broke down within the system or, more importantly, were controls absent? How did the Commission, either through its misconduct division or through its management audits, identify the problems? What tests could internal auditors put in place to help them detect similar instances or problems within their own areas? We have seen some attempt to do this in terms of the corruption prevention manual and the annual reports produced by the Commission over the last couple of years. The details on case scenarios that they provide are real, valuable evidence to the auditors but, I guess with the inquiring mind, there is always more that we would like to know about the exact circumstances of where the problems were and how they were detected. We think that that very much would fit in with the role of the Corruption Prevention Division in offering advice and assistance through liaison, management audits, training and education. We believe that that service is not just available to Queensland Government departments but to the public sector overall, that is, statutory bodies, local authorities and the tertiary institutions. The feedback from institute members where we have, in fact, had members of the Corruption Prevention Division presenting papers at our branch conferences and seminars has been excellent. They have always been well received and generated great discussion both in question time and afterwards.

The Institute of Internal Auditors covers not only members within the public sector but also the private sector, and we are aware of some people who have taken advantage of the *Corruption Prevention Manual*. In fact, in November last year I had the opportunity to be in the United States. I presented a copy of the *Corruption Prevention Manual* to the Queensland

branch's sister chapter, the San Jose chapter in California. The feedback that I have received is that that manual has been very well received in those areas.

I guess that summarises fairly quickly the major points of the institute's paper, of which you have a copy. I think it would be more worth while for you to ask questions rather than me reading whatever you already have in front of you. Thank you.

The CHAIRMAN: I have a couple of questions. In reference to the overall philosophy of an organisation, you mentioned that corruption prevention is the responsibility of management. In terms of the Queensland Government's overall organisational philosophy as an employer, ideally where should the responsibility for corruption prevention lie?

Mr McDonald: The responsibility can never move from the chief executive officer or the accountable officer who is appointed under the various Acts to head up those organisations. But I guess the issue is: do they have the expertise available to them to make sure that there is something in place and working? One of the issues at which we need to look is that of the culture that has built up over many years in the Queensland public sector in relation to issues such as accountability. Many directors-general are going down that track.

However, I believe that for some actions—for example, making internal audit mandatory for public sector bodies—the assistance provided by the Corruption Prevention Division is needed by directors-general in order to be able to be accountable; that is, without a system in place, without the expertise to help, it is an impossible task.

The CHAIRMAN: Given the size of the Queensland public service, it should not be too hard to adopt those skills into the organisation.

Mr McDonald: That is true. Again, it comes back to resources. Where should that responsibility lie within an organisation? Should it be the responsibility of internal audit? For example, the Roads and Traffic Authority in New South Wales set up a corruption prevention unit in conjunction with its internal audit unit. That unit undertook virtually the whole role of the Official Misconduct Division and the Corruption Prevention Division of the CJC, in that it conducted what it called a "Speak up campaign". It had qualified investigators, who in the first instance were mostly police trained. In their first couple of years, they were horrified by the instances coming out.

So there is an issue of resourcing. That is why the institute is keen to maintain its relationship with the Criminal Justice Commission—that is, we are not only getting a sharing of resources but also a sharing of information and knowledge.

The CHAIRMAN: Again, ideally from the employer's perspective—in this case, the Queensland Government—why would the responsibility for corruption prevention and the detection of fraud not lie with either the PSMC or the Queensland Audit Office?

Mr McDonald: To my mind, the PSMC is a policy body, so it could provide direction on policy. That is certainly an issue but, again, we would have to ask whether it would have the resources to provide assistance. The other drawback for the PSMC is that, from my understanding of the way it is set up, it directly relates to the 18 Government departments. Where then would it have the authority to provide policies to local government, tertiary institutions, statutory bodies and so on?

The CHAIRMAN: That would simply involve an amendment to the legislation. What about the Queensland Audit Office?

Mr McDonald: Again, in my opinion the Queensland Audit Office would have the same responsibility for the detection and prevention of fraud as an internal auditor—that is, it should recognise the instances of red flags and be able to investigate to the point where it needs, or recognises, that it needs professional assistance. At this stage, auditors are not trained to be investigators to get right to the bottom of a particular fraud or instance of official misconduct. That is why I made the comment before that I think a situation similar to the Queensland Police Service of having officers within the public sector receiving certified training and setting policies and procedures in place would probably make the whole process a lot more efficient and effective.

The CHAIRMAN: I do not have any other questions. Mr McDonald, your stay with us has been brief, but nevertheless informative. I appreciate the written submission and also the verbal submission you have made to us, and your preparedness to answer questions. Once again, on

behalf of the Committee, I would thank the Institute of Internal Auditors and you for making your time available to represent it today.

Mr McDonald: Thank you very much. We appreciate the opportunity.

JOHN ROBERTSON, examined:

The CHAIRMAN: The Queensland Law Society is represented by Mr John Robertson. John, for the benefit of *Hansard*, could you outline the capacity in which you are here today?

Mr Robertson: Yes, Mr Chairman. I am here representing the Queensland Law Society Incorporated, and that is the body that represents solicitors in this State.

The CHAIRMAN: Under the signature of Michael Baumann, the president, a submission has been made to the PCJC dated 15 June 1994. Would you like to, firstly, speak to that and then take any questions from the Committee?

Mr Robertson: Yes, Mr Chairman. I want to expand briefly on two aspects of the written submission to which you have referred and to make some brief comments arising out of the very lengthy submission that you have received from the Commission itself. I cannot say that I have mastered the 250 pages of that submission, but there are some aspects of it that I want to advert to briefly on behalf of Queensland solicitors.

We have raised our concerns in our written submission concerning a trend that, I stress, is reported to the society by its members whereby the pervasive powers of the Commission are being used by the Official Misconduct Division in certain cases to interview potential witnesses and gather evidence subsequent to the laying of criminal charges. We point out that the very name of the Official Misconduct Division in the Act suggests that the exercise of these powers was to be used primarily to investigate official misconduct. We concede that the Act clearly extends those powers to the investigation of major or organised crime, but we will argue briefly in this submission that the terms of the Act itself clearly contemplated that use of these special powers was to be predominantly reserved for the investigation of official misconduct.

Section 3 (a) (iv), which is the section dealing with the objects of the Act, provides for the establishment of the Commission to take measures to combat organised or major crime for an interim period. We argue that the Act always contemplated that the Commission's role in relation to the combating of organised or major crime was to be limited in time. The CJC submission itself acknowledges this, but as I read it, their submission suggests that the Commission's role in this area is now set in concrete and should continue indefinitely.

As you know, the certificate of the Chairperson is sufficient to activate an investigation by the Official Misconduct Division into major or organised crime. The Chairperson or, if he elects, one or more other Commissioners must also certify that the particular investigation is not appropriate to be discharged or cannot effectively be discharged by the Police Service. In other words, before the Official Misconduct Division can investigate major or organised crime, the Chairperson must come to the opinion that the investigation cannot effectively be discharged by the Police Service. There has been some consideration of this role by the Chairperson in the Court of Appeal. Although the particular case of Kolovos v. O'Regan is not conclusive on the point, there is certainly a strong suggestion that the Chairperson's decision in this regard is unassailable by the courts.

The Law Society says that the interim period referred to in the objects of the Act has now passed or is coming close to its conclusion. It is understandable why the Legislature decided to empower the Commission in this way in 1989, when in the wake of the inquiry the morale of the Police Service was in tatters. That is no longer the case. We are concerned that the use of these powers in investigating major or organised crime after charges have been laid strikes at two fundamentals in our criminal justice system. One is that the onus of proof is on the prosecution beyond a reasonable doubt, and the other is that a person is presumed innocent until proven guilty.

Our point is that there is no longer any valid reason, notwithstanding the CJC submission, for the Commission to play a major role in the investigation of organised or major crime and that the Police Service is now more than equipped to take back this function. Our point is demonstrated by the circumstances surrounding one of the operations referred to in the CJC submission, that is, Operation Whitewash. That was a joint CJC/AFP operation in which the Commission quite justifiably claims credit for an investigation which led to the conviction of a major heroin supplier. The police attached to the Criminal Justice Commission did not use any of those special investigatory powers; they used their own powers of investigation and the very

professional use of surveillance and other techniques in conjunction with the AFP, and were able to gather an overwhelming case against the accused.

If our primary submission that the investigation of major or organised crime be handed back to the Queensland Police Service is not accepted, then it is our submission that the use of the special powers of the Commission contained in Division 3 to investigate organised or major crime in circumstances in which persons are already before the court should be subject to leave of the court and on notice to the accused person.

Our second point, which is related to the first, concerns the interpretation by the Court of Appeal of section 99 of the Act in the decision of The Queen v. Le Gros and Jackson. It relates to this: that it is fundamental to the presumption of innocence that an accused person should have access to all statements made by a prosecution witness to investigators whose credibility is to be a major issue in the trial. In our submission, we refer to the findings of the Runciman royal commission in England that one of the primary reasons for some of the very public miscarriages of justice in that country were due to the failure of the prosecution to disclose such material to the defence prior to trial. The importance of this duty on the prosecution to disclose has been stressed time and time again by the courts in Queensland. If, however, the Commission interviews a witness in an investigatory hearing and then a non-publication order is made pursuant to section 88, then without the consent of the chairperson, no-one—including the courts—can gain access to that material. One can understand the reason for this power in the investigation of official misconduct or indeed in the preliminary investigation of major crime before charges are laid, but this unfortunate side effect, we suggest, was probably not contemplated by the Legislature.

They are the only additional things I wanted to say in relation to our written submission. I wanted to make a few comments arising out of the Commission's submission to you. Firstly, the Commission deals with what I think it calls the debunking of certain myths at page 52 and following of its submission. That section is titled "Myths and misconceptions". I want to deal with just a couple of those. One was what the Commission describes in its submission as the myth and misconception that the Commission inhibits police in the performance of their duties.

To a very large extent, I agree with and adopt the argument that is made by the Commission at page 53. However, I think it is important for me to inform the Committee that, through our members, the Law Society is aware still of many cases in which police officers—particularly in relation to summary offences and particularly in relation to the prosecution of what I could call potentially high-profile defendants and/or matters that might attract public interest—really had come to the conclusion prior to making an arrest or issuing a summons that the case against the accused would fail, but felt that if they did not proceed, because of the identity of the accused, then they were open to a complaint being made to the CJC. I stress that that is not a complaint about the Commission, but I do report as a matter of public interest to the parliamentary committee that that is still occurring.

The argument would be—and I accept this—that perhaps it is important that the discretion of police officers be significantly controlled by the courts. I accept that, but it is having a down side, and that is that, in many of these cases, the charges are being dismissed quite arbitrarily by the courts and very large costs orders are being made against the Police Service. Really, I do not disagree with the Commission's fundamental argument, but I add that bit of information for the Committee's consideration.

Again, we essentially adopt the argument made by the Commission about the important decision as to whether hearings are to be conducted in public or in private. The Committee will no doubt be aware of the unfortunate consequences of one of the very early public inquiries into the Corrective Services Commission, which really did lead to a most unfair and an unjust denigration in the media and in the public domain of many innocent people's reputations. I think the Commission has recognised that great care should be exercised in making that decision to have a public or a private hearing because of that factor, and particularly when criminal prosecutions may follow and there is the potential to prejudice a criminal trial. In our submission, we say that perhaps the way to go is for the Commission to develop a clear policy as to how its decision making is exercised in relation to that area.

The final comment I wanted to make by way of my primary submission was that the Queensland Law Society very much favours the maintenance within the Criminal Justice

Commission of its Research and Coordination Division. The Research and Coordination Division has, with respect, performed a very good public service for the Queensland community since its inception. I think it is important to note that the reports of that division as opposed to the reports of a research division, say, attached to the Department of Justice and Attorney-General, have the advantage of being clearly independent of Government agencies, their reports are always made public and, of course, the final decision about implementation of any reports still remains with the Government. So we certainly favour the retention of the Research Division as an independent arm of the Commission.

The CHAIRMAN: This Committee has had a bit of a problem with the Kolovos decision as well. None of us are lawyers, but it does seem to us that it is not necessarily a conclusive decision because the other side basically did not put up any evidence to suggest that they should get behind the Chairman's certificate.

Mr ROBERTSON: The court's decision is inconclusive as to whether Mr O'Regan's certificate is unassailable, but certainly the courts in other cases, such as Le Gros and Jackson and cases concerning representation before investigatory hearings, have made the point again and again that the Criminal Justice Act is very widely framed and applying principles of statutory interpretation, the courts have interpreted the powers in that way. This, of course, is no reflection on any of the chairpersons of the Criminal Justice Commission, but those powers that he has can be delegated. One person really decides whether an investigation should be undertaken into a matter of major crime or organised crime. In their submission, they describe major crime as being more serious than serious, but major crime, in my submission, would include rape and serious sexual offences such an indecent dealing with minors, and no-one would argue that the Criminal Justice Commission, in the exercise of its Official Misconduct Division powers in division 3, would attempt to interfere in an investigation like that because Mr O'Regan certified that it was major crime.

The CHAIRMAN: We had a pretty lengthy discussion about all of this. We have had very long discussions in private session with the CJC about this particular topic. I think I can just simply say to you that the Committee has a deal of concern about that decision. While we think that it probably is inconclusive, nevertheless, it has taxed our minds and I would be very surprised if it is not something that we report on in the review, even if that means that there should be legislative change, because I do not think it is good enough to just rely on whoever is the Chairman of the Criminal Justice Commission at the time, because if you go back to the Fitzgerald report and the debate at the time, organised and major crime I think had quite a different meaning to what the average person would regard particularly as major crime. All of us would say a major crime is murder, but in terms of the Fitzgerald report, I am not sure that that was his interpretation in the context of organised and major crime, but I do not think he had that interpretation of it.

Mr ROBERTSON: It probably goes back to our fundamental argument that there must have been a very legitimate reason for that object section to be drafted in that way and we have submitted that it was because at the time the Criminal Justice Commission came into existence in 1989, the Police Service was probably incapable, because of the damage that had been done in the wake of the inquiry, of taking on investigation of organised and major crime. That is well and truly past and the very argument that the Commission mounts about a joint task force is an argument in favour of taking away the function from the CJC and returning it to the established investigatory arm of the criminal justice system because the Queensland Police Service can engage in joint operations with other bodies such as the Australian Federal Police. There is no magic about the CJC participating. I heard yesterday a report of Commissioner O'Sullivan's submissions to the Committee to the effect that there are something like 90 of his most experienced officers now attached to the Criminal Justice Commission. Now, there is simply no reason why those persons and the resources associated with those persons should not now come under the umbrella of the Police Service and that would then obviate the concern of many of our members about the gradual encroachment into the criminal justice process of these pervasive powers and the use in the number of instances that we have highlighted of those powers when persons are already before the court.

The CHAIRMAN: You use the word "returned" to the Queensland Police Service. I would suggest to you that that is not quite correct because the Police Service did not have the coercive powers that the CJC has got. So in the process of returning that responsibility to the Police Service, would you also give the Queensland Police Service those coercive powers?

Mr ROBERTSON: My submission makes it clear that we say that the power to investigate organised and major crime, the powers that the police presently have either on their own behalf or in conjunction with agencies such as the AFP, are more than sufficient, as demonstrated by Operation Whitewash, to undermine and to bring persons before the court, and the use of those pervasive powers should be reserved to the pre-charging stage. Now, we do not have any problem with those sort of powers being available prior to charging. Our concern is that once a person is before the court, then it is wrong for a body such as the CJC to invoke the investigatory powers of the Official Misconduct Division to bring persons before it, compel them to make statements, sometimes against interest but usually against the interest of a person already accused, and then in the event that the Commission or the Director of Prosecutions decides not to use that witness, the accused then cannot gain access to that evidence for the purposes of his or her defence. We say that that is because the Commission is very gradually moving beyond what the Legislature contemplated it would use those powers for, that is, the investigation of official misconduct and moving more into what I would call the standard criminal investigation process which we say should be the province of the police.

The CHAIRMAN: Just acting as the devil's advocate again, the Fitzgerald report outlines the difficulty in combating major and organised crime on numerous occasions throughout the report, and these additional powers—it is outlined in chapter 4 of the Fitzgerald report; it starts at page 148—obviously come as a result of what he terms disorganised law in trying to combat major and organised crime. He argues that coercive powers, even though they infringe on civil liberties, are necessary. So are you challenging the conclusions of Fitzgerald?

Mr ROBERTSON: I understand that argument. Can I come at it from a different perspective?

The CHAIRMAN: I would prefer you to come at it from that perspective.

Mr ROBERTSON: I think, to adopt the Commission's argument, that there is a lot of myth and misconceptions about the investigation of organised crime. I, of course, over 23 years in criminal practice have myself been involved in a lot of matters that could be described as organised crime, for instance, major drug cultivations—I hasten to add: involved in a professional sense. I can say that in practically all those cases the successful prosecution was not brought about because of the use of these sorts of highly pervasive powers; it was brought about by simple, good police work, i.e., an experienced police officer received information through the informant, got a leg in to the organisation of the criminal activity, from there used surveillance techniques, etc., etc. Now that seems to me, in my experience, to be one of the predominant ways that people who are involved in organised crime are brought before the court.

The other area is the establishment of data. You will note that we specifically have not made any submissions about the database established by the Criminal Justice Commission. Information is obviously very, very important to combat organised crime, but what I am saying is that I am yet to be convinced that it is necessary for the general Police Service or, indeed, any investigators to have the sort of wide-ranging powers that the Official Misconduct Division has—once its jurisdiction is invoked—for the purposes of combating organised crime.

The CHAIRMAN: Does that not fly in the face of numerous royal commissions which, time and time again, have shown that you have to have coercive powers to be able to get over the problems of State borders, the various different Police Services and law enforcement agencies around Australia which do not share information in a lot of cases and, in some cases, cannot share information because of the terms of reference or the statutes under which they operate? Does that not really all fly in the face of that?

Mr Robertson: Not at all. That is another argument, is it not? The reason that, say, Operation Whitewash was successful was because two agencies—one Federal and one State—were able to share information and to combine their resources, and it worked. That is another problem. I still do not see how the use of coercive powers is the panacea; it is simply not. My practical experience suggests that it is not.

We have suggested as a fall-back position that if the Committee does not accept our primary argument that before the Commission can use those coercive powers in the case of an investigation involving someone already before the court then they should refer that to the court on notice to the accused person. Our concern always is that the decision to exercise these powers and the exercise of these powers is done behind closed doors—covertly—and that has

the potential, as established by the Runciman royal commission, for very substantial miscarriages of justice which lead, in turn, to a major diminution in public confidence in the criminal justice system. So that is what we are on about. As I say, I go back to my position. I am still not convinced that, provided we are in a society that accepts the fundamentals, that is, that there is a presumption of innocence and the onus of proof is on the prosecution beyond a reasonable doubt—provided we do honestly accept those as being fundamentals and we are not turning to a continental system, such as the system in France—the inquisitorial system—then I am yet to be persuaded that these magical coercive powers are the panacea for this ephemeral description of organised crime.

Mr BARTON: If, in fact, those experienced police officers who are with the CJC now were to go back to the Police Service and the CJC were not to exist, would it be fair to say that the police would still need more than just those experienced police officers back? Are the multidisciplinary teams not a crucial part of particularly chasing organised crime—the fact that you have the link back to the databases through the intelligence services; the fact that you have experienced solicitors working with the teams with a more detailed knowledge of the law as it is involved, and the accountants involved to chase the money trails more effectively? How would you see that? Because that, to me, seems to be a crucial part of the CJC's operations now in the organised crime area. Certainly the experienced police officers are a crucial part and an investigative part, but the others seem to be just as crucial to me. How would you see that occurring?

Mr Robertson: The Law Society's position has consistently been that, in the investigation of complex criminal activity—you can use the word "organised"; but complex criminal activity—it is very important for police officers to have access to legal advice and other specialist advice from the outset. The Director of Prosecutions Office in Queensland has developed a Proceeds of Crime Unit—limited very substantially by its lack of resources. It has also developed in a minute way the multidisciplinary approach that you talk about. I can see no reason why a transfer back to the Police Service would not also involve the use of the Director of Prosecutions, who have now accountants and other persons on their staff—the Queensland Fraud Squad has accountants attached to their staff—why that multidisciplinary approach, which I accept is important, could not be maintained and undertaken by the traditional players in the investigation and prosecution of criminal activity.

I do not think, once again, that there is any magic in the fact that the CJC employs investigatory accountants and lawyers who head up investigatory teams. That can be done, and is being done, in the present law enforcement and prosecuting agencies. So I do accept that that is an important aspect. It has significant resourcing implications, of course, if you are going to do it properly. We have always maintained that the Fitzgerald recommendation that the Director of Prosecutions take over the prosecution of committals should be implemented. We have also maintained that the Director of Prosecutions should be available at the outset to give legal advice to police officers before persons are charged and about issues of gathering evidence. That, in fact, in practice is done in relation to complex investigations—for example, murder. The Director of Prosecutions are often involved in giving advice prior to people being charged. So again I say there is no magic in the CJC saying, "We are the only people who have that unique combination of multidisciplinary skills."

Mr BARTON: It would be a little different, though, would it not, having the legal people in the DPP's office as opposed to being part of an actual investigative team?

Mr Robertson: I do not think so. There is another aspect to it; that is, it ensures that the lawyers remain objective. The importance about a police officer getting legal advice is that it is objective. I am not suggesting for a minute that the lawyers in the Commission do not give objective advice, but there is a perception that when you are part of the team, when you are on the side of the prosecution, then there must be pressure upon you, for instance, to succumb to the pressure of a police officer and give advice that is flavoured. If you do maintain what was the traditional distinction between prosecution and investigation, and at the same time in relation to complex crime you have this multidisciplinary approach by cooperation between the Director of Prosecutions Office and the Queensland Police Service, then you can ensure that those sort of perceptions do not arise and you can ensure that the advice the police officers who are investigating are getting is objective and correct.

Dr WATSON: Can I just clarify two things? I am not quite sure that I understand exactly what you said. You seem to make two distinctions. You seem to accept the argument for the use of the special powers—coercive powers—prior to any charging of somebody. It seems to me you are making a distinction there.

Mr Robertson: I did say that. What I meant to say was that our position—I am sure you will agree—throughout the whole debate, including the debate on police powers, is that that should always be subject to review by the court. That has always been our concern.

Dr WATSON: Whether it occurs before or after the charging?

Mr Robertson: Quite so.

Dr WATSON: That clarifies that one. The second distinction that you seem to be making is that the use of those special powers—coercive powers—was okay when you were looking at official corruption, but questionable when looking at organised crime.

Mr Robertson: Official misconduct.

Dr WATSON: I am sorry, official misconduct. Is that a distinction that you drew?

Mr Robertson: Yes, it is.

Dr WATSON: Can you just elaborate on why you thought that?

Mr Robertson: I will adopt Commissioner Fitzgerald's argument, that is, official misconduct investigations do not always lead to disciplinary charges. I am not cognisant of the statistics, but the use of that power has a preventative aspect to it as well. There may be official misconduct going on in a public sector area—a Government department—but even using those coercive powers, insufficient evidence can be gathered to bring disciplinary charges. However, I believe that if you make a distinction between the investigation of misconduct and criminal activity, that is a valid distinction to make because the law itself makes that distinction.

I will give you an example. In relation to disciplinary proceedings brought against professional persons that are in the nature of misconduct in a professional sense, the law accepts that in many cases the rules of evidence do not apply. It accepts that the onus of proof is much lower than the criminal standard. It is for that reason that the Law Society makes that distinction between using those coercive powers in relation to investigation of official misconduct and criminal activity. I probably have not made myself too clear.

Dr WATSON: I think I understand you. I thought that those were the distinctions you were making. I was not quite sure and wanted clarification.

The CHAIRMAN: On behalf of the Committee, I would like to thank you for appearing on behalf of the Queensland Law Society, speaking to the submission from the Queensland Law Society, raising a few other points with us and then answering our questions. Is there anything further you would like the say before you leave?

Mr Robertson: Thank you for the opportunity.

JOHN JERRARD, examined:

The CHAIRMAN: Would you identify yourself and the organisation that you represent for the benefit of Hansard?

Mr JERRARD: Thank you. My name is John Jerrard, a barrister. I am here representing the Bar Association of Queensland.

The CHAIRMAN: The floor is basically yours, Mr Jerrard. On behalf of the Bar Association you are now free to discuss any matter on behalf of your constituency that you would like to address to the Committee. After that we might have some questions that we would like to address to you.

Mr Jerrard: I am here at fairly short notice from Mr Sofronoff. Partly the views that I express are those of the Bar Association, partly they are more personal views. I should perhaps immediately express those of the Bar Association that have been communicated to me—that is, a number of members of our profession have expressed concern about the manner in which the coercive powers of which you have just been speaking have been exercised, particularly when citizens are given summonses to appear and answer questions. The nature of the inquiry being conducted or its purpose is not really disclosed and it is extremely difficult for barristers to advise their clients as to their rights or lack of them and to advise upon whether any challenge can be made to the powers being exercised, simply because of an absence of information. It may be that in the course of time this can be overcome by the development of some protocols between the Bar Association and the Law Society on the one hand and the authority exercising those powers on the other hand, as has happened with search warrants. At the moment, our members are complaining that they fear people they represent do not really know what they are in for, why they are there, and cannot really be advised.

This morning, quite coincidently, I received a telephone call from a Townsville practitioner concerned about a client of his who had been asked to attend and give evidence today in an inquiry being conducted by the CJC. The client was at the airport. His barrister and solicitor were arriving at the airport when the attendance was cancelled. He has expended private funds preparing to bring down from Townsville a solicitor and barrister and to provide accommodation for them all overnight. A telephone call was made to a mobile phone. It stopped them at the airport and they were told that their attendance was not required today, but they would be told when it would be.

It is that sort of conduct that causes some disquiet. The man has spent money and is obligated to pay the lawyers for the day. So far there has been no proposal that he will be reimbursed for that.

I looked at the various areas of operation of the CJC and its objects. If I can pick up on a point made, I think, by Mr Robertson, the objects that are set out in section 3 of the Act are very wide ranging. Objects (v) and (vi) appear to have been well executed by the CJC and to be necessary powers in a body such as the CJC. That is, they are not matters which could really be done as well as they have been by any other entity that was not independent like the CJC and with its powers. But objects (iii) and (iv) are perhaps getting increasingly hard to justify because of the apparent undesirability of having a second police force also inquiring into organised or major crime. It is obviously undesirable that the Queensland Police Service should not itself investigate, detect and bring to apprehension people involved in organised or major crime, and the Queensland Police Service certainly should not be the poor cousin or anything other than a primary crime investigating service. It is obviously desirable that good officers should have a good career path in the Queensland Police Service and funds should be invested in them.

With respect to objects (i) and (ii)—(ii) appears to have been satisfactorily carried out and it is difficult to say anything about (i), but there seems to be not much yet to show whether it has or has not been attempted or achieved.

The Criminal Justice Act provides for the five divisions within the Criminal Justice Commission. The Official Misconduct Division and the misconduct tribunals appear to have performed their tasks well and, once again, I say it does seem necessary to have an independent body that investigates alleged corruption, particularly within the Queensland Police Service. It could hardly continue to investigate itself. The Witness Protection Division has not lost anybody, so it is probably performing its functions well. It may be that nobody has attempted to harm any

possibly protected witness, but it can be said that no protected witness has come to harm. The Research and Coordination Division has published a number of papers. Many of them appear to be sound efforts. I have not myself been aware of any really glittering achievements, but I have read the review of police powers, or skim read it, and it is a very detailed, sound work. The Intelligence Division is a division whose performance one cannot judge. It may be that they are finding out very real things; it may be that they are just recirculating gossip, but we would not know. There has certainly been a number of significant inquiries that have been conducted by the CJC that could not have been done efficiently by anybody else, such as the inquiries into liquid waste and the Joh jury selection.

Section 21 in the renumbered Act sets out the functions of the Commission. In respect of section 21 (1) (a), it is difficult to point to any really clear achievements there. In respect of (b), its function to do such things as in its opinion are not appropriate to the Police Service—well there have been a number of good public inquiries carried out and a number of other good investigations but one must start hesitating, we suggest, at the idea that the CJC should continue to maintain separate major crime investigation tasks that might just as well be carried out by the Queensland Police Service.

In respect of the responsibilities listed in section 23, if one goes to responsibility (f) (iii), that responsibility is clearly necessary to investigate official misconduct in units of public administration. In respect of the other responsibilities, it is either difficult to see clear evidence of achievement or else one has to ask oneself, "Do we need a second Police Service?"

You were asking Mr Robertson questions about the coercive powers. It is really undeniable that at least some of the major white-collar crime that has been revealed to public gaze has been revealed because of the exercise of coercive powers by investigatory bodies. For example, the bottom-of-the-harbour taxation schemes were really only uncovered because of the work of a Mr McCabe and a Mr Lanfranchi, who were exercising powers under the then Uniform Companies Act for the Victorian Government and gradually it became the Queensland Government as well and then on a commission from the Commonwealth Government. It was their work which was later carried somewhat further by Mr Costigan that exposed what was occurring with a very large number of companies. Such criminal charges as have been brought against directors of major companies such as Ariadne, or Qintex, have really been made easier to bring by the exercise of the powers of the NSC and then the ASC.

If the Queensland Police Service were to be given those comparable powers, they should certainly be subject to review by the courts. The Queensland Police Service has never had such powers and, at the moment, now we have one body, the Criminal Justice Commission, which investigates crime, or major crime, which possesses them and one body, the Queensland Police Service, which does not.

The CHAIRMAN: Do you want to take some questions now?

Mr Jerrard: Yes.

The CHAIRMAN: You mentioned a personal submission. Do you want to make that personal submission before you go to questions?

Mr Jerrard: Some of the last ones were the more personal ones.

The CHAIRMAN: I will throw it open to the Committee members. Are there any questions of Mr Jerrard?

Mr BARTON: There was one about the last point that you just made, Mr Jerrard. You have indicated that if the QPS were to be given those sorts of powers, they should be under the scrutiny of the courts. Is it appropriate for a Police Service as such to be given those powers or would it be better to have them quarantined, for want of a better word, with a specialist organisation?

Mr Jerrard: I suppose that is a matter for you people to decide. The Police Service has powers of obtaining a warrant which are not really different from the powers that the CJC officers have, although the Police Service needs to establish something called reasonable belief and reasonable suspicion; the CJC only needs to establish a suspicion. The CJC do not need a warrant to enter into any unit of public administration and then the CJC, in addition, can issue a summons demanding that someone produce documents or give evidence. If one is concerned about a Police Service having those powers so that one quarantines them in this other specialist

body, the position is still the same in the end that, ultimately, people can be summonsed and forced to give evidence or produce documents. Whatever body possesses those powers should be subject to control and review by the courts. At the moment, the position is not really unsatisfactory because of the decision that you were discussing with Mr Robertson.

The CHAIRMAN: Anything further?

Mr BARTON: No, I will leave it at that.

Dr WATSON: I guess one of the issues, of course, is that you would have to quarantine the powers. If you give them to the police, you would have to quarantine them in terms of the investigation of certain cases of crime. You could not give it to the police presumably—or would you give them to the police?

Mr Jerrard: I think they would be entirely unnecessary except really for major or organised crime. I mean, essentially, you do not need those sorts of powers to investigate a blue at the local hotel, and it would be pointless empowering a Police Service or the CJC to do that. That is, it is unnecessary so one would not give those powers. It would be pointless. But to investigate major crime, major fraud, and to allow the Police Service, for example, to trace funds and to see where a money trail is going, one does need the ability to summons people who have documents so that the documents can be produced and examined.

Dr WATSON: What about a definable set of crimes?

Mr Jerrard: Yes, that is one way.

Mr BARTON: Or a unit within the Police Service? I am a little concerned about a young, inexperienced police officer being able to gain access to the intrusive powers that the CJC has. You would want them quarantined even with the Police Service, if it were to be given those powers?

Mr Jerrard: Yes, certainly.

Mr BARTON: Is there not a risk in quarantining that fences can fall into disrepair and leak—for want of a better term—information into the rest of the Police Service?

Mr Jerrard: You mean a lack of security within the Queensland Police Service?

Mr BARTON: Not so much that. Mr Jerrard, you are probably familiar with some of the hearings that we conducted into police powers. I am trying to think of one in particular. I think it is in relation to the authorisation of searches, in particular strip searches. Historically, the ranks of sergeant and above had the right to do that, and the request—and I cannot recall for the life of me which way we recommended—was for that to be given to all serving police officers. There were good, strong historical reasons for why these powers had been quarantined to the ranks of sergeant and above. Is there not more of a risk that, if you give some police officers those intrusive powers, some will say, "That is okay for major crime, but I cannot get this little thug from Eagleby to answer my questions about what he did with the car he stole. If I could force him to the answer the questions, I can get a conviction"? Would there be more of a danger of people seeking that power and spreading it, even though it might have serious civil rights implications for the community at large?

Mr Jerrard: Quite a few things are involved. At the moment, the little thug from Eagleby, if forced to answer questions, cannot have those answers used against him. I would expect that to still remain the position. So that is an example of why the powers are unnecessary and therefore should not be given in anything other than the investigation of organised and major crime. Whether one has a special unit within the Queensland Police Service or continues a special unit called the CJC is a matter for policy.

It is plain that major fraud has been uncovered in the past because of the exercise of such powers, and it is difficult to justify not giving them to some entity in Queensland to ensure that such things are uncovered. I cannot really comment upon whether it is more difficult to quarantine that if it is given to part of the Police Service. Certainly, one does need to restrain enthusiastic amateurs from the exercise of powers. In the same matter, I understand, that was the ultimate subject of investigation that has led to this gentleman being given late notice that he did not have to come down, there were other incidents in which enthusiastic officers from the CJC did things that in hindsight look a little foolish.

Mr BARTON: We are aware of a few of those.

The CHAIRMAN: Is there anything further? Mr Jerrard, thank you very much for your time today.

The Committee adjourned at 1.13 p.m.

The Committee resumed at 2.28 p.m.

JOHN O'GORMAN, examined:

The CHAIRMAN: We will resume the public hearing of the Parliamentary Criminal Justice Committee into the three-yearly review of Criminal Justice Commission. We welcome Mr John O'Gorman, from the Queensland Police Union. Mr O'Gorman, we have a submission from the Queensland Police Union dated 16 June 1994, which is signed by Mr M. J. Melling, the Assistant General Secretary. I take it that you are going to speak to that submission and also make any other comments that you want to and that you will be prepared to take questions from the Committee after that. The floor is now yours, Mr O'Gorman.

Mr J. O'Gorman: I would like to expand on a couple of matters that are mentioned in that submission. On the first page, there is a heading "Failure to advise members in writing for attendance at interviews". No doubt in the questioning from the Committee, if there is any clarification needed, the reasoning behind our concern about that will become clear.

Our basic concern is that, without notice from the Criminal Justice Commission of a need for attendance at interviews, our members have no idea what the complaint against them might be or what the allegations in regard to which they are going to be interviewed might be. It follows that, if they were provided with the basic allegations or the subject of the interview, their material or their concentration on a particular event may well enhance the quality of the interview.

For example, if the CJC arrives at the City Police Station at which I am now stationed and says, "We want to interview you", and I am taken into a room and I am interviewed, even with the best intention of being open and honest, the information I provide to the investigators would necessarily be of an inferior standard. With prior notice of what the investigation was into, I could produce such things as patrol logs, roster sheets, notebooks—if it was not the current notebook that I was using—and those sorts of things.

In a spirit of natural justice, surely if someone is going to be interviewed in relation to a complaint, he is entitled to know what the allegations against him are. This issue is addressed in another section of our submission. I want to make it extremely clear that we not only recognise but we would also actively encourage non-notification of serious criminal allegations against police officers to a police officer. For example, if allegations are made against me that I am involved in criminal behaviour, I do not believe that I should have advance knowledge of being interviewed in relation to criminal behaviour at all.

The same standards that are employed by police in investigating criminal allegations against any member of the public should apply at least to police in the investigation of criminal allegations against police. The objection that we have to the non-notification of a requirement for interview is in relation to breaches of discipline, or what is euphemistically referred to as "minor misconduct", certainly not official misconduct or criminal behaviour.

I turn now to the second heading in our submission, interviews by telephone. There was at one stage—and I honestly do not know whether it still occurs—a practice amongst CJC investigators to conduct interviews with witnesses, and in some cases complainants, over the telephone. In the material supplied to the Police Service to take disciplinary action against our members, there is a summation or an assessment of the credibility or the person's standing as a potential witness made as a result of a telephone interview. The risks that are involved in that process are fairly wide, but the two major ones are that you have absolutely no idea who you are speaking to on the end of the telephone if you cannot establish their genuine identity. I find it absolutely amazing that any investigator could claim to assess the credibility or truthfulness of a person being interviewed as a result of a telephone investigation. It is frivolous in the extreme and totally disregarding the rights of everybody involved in the investigation, and certainly disregarding the interests of the community.

Our third heading, non-supply of allegations—keeping in mind my previous comment in relation to criminal allegations against police, we can find absolutely no reason why, if I have allegations made against me of a breach of discipline or under the category of minor misconduct, those allegations should not be clearly outlined to us so we clearly understand what we are being investigated for.

Heading four, the failure to provide all information to member attending hearings or interviews—I think that is fairly self-explanatory. I would like to expand on it to a minor degree. If I

as a non-legally qualified person am attending a discipline hearing with a police officer against whom allegations of a breach of discipline have been made, then we are provided with material upon which the authorised officer, usually a very senior police officer, is basing his or her assessment of the complaint. Unfortunately, we are provided only with extracts of interviews or extracts of statements, not the overall interview or the overall statement. It is ludicrous to suggest that that is sufficient to properly discharge the concept of natural justice that should be afforded to everybody in the community, and that includes police officers.

The matter of investigative hearings is heading five in our submission. Investigative hearings have a number of problems. One is that we have a basic objection to investigative hearings being used for other than extremely serious or serious allegations against police. We believe that people who are witnesses at an investigative hearing, as distinct from people under investigation, have a right to be clearly told in what capacity they have been subpoenaed to attend an investigative hearing. There are a large number of examples where police officers have been contacted by telephone or served with a subpoena to attend an investigative hearing and have absolutely no idea why they are going there, in what capacity—whether it is as a suspect or a witness—or what the matter under investigation is. I will clarify that last statement. Of recent times especially, the matter under investigation has been outlined, but you have no idea whether you are going there as a potential suspect or as a witness.

There are problems with the secrecy provisions at investigative hearings. People who go to investigative hearings are not able to tell anyone that they have been there. The difficulty with that situation is illustrated by the fact that, when you are subpoenaed to go there, it is reasonable to believe that you are going to tell somebody that you have a subpoena to attend a CJC investigative hearing, because it is a fairly serious incident in anyone's life to get a subpoena to attend an investigative hearing at the CJC. It is unreasonable to expect that you are not going to tell somebody that you think you might have a little problem because you have to go to the CJC for an investigative hearing. Once you have gone there, you are then told that you cannot discuss with anybody anything that has been spoken of there, and you are not to tell anybody that you have actually attended. It is impossible in some circumstances to honestly comply with that direction.

I should expand on that in another minor way. Often a police officer is required to attend such a hearing while on duty. Obviously, there are a lot of patrol logs or duty logs at stations where police officers have to account for their time. If you go to an investigative hearing and you are missing for three or four hours, I am at a loss to know what you put on your duty log as to where you have been for those three or four hours if you are not allowed to say you have been to the CJC. Failure to comply with the Commissioner's instructions in completing duty logs is a breach of discipline.

Number 6, the Research and Coordination Division—our basic criticism of the Research and Coordination Division is, from our experience, the lack of consultation with police practitioners in the areas where the Research and Coordination Division is researching police related matters. There are some instances where research might be conducted by interviewing some police that we are not aware of, but we certainly have a basic criticism of the quality of research coming from the Research and Coordination Division when the people who are doing the job are not surveyed or interviewed to any extent and we believe that the end product has a deficiency because of a lack of the grasp of reality of doing police work.

Heading No. 7, refer to part 3, Investigations—it is strongly suspected by a number of our members, though it cannot be substantiated to a standard of any proof, that the notice to discover information is being used in ways such as obtaining telephone records of the private telephones of police officers who are in no way suspects in serious criminal investigations who may be witnesses in a discipline investigation. I would stress this is only a strong suspicion that is entertained by our members. We obviously have no way of being able to substantiate that, but we do submit to the Committee that, if that is a practice that is engaged in by the Criminal Justice Commission, it is grossly offensive to the basic tenets of natural justice or established investigative practices that telephone records of private telephone conversations from a private telephone should be able to be obtained with absolutely no knowledge of the person in whose home the telephone is, particularly if you have no idea what the investigation is about. If it is a serious criminal investigation, by all means, the gloves are off if there is a police officer involved and any means that can be used to establish the guilt or otherwise of that police officer, we do

not have a problem with, within reasonable bounds, obviously. But if it is a matter of a breach of discipline or minor misconduct, then the obtaining of private telephone records without the knowledge of the person is grossly offensive and we believe should be stopped.

The CHAIRMAN: Can I just say that this afternoon the Criminal Justice Commission will have the opportunity to respond to the matters that have been raised particularly today and late yesterday and I would specifically ask that they respond to that this afternoon.

Mr J. O'Gorman: Our heading No. 8, the Commission not bound by rules or practice—I notice in submissions from other bodies such as the Law Society, the Criminal Law Association and other people, that concern of ours is addressed far more effectively and professionally than we have been able to do and I would rely on those submissions to the Committee rather than waste any more time.

The last section of our submission is part 6, the offences. We believe that the section that is designated part 6, point 11, frivolous or vexatious complaints, needs overhauling to achieve at least the legislative provisions of section 10.2(1) of the Police Service Administration Act, which provides for the prosecution of persons who make false representations causing an investigation. Our perception is that the CJC is being used by various people as the first stop in an attempt to discredit police officers who may have arrested somebody or may have taken prosecution action against somebody or merely as a getting even forum, and we believe that, whilst we would have total opposition to any restriction on complaints being made to the CJC, we believe that we must strike a balance of reality; if people are going to make complaints, there has to be some substance to the complaints before a police officer is put under the necessary strain of CJC investigation or a discipline investigation. I do not believe I can help the Committee any more. I am prepared to answer questions, obviously.

The CHAIRMAN: Apart from point 6 where you mention the Research and Coordination Division, you do not really say too much about the CJC as a whole in terms of its future. In fact, I do not think you say anything at all about what should be the future of the CJC. Given that this is a three-yearly review, particularly from the perspective of the Queensland Police Service, as advocate for your members, what have you got to say about what should be the future of the CJC?

Mr J. O'Gorman: From the Queensland Police Union's point of view, we believe emphatically that the CJC must continue to exist. To be blunt, our basic interest in the CJC is to make sure that there is an easily accessible avenue for people to make allegations against police officers, and that facility must be independent of the Police Service. We learnt in the era prior to the Fitzgerald inquiry that anybody who wanted to make some cheap headlines, whether it was a politician or anybody else, only had to run to the media with allegations that the police were doing this or that and the headlines were provided and the perception in the community was that it was going to be swept under the carpet. I do not believe that perception can honestly be held in the community today when the CJC is there to receive complaints. We insist that the CJC remain in place primarily to investigate criminal allegations or serious official misconduct allegations against police officers. The interests of our members are served in that, if somebody has allegations to make, the community has faith in the process of the CJC, that it is there to receive the allegations and energetically, we would say sometimes over-energetically, investigate those allegations. That is basically our only view. The Official Misconduct Division is, in our view, utterly necessary to police officers in Queensland being able to operate without people being able to make allegations and not having to substantiate them. The facility is there for them to substantiate them and they should be called upon to do so.

The CHAIRMAN: What about in terms of the major and organised crime function of the CJC?

Mr J. O'Gorman: As a union, we believe in the legitimacy of the CJC being involved in the major organised crime function. We do not know too much of the operations of the major organised crime function. Our members who are working there have not been approached by the union to discuss it because of the integrity of the information in the area that they are working in. We have not got any information to be critical of the major organised crime function.

The CHAIRMAN: So you do not argue that it should return—I will not say return—you do not argue that it should be with the Queensland Police Service as opposed to the CJC?

Mr J. O'Gorman: We do not argue that, but I would qualify that by saying we do not have the information to make a recommendation or a suggestion either way.

The CHAIRMAN: Any other questions?

Mr BARTON: The Research and Coordination Division, I think you have essentially indicated that they do not make contact with you. Do they consult with you? I will give an example. We are halfway through the police powers review right now. Volume 4 is down, volume 5 is not down yet. Has the research division consulted with the Police Union over volumes 1 through to 4 and 5, because 5 is currently in the process of being developed?

Mr J. O'Gorman: From my recollection, the involvement of the Police Union in the police powers debate has been through written submissions and giving evidence to the Commission in a forum like this. I cannot say emphatically, but I do not believe that there has been any significant contact with the Police Union from the Research and Coordination Division in relation to police powers. I cannot take it any further than that.

Mr BARTON: It has been put to us—certainly over a long period, although probably not very forcefully recently—that the presence of the CJC does restrain some police from doing their job effectively because they are concerned about complaints being made to the CJC. Is that a factor, and how big a factor is it if it exists?

Mr J. O'Gorman: It is a factor to a lesser degree now than it was some years ago. I think that, to be brutally honest, when the CJC first came into being, some of the methods that were imposed—I have a view, and the union has a view that they were very extreme measures. Some of the discipline sanctions that were handed down to police officers were extreme. That created an environment where police were very reluctant to confidently discharge their duties for fear of getting a complaint to the CJC, and the logical extension of that is having a fairly serious discipline sanction. That perception is falling now compared to what it was in the past, and I believe that it is just a price of what happened up to Fitzgerald, then the inquiry and the setting up of agencies to prevent it happening again. It is a necessary evolution of a new process being put into place. I believe that the CJC's role in disciplinary matters is purely an overviewing role. I have no doubt that it is purely an overviewing role. The administration of discipline is a matter for the Police Service. Whilst we do not agree with some of the sanctions that are handed down, I do not believe it is a problem with the CJC; I believe it is a problem with perceptions with the Police Service.

Mr BARTON: You have indicated that the union prefers the CJC to remain in place for serious allegations.

Mr J. O'Gorman: Yes.

Mr BARTON: That move to send the less serious allegations to the District Court or to put those tribunals under the District Court—is that satisfactory to the union? It would mean that the lesser complaints would not be directly under the CJC.

Mr J. O'Gorman: I am not aware of the move you refer to—the CJC's investigative role of minor misconduct to the District Court?

The CHAIRMAN: I will give you an extract from the Fitzgerald report and let you have a look at that. While you are reading that, I will read it into the record. Page 322 of the Fitzgerald report under "Hearings 10.4" states—

> "The CJC will need to be able to conduct hearings of two types.
>
> It should be able to conduct public hearings on matters of general significance with respect to the administration of criminal justice in the way law reform commissions from time to time conduct such hearings. Equivalent mechanisms should be provided to it.
>
> The CJC from time to time may also need to conduct hearings for investigative purposes. Mention has earlier been made of the need for judicial control of that, along with other special powers. No such hearing should be possible without judicial leave."

I do not think there is any need to read any further. Would you like to give us your comments on that, in view of what you said under point five of your submission relating to investigative hearings?

Mr J. O'Gorman: I think that accords with our submission that if it can be justified to the District Court or to a member of the judiciary that an investigative hearing is necessary, that goes some considerable way to addressing our concerns about investigative hearings.

Mr BARTON: You have members, obviously, in the general police force, but there are some 90-plus attached to the CJC. In terms of the joint operations, is that a satisfactory situation from the Police Union's point of view?

Mr J. O'Gorman: I have not heard of any operational problems. In fact, there have been some pretty significant operational successes in the joint operations. I am aware that there are criticisms of joint operations, and people have proposed the view that it can blur the CJC's role in the investigation of police. My experience is that it has absolutely no effect on the CJC's energy in investigating complaints against police. The function of the joint task forces—I think they are called—has been directed towards police officers in the past, and we do not have a difficulty with that. If I fall within the net of a joint investigation, then I have to answer the same as everybody else in the community. We have a belief that police officers in that situation have to answer a little bit higher.

Mr BARTON: I know you said before that you are probably not in a position to know a great deal about what the police officers attached to the CJC do, but from a union perspective your members in the police force mainstream do not feel threatened by the CJC, in terms of an operational point of view, taking over their work?

Mr J. O'Gorman: Not at all.

Mr BARTON: They are comfortable with the joint working arrangements?

Mr J. O'Gorman: Yes, they are certainly comfortable with it. I think that, quite properly, the CJC has some powers that, with the necessary checks and balances—if it is adjudged that it is necessary to exercise those sorts of powers, then the appropriate approach can be made from the Police Service to the CJC and an assessment made. I am not sure of the mechanisms of that, but I have had no operational problems with it.

Mr BARTON: But the union does not see it as being necessary for those intrusive powers to be available to the police in the mainstream police force?

Mr J. O'Gorman: No, we do not.

Mr BARTON: And you have concerns about how those powers have been used on some occasions against your members?

Mr J. O'Gorman: Only in matters of minor misconduct and discipline. We do not believe that anybody should have those heavy-handed powers applied to them except in serious matters.

Mr BARTON: In the serious matters, that is fair; but if it is a question of whether they could be a witness or could have information, probably what you are saying to us—and it is a leading question—is that on some occasions the union's belief is that the CJC may have been a little too heavy handed in how it is applied to people who are essentially witnesses on the periphery rather than the main suspects?

Mr J. O'Gorman: Yes, and I would stress that in relation to investigative hearings our information is fairly flimsy because the ones we can talk about are the ones that are very old and over. With the ones that are more current, obviously the people have suppression orders on them, so they cannot come near us or we cannot go near them about those. So there is that problem.

Dr WATSON: As to the interviews by telephone—I understand the problems you have raised there. I can certainly see how that can cause some problems. In a decentralised State such as Queensland, there must be some practical aspects. Taking it a step further, and given the changes in technology, I presume you would not have the problem if it was, say, teleconferencing, where you could actually see the person; where you could actually see the individuals, you could actually see the person, you would know who you were talking to, and you could perhaps record it, or something like that. Would that overcome the problem?

Mr J. O'Gorman: No. To be honest, I was a detective for 20 years. If your house was broken into and I had to go from here to Mount Isa to interview a suspect or a material witness, commonsense would say that I go there to talk to them because there are some things that are

pretty hard to define. When you sit down to talk to somebody, just through mannerisms—it takes a while to settle people down to a level where the conversation is really worthwhile. I think we all know that if the phone rings at home at 9 o'clock at night and you pick it up and you have no idea who the people are, the first thing you want to do is get rid of them until you can see who the hell they are.

Dr WATSON: If you went to the video kind of stuff—given that technology is changing and you have potentially the ability to transmit you and I sitting here versus you sitting in Perth and I here and being able to see one other—you would still have the same kind of problems, even in that context?

Mr J. O'Gorman: Yes. In my experience with video interviewing for evidentiary purposes—for statements for court—people take a long time to settle down and relax to the point where you can get somewhere near the truth, in front of a video camera. I believe that anything other than face-to-face interviews are fraught with danger, particularly when there is a negative consequence, from a minor through to a very major one, for someone else. I think that we have to be sure that, if I am going to make an allegation against you that the quality of investigation that I cause is fair, not only to me but to you. I think that that is basic. If the quality of the investigation is compromised by expediency or cost cutting or whatever, then I believe that is not a compromise that the community should be prepared to bear.

Dr WATSON: Even if it was a preliminary inquiry into relatively minor offences as against more serious offences?

Mr J. O'Gorman: It only supports our argument that relatively minor offences should be treated as relatively minor. My experience as a detective is that often witnesses can finish up as co-offenders, or vice versa—people nominated as offenders can finish up as witnesses. It takes a fair degree of experience and investigative expertise to assess people as to where they are likely to finish up, as well as evidence. You need to have the personal contact to be able to use whatever skills you have developed over the years to get the best out of that interview and to get everything out of that interview that you need to. I honestly do not believe that it can be done by video and certainly not be telephone.

Dr WATSON: I understand the problem with the telephone.

Mr J. O'Gorman: I still have a problem with video, because you see this much of the person. Even if it is a long-range thing, the comfort of two people sitting together and getting used to each other is not there and I think the quality of the interview suffers. I know it suffers.

Mr BARTON: You cannot pick the eye contact or the body language in the same way—or smell the feet.

Mr J. O'Gorman: That is right.

The CHAIRMAN: There have been a fair few comments over the last couple of days and even leading up to this review that, firstly, the CJC is too close to the Queensland Police Service and, secondly, that the CJC has become a super police force.

Mr J. O'Gorman: I submit with all respect that people who make those sorts of submissions have no idea what they are talking about. The part about the super police force, there could be some basis for people having concerns about that in the area that we spoke about before—the joint task force and the powers that are available to the CJC in what I believe Mr Fitzgerald was referring to, the investigation of serious crime or organised crime. There are powers that the CJC have that would be very handy for police but, because it is a separate organisation, the use of those powers has to be justified. I think it is a pretty reasonable compromise between our competing interests and other people's.

The CHAIRMAN: When you say "has to be justified", from your understanding what is the process to try to utilise those powers that they have.

Mr J. O'Gorman: I must admit that I have a very second-hand knowledge of the process. My knowledge is as limited as the Police Service has to make an approach to the CJC to say they have run into a wall in a serious investigation. They then have to justify to the CJC the need to conscript the CJC and its resources and powers into that investigation. Without being flippant it would not be done if I had an investigation into someone stealing a leather jacket from Myer. But, at the other end of the scale, if it is a major criminal enterprise that is under investigation, I believe

that it would not be too hard to justify that. As to the procedural processes that are gone through, I have absolutely no idea.

I think we have to put faith in somebody. It is the highest level of the Police Service, the Commissioner, Mr O'Sullivan, and people at the top level. I do not have a problem with anybody's integrity up there and I do not have a problem with anybody's integrity at the CJC, so I presume that is being done properly and that the mechanisms are in place to ensure that it is. I have not heard any whispers otherwise, except, perhaps, from people who might have a purpose to get rid of that cooperation.

The CHAIRMAN: I do have not the benefit of *Hansard* to be able to read back to you what the Commission said yesterday, but off the top of my head it was something like this: there is a committee involving members of the CJC and the QPS and application is made to that Committee. There has to be a recommendation for the use of those powers and then it is up to the CJC ultimately to decide whether those powers will be exercised. But when *Hansard* is fully available you will be able to read what the Commission said.

Mr J. O'Gorman: There would not be too many senior sergeants from the City Police Station on that Committee, I would suspect.

The CHAIRMAN: What has taxed the mind of the Committee is what Fitzgerald actually meant by the words—he did not use the words "serious crime"—"major or organised crime."

Mr J. O'Gorman: Our view is that major and organised crime must attract the meaning that it has in the broad community, rather than—and I am not referring to anybody at the CJC or anywhere else—a definition massaged by lawyers. Being realistic, I think that police have a tendency to want to be more successful at their job; lawyers have a tendency to want to be more successful at their job. We have to accept the broad community's definition of major crime and organised crime.

The CHAIRMAN: Are you referring to defence lawyers, or——

Mr J. O'Gorman: It is a bit hard to differentiate between lawyers—with all respect to individual lawyers, of course.

The CHAIRMAN: Are there any further questions of Mr O'Gorman?

Mr BARTON: Could I take that one a little step further just to make sure that we are on the same tram. When I read the Fitzgerald recommendation, and when I read the Act, I tend to put major crime in the same basket as the organised crime. If, in fact, the intrusive powers were to be used, my view—and I will put my cards on the table—is that certainly it is a major crime if someone has been murdered, but if it is a straightforward murder that is a crime of passion or if it is a hold-up, then I would think that that is an area that the police could normally handle within their area.

Mr J. O'Gorman: Adequately deal with it.

Mr BARTON: But if it was a murder, similar to some that we have seen lately where people have been pulled out of creeks with tattoos and there have been Harley Davidsons involved—it appears to be gangland or drug-related——

Mr J. O'Gorman: We need those other powers to get anywhere near them.

Mr BARTON: You would believe that you need those powers and that is a reasonable one for them to be referred from the Police Department to the CJC for use?

Mr J. O'Gorman: Most definitely and the need to control the effect of that sort of activity on the community has to be seen for what it is and it is a very high need. It is impossible for the local detectives, or even a Statewide homicide squad, to adequately investigate those things to total exhaustion. That is what you have to do. It is like the weeds in your garden—if you only get a few of them out, the others will get going again. The whole lot has to be got. We cannot do that. We need the extra powers for that.

Mr BRISKEY: What did you do before the CJC?

Mr J. O'Gorman: We pulled out a few of the weeds and then went back next week to see if there were any more coming up, to be honest. I do not mean that to be a flippant answer. Prior to the CJC I do not believe that in Queensland—or anywhere else in Australia—without those

sorts of powers we got anywhere near the big organised crime organisations that do exist. The example that Mr Barton gave is only a symptom of it; it is much broader than that.

If I can be a bit presumptuous, you mentioned the Fitzgerald report, Mr Barton. We have a view, and it is a strongly held view, that we must never forget what happened to cause Fitzgerald and we must make sure that it can never happen again. But we must also remember that 3 July 1989 was over 5 years ago. That is when Mr Fitzgerald's report came down. It must be allowed to evolve or we would be still driving FJ Holdens.

Mr BARTON: We cannot be left in a time warp.

Mr J. O'Gorman: No, we cannot. With all respect to the politicians, for people to continue to say, "It is not what Mr Fitzgerald said", or, "It is contrary to what Mr Fitzgerald said", is really taking the easy way out. We have to roll the Fitzgerald clock on five years or we might as well give it away.

The CHAIRMAN: Can I just say in response to that, Mr O'Gorman, that I think part of the foresight of Mr Fitzgerald was the requirement for there to be three-yearly reviews, and that is what the process is all about.

Mr J. O'Gorman: I was not criticising what is happening, I was just concerned that you hear people—and not the Committee—say, "That is not what Mr Fitzgerald wanted." We have got to look at it in 1994, not 1989.

Dr WATSON: It is fair to say that people have used exactly that argument for removing the powers, those special powers from the CJC and the CJC itself.

Mr J. O'Gorman: With respect, I am quite sure that I have not.

Dr WATSON: No, I am just saying that others have used precisely the same argument and they seem to be diametrically opposed. It seems to me, moving beyond Fitzgerald is not an argument for getting to any particular place, but an argument for going anywhere.

The CHAIRMAN: Are there any further questions from the Committee?

Mrs BIRD: John, would you know automatically if you had a whistleblower within your union membership?

Mr J. O'Gorman: Not necessarily automatically. I am trying not to breach confidences. I have had approaches from a number of police and have facilitated a number of police approaching the CJC on pretty serious matters, and some not so serious. Despite what some people have said in the past, we encourage people who have a concern to either come to us and we will steer them to the people at the CJC or we encourage them to go straight to the CJC with whatever concern they have got. But we ask them to live in the real light of day and not see shadows where there is no need to have a concern. We certainly do not suggest to people, "Do not worry about it." If someone has a concern, we will steer them to the CJC, but they do not all come through us, obviously.

Mrs BIRD: Do you find a dilemma in that it may well be against another member of the union?

Mr J. O'Gorman: None at all. We have been able to refine the process of our legal defence fund, as an example. If a police officer has allegations made against him or her that fit within the legal defence rule, it is of little concern to us where the allegation comes from. We apply the legal defence rule to them. If a police officer is making the allegation and needs support, or legal protection, we do not have a difficulty in providing that, either.

Mrs BIRD: Do you have a counselling system to assist a whistleblower within the union particularly?

Mr J. O'Gorman: Not a direct counselling system for whistleblowers. We access the Police Service human service officers, or we have a referral system to outside community agencies where people can get counselling or assistance. We made a conscious decision to not engage people specifically that we use on a continuing basis so that people who had a desire or a need for counselling would be comfortable with the person they went to, and there have been cases where we have paid the costs—if there were costs, that we would pay the costs from the union. I am not saying that where we pay the costs it has been for whistleblowers, but people who have needed specific counselling.

The CHAIRMAN: Anything further?

Mrs BIRD: No.

The CHAIRMAN: If not, I would like to thank Mr John O'Gorman from the Queensland Police Union of Employees for the submissions that have been made to the Committee, both written and verbally, and answering all the questions that the Committee has had for you today. Thank you, Mr O'Gorman.

Mr J. O'Gorman: Thank you.

TERRY O'GORMAN, examined:

The CHAIRMAN: I welcome Mr Terry O'Gorman from the Queensland Council for Civil Liberties. Terry, you have given us a very comprehensive submission of some 46 pages and I would ask now that you speak to your submission and make any other further comments that you like. Following that, hopefully you will be happy to take some questions from the Committee.

Mr T. O'Gorman: Thank you, Mr Davies. Firstly, could I start on a related topic? I would like to congratulate the Committee on its decision to release the submissions. Certainly, some parliamentary committees that I have appeared before in the Federal arena this year were asked to do that and did not. It makes, I think, the task of proper submissions somewhat impossible when submissions are not released. So I would like to congratulate the Committee and thank the Committee for doing that. Secondly, before I move to the submission, I would like to congratulate the Committee on its police powers report. While obviously there are a number of recommendations that we found quite unacceptable, nevertheless, the Committee's work and the work of the researchers we considered to be of a very high standard. That process, combined with the CJC's very thorough work in the four volumes that were under review, has produced for the first time since I have been involved in civil liberties going back to 1970 a dispassionate and, I dare say, a pretty expert view on where police powers should be going.

The CHAIRMAN: Thank you, Mr O'Gorman.

Mr T. O'Gorman: Moving to the submission, what I would intend to do is to go to the submission on a point-by- point basis and attempt to cross-refer it to certain aspects of the 200-plus page submission of the Criminal Justice Commission.

I am aware of the time frame. I have attempted to prepare my submission with regard to the time frame. In the introductory part of the council's submission, I make the point that the Criminal Justice Act itself was brought in in an incredibly short time frame. The Fitzgerald report was handed down in July of 1989; the Criminal Justice Act was passed in October. It was a period, for those of us who can remember back that far, of great hype. There was a Government on the ropes, there was an Opposition baying to get in and the Criminal Justice Act, in fact, was the vehicle used by both sides of politics at that time to have its last round before the election day. I make that point because if one has regard to the *Hansard* of the actual debate in relation to the Criminal Justice Act, it is notable for its points scoring and notable for its lack of appreciation of exactly what Parliament was doing in relation to this quite extraordinary set of powers. The council itself stands to be criticised perhaps in retrospect for the fact that we did not have a proper appreciation of many of the powers that were proposed. We certainly at the time made comments to the effect that a permanent standing royal commission was a very grave step to take, but the operation of the Commission over the last four to five years has highlighted to us a number of areas that we did not pay regard to because we did not have the background or experience. Indeed, no-one except perhaps the drafters paid regard to many of these issues.

In the submission, I concentrate principally, but not exclusively, on organised crime and the particular and quite extraordinary powers that are in the Criminal Justice Act that are consistently, particularly in the Criminal Justice Commission's submission, attempted to be justified by what I contend is a quite emotive phrase quite commonly called "organised crime". In recent times, particularly in the CJC submission, we see the emergence of another emotive phrase called "outlaw motorcycle gangs". They are called "outlaw motorcycle gangs", but I do not know why they are not just called "motorcycle groups". I do not know who outlaws them. They are possibly simply being proscribed by the CJC's submission writers. The fact is that they are groups of people who have an interest in motorcycling and who, from time to time like other groups in the community, might get into trouble with the law. We challenge many of these labels, such as "organised crime" and "outlaw motorcycle gangs", because we say that it is that emotive type of labelling that is permitting many of these quite extraordinary powers to go by either unchallenged or with very little critical comment.

At page 24 of the Criminal Justice Commission's submission, there is an attempt to justify its continued existence in relation to the concept of organised crime. In particular, page 25 states that the Queensland Police Service has enormous demands put on it in attempting to satisfy the everyday needs of the community. In effect, it goes on to say that, because the Police Service is busy, the CJC's organised crime mandate, as it sees it, is entitled to proceed beyond the interim

period stated in the Act to a period of permanence. It does not say that in as many words, but that is the effect of its submission.

It is to be noted—and I question how well known this is—that the organised crime fighting capacity of the CJC was stated in the Act to be of an interim nature. In my submission, one of the major issues that this Committee has to look at is whether that interim organised crime fighting capacity, as opposed to an organised crime investigation capacity, is to turn into a permanent capacity.

I refer to the Joint Organised Crime Task Force. I have directed the Committee's attention, in looking at where the CJC is, to the plethora of law enforcement agencies in this country. Each State has its own police service. There is an Australian Federal Police service. There is a National Crime Authority operating nationally and in each State. There is the Australian Securities Commission and the Australian Bureau of Criminal Intelligence. New South Wales has its police service and its crime commission, and ICAC. Also, we have the Australian Police Ministers Council formulating criminal law policy from the law enforcers' point of view. We have SCAG doing the same. Against that background, the Criminal Justice Commission, as the latest player on the block, is trying to establish its place on a pretty limited law enforcement turf.

I will move on in the council's submission to the issue of the appointment of commissioners with the Criminal Justice Commission. I refer to the somewhat unsatisfactory procedure that resulted in the replacement of Dr Irwin. I make the point that the current appointees, the current commissioners, can in no way be seen to be the toadies of Government. I know some of them, and that is the last thing that they could be described as. It is the council's view that, if the Criminal Justice Commission is to continue—and we say it should with some changes—the Parliamentary Committee should have the equivalent of confirmation hearings not only of the chairman but also of commissioners. If that were done, any game playing by this Government or any future Government would hopefully see the light of day. The appointing of chairpersons and commissioners of the Criminal Justice Commission is extremely important, and we see a very important role for the Parliamentary Criminal Justice Committee in having the equivalent of confirmation hearings for the chairman and the commissioners.

We move on to consider the concept of organised or major crime, and note that there is a difference—at least in the definition— between organised crime on the one hand or major crime on the other in the Act, although, of course, organised crime is not defined and nor is major crime. I note with interest that the CJC was obviously anticipating that it would have to give some explanation of these two concepts. Page 24 of its submission states that organised crime equals organised criminal activity. That is all right. However, it does not say much. It goes on to say that that means activity of an orderly but not necessarily a structured group. Presumably, that means criminals who are more than one who can achieve a bit more than a criminal who is disorganised by himself. The fact is that there is no definition of organised crime.

I hark back to some of the earlier comments I made that many of the extraordinary powers are justified under this quite emotive epithet of organised crime. Major crime is simply described as "unusually serious". It is not defined, but that is how the CJC in its submission defines it. The Court of Appeal was called upon to consider those definitions in Kolovos, and it declined to do so. It will have to be defined sooner or later.

I move on to page 9 to consider the aspect of the responsibilities of the Criminal Justice Commission, in particular in relation to the reports that it makes to Government. There is some concern, in particular having regard to some of the comments in the CJC submission and in its four annual reports to date, that there seem to be some occasions—and we are concerned that the instances are possibly increasing—where briefings are being given to Government in relation to what the CJC considers to be problems in relation to presumably organised or major crime.

We are not objecting to those briefings, but we are concerned that that could be having the effect of giving the CJC and similar law enforcers a dream run in relation to Government policy in relation to the criminal justice system, in particular the law enforcement side of it. In that regard, I note with some consternation the State Attorney-General's press release yesterday which said that there is to be a new offence of organised crime in the Criminal Code. I do not know where that has come from. It certainly was not in the O'Regan review committee draft. It has come in subsequent to the draft. It certainly has not come from the Civil Liberties Council or any other allied group, because we have not been told about it. One wonders whether this is some inside

run that the CJC has been given to introduce a major new concept, a major new criminal offence, into the Criminal Code.

Moving on—we consider Commission hearings in its public and its private phase. We see the Commission's public hearings, particularly in recent times—for instance, let us take Basil Stafford, even though it has not reported—as performing a particularly valuable public interest role. The public hearings got off to a bad start when hearing allegations against certain gaol warders. However, the Criminal Justice Commission, to its credit, did learn from that quite unsatisfactory experience—and it was unsatisfactory as far as certain gaol warders were concerned—and has changed its procedures since.

I might make the observation for those who say that the Civil Liberties Council is always on the side of criminals that we did, in fact, make substantial submissions to the hearing in relation to the allegations made against gaol warders. We said that what was being done to the gaol warders in those hearings was very unfair. But the Commission has come up with a set of procedures since in relation to public hearings which we consider largely redresses those particular difficulties.

I will skip some matters because of the time. I want to move next to the aspect of the abuse of the complaint process. In its submission, the CJC makes note of—and I am at page 16 of my submission—the trend of politicians, which happen to be Opposition politicians at this stage, of making allegations prior to an election in respect of either Government politicians or bureaucrats who are seen to be close to the Government. It notes that ICAC in New South Wales has had the same problem in relation to a Liberal Government and a Labor opposition. Indeed, it is pertinent to note that the Labor Opposition in recent times has done what Oppositions are fond of doing, that is, hopping on the law and order bandwagon and using complaints to ICAC as a means of pulling itself up in the polls. It is an issue that needs addressing. We cannot come up with a satisfactory solution, but a solution needs to be found. It is simply unacceptable for someone—be it a conservative politician now or a Labor politician when the conservatives get back in—to simply use the CJC and the complaint-making process as a means of scoring political points in the lead-up to a State election. Something needs to be done to remedy the misuse of that particular complaint process, the misuse being that a complaint is made and then it is immediately advertised to the press. The complainant is on the back foot and, particularly if there is an election imminent, the person being complained against has the very real risk of not being able to recover.

We move on to consider the aspect of costs. Individuals who have to attend before the CJC, whether in a public hearing or in a private hearing, are faced with quite enormous legal costs. Without going into the issue of the rights and wrongs of legal costs, persons who have to be advised in relation to public and private investigative hearings are faced with an enormous amount of labour-intensive work that has to be done. It is very unfair to expect individuals to have to carry that cost. That issue of costs has to be addressed, that is, the costs that are incurred in relation to people who have to attend to defend their position at a public hearing, or people who have to attend at a private investigative hearing to meet allegations which are being made against them.

Our position is that, if the community or if the Government has seen fit to set up a mega-entity in the form of the CJC, there has to be some provision made for funding—perhaps out of the CJC budget, if it cannot come from anywhere else—to meet the costs of people who have to defend their reputation. It is impossible to expect people to go along to public hearings and private hearings unrepresented. I have seen some cases where people have been unrepresented, particularly at private hearings, and they have got themselves into enormous difficulties.

We move on to consider the Complaints Division of the Criminal Justice Commission. We see the complaints procedure, particularly in relation to police, as being one of the major successes of the Criminal Justice Commission. That said, we nevertheless see certain problems. Perhaps the primary problem is best illustrated in the Paynter case, where a youth was said to have gone to the Juvenile Aid Bureau for the purpose of getting assistance and got a flogging for his help. He did not go there as a suspect; he went there as someone needing assistance. The officer who assaulted him was dealt with by the Commissioner. He was dismissed, and then that dismissal was suspended. He is now back in active service in the Police Service.

It is a matter of supreme regret that the Criminal Justice Commission does not have the power, as the Attorney-General does have in relation to ordinary citizens, to take on appeal what the CJC considers to be inadequate sentences handed down by the Police Commissioner. We say that, if it is good enough—not necessarily on a tit-for-tat basis—in relation to sentencing principles for the Attorney-General to take on appeal perceived inadequate sentences handed down to citizens, if the CJC is to retain the confidence that it has so far got from the public in relation to complaints against police, it must have the power to take on appeal, whether to a Misconduct Tribunal or to the Supreme Court, instances where it perceives that the Commissioner has been unduly lenient. The Paynter case, in our view, is a particular case where the Commissioner, for no apparently good reason, was remarkably lenient in relation to a detective who, without any explanation, assaulted a youth who went in for assistance.

I move on to consider the issue of complaints against the CJC itself. There is at the moment no effective machinery for dealing with complaints against the CJC. As the CJC moves, we say, inexorably towards a super police force role, as demonstrated by an increasing joint operational exercise—with deference to the last speaker—with the Queensland Police Service, as illustrated by the setting up of the Joint Organised Crime Task Force, to whom does a complainant go when there is a complaint made about police or law enforcement operatives who are attached to the CJC? It is an issue that has to be addressed, with respect.

I refer to a case with which I personally have had involvement which is in some tangential aspects still before the court, where a client of mine was charged with accessory to murder. He was kept in custody for six days before he was granted bail. During that six-day period in the watch-house, he attempted to cut open his stomach. He was released on bail on the seventh day, and after six months the charge was dropped. There was no basis in law for that person to be charged. When I wrote to the CJC and said, "Who do I complain to?" they said this Committee. With respect to each of you as individuals, this is not a suitable forum. There has to be some mechanism worked out as to where complaints against the CJC go.

There was, in the earlier 1990 report of the CJC, a suggestion that there was a mechanism then comprised of a senior policeman, a representative of the Director of Prosecutions Office and, I think, someone from the Attorney-General's office. Maybe that needs to be resurrected, but something has to be done.

The CHAIRMAN: That is what is referred to as the tripartite arrangement.

Mr T. O'Gorman: Yes. It is a real issue, because as the CJC becomes more and more involved in joint policing, there has to be somewhere to go. The illustration that I gave is a very serious illustration of a person who was charged with a very serious offence that was dropped before committal proceedings were even had, six months afterwards, without a word of evidence being led. Where does that person go?

There was also a suggestion in the 1990 report of the CJC—which does not, at least as far as I can see, find its way into the CJC's submission to this Committee—that somehow or other the Misconduct Tribunals are characterised by excessive legalism. I refer to that at page 24 onwards of the council's submission. There was a view stated that the Misconduct Tribunals are characterised by excessive legalism, and that excessive legalism is requested, at least in the 1990 report, to be gotten rid of, and it is reported again in the 1991-92 report, where it says—

> "In November last year, the Commission made a number of recommendations to the PCJC to ensure that the Misconduct Tribunals do not become overly legalistic."

Frankly, we have not seen the recommendation of the Commission in that regard, but we find that submission quite remarkable. It is said that the council is often on the side of criminals against police officers, but in this case, our objection to removing what the CJC sees as being excessive legalism is going to adversely impact on police officers. Police officers are the primary group of people who end up before the Misconduct Tribunals—which I stress I acknowledge the CJC says are quite separate from them—but it is very important that the Misconduct Tribunals are characterised by as much procedural fairness (and in the CJC's view that means excessive legalism) as occurs in court proceedings, because the penalties for police officers, if they are found guilty of offences that are heard by a Misconduct Tribunal, is nothing less than dismissal. It is with some considerable concern that we see that, and we certainly would urge you to very closely look at any suggestion that Misconduct Tribunal procedures should be somehow or other watered down because the CJC sees them as being characterised by excessive legalism. Those

who appear before it have significant rights—particularly job rights—on the line, and they are just as much entitled to procedural fairness as anyone who is before a court.

Moving on to the Research and Coordination Division—we regard this, along with the complaints work of the CJC, as being probably the success part of the Criminal Justice Commission. Despite the fact that the Government, and the Premier in particular, has seen fit to pre-empt particularly the prostitution findings even before they were published, we see the work that has been done firstly by Dr Mukherjee and now by Dr Brereton as being work of a very high standard, notwithstanding that from time to time they come up with some quite incredible proposals like covert search warrants, but leaving those aberrations aside, their standard of work has been very high and we see the Research and Coordination Division as having achieved one of the major recommendations of the Fitzgerald report and that is to depoliticise or take the petty politicking out of law and order.

Now, we stress that we accept that once the CJC come up with a report, of course it is up to Government and the Opposition to run with it, but at least the beauty of the prostitution report is that it has enabled the Civil Liberties Council and others to, with respect, argue quite easily publicly the stupidity of the Government's law in relation to prostitution because we are able to say that it is not the Civil Liberties Council saying it is stupid. When you look at the work of the jurisdictional comparative work done by the CJC in its report you see that it is demonstrably, by any objective standard, a stupid law. So we heartily commend the Research and Coordination Division in relation to the work it has done in that area.

There is a suggestion in the CJC's submission as to whether that work should be done by a Government department. We are utterly opposed to that. We say that the evils that were highlighted by the Fitzgerald report in relation to the previous Government's quite cynical misuse of Government departments for law and order issues is at least going to be harder to do under this Government or under any future Government if the Research and Coordination Division is kept independent, and for the purpose of non-Government members on the Committee, might I make the observation that the Civil Liberties Council is fond of making comparatives. Back when Labor was previously in power, in the 1950s, the Labor Government when it was last in power in the fifties was not adverse to using police for its own quite overt political purposes just as the conservatives, when they were in Government, in the latter stages fine arted the process as well.

We make the point in relation to the Research and Coordination Division that they should be encouraged and indeed directed to set up the equivalent of the New South Wales Bureau of Crime Statistics. It is of vital necessity that there be an independent bureau of crime statistics set up in Queensland. Whilst the Research and Coordination Division have done some work in that area, it is imperative that they move to the same standard of work as the Bureau of Crime Statistics has in New South Wales. Indeed, it is a measure of the success of the New South Wales office that it has recently, by the production of cold statistics, been able to completely scuttle the Labor Opposition's attempt to run a law and order campaign against the conservative Government in New South Wales by showing that the figures that Bob Carr in New South Wales has put up to show that law and order is out of control, particularly juvenile law and order, just simply do not stack up. So an independent bureau of crime statistics is a must and we very much urge the Research and Coordination Division to be moved towards that particular goal.

I will make quickly three final points because I am conscious of the time. We argue very strongly for privacy laws. I would propose to tender a series of correspondence, with copies, dating back to 1990 where the Queensland Civil Liberties Council have asked the previous Minister for Justice and the current Minister for Justice to set up some privacy laws consequent upon the sunset of the previous somewhat inadequate privacy committee that sunsetted in August of 1990. Twice, no less than twice, in writing—once by the current Attorney-General in recent times—have we been promised that privacy laws are being taken to Cabinet. They have never, on our information, got there. I tender a number of copies of those series of letters. We say that the one big gap in the post-Fitzgerald structure in Queensland is the lack of any statutory privacy laws, and we say particularly in relation to the CJC that there is a necessity for at least data protection legislation similar to what is currently being introduced in New South Wales to be introduced in Queensland and that a privacy commissioner be established along the lines of the Federal privacy commissioner that was set up pursuant to the 1988 Federal Privacy Act, because we say this—if you look at the CJC's submission, particularly in relation to its intelligence database, they positively wax lyrical about how excellent it is and how super excellent it will

become in the future. Now, if you match their database along with the increasingly sophisticated Queensland police database, you have in Queensland criminal intelligence being increasingly collected, shared with, got from all the other plethora of law enforcement agencies that I referred to earlier, but in Queensland its use, its dissemination, is totally unregulated by any privacy laws.

Now, in deference to the CJC, we acknowledge that under Mr Paul Roger, the Director of the Intelligence Division, that certain privacy principles for the collection and dissemination of criminal intelligence have been put in place, but that is only of limited value because the problem is that who monitors to ensure that those privacy principles having been put in place are in fact being observed? The answer—the CJC. So it is a totally unsatisfactory situation, to have to use the tired old cliche, Caesar monitoring Caesar in relation to this very important area of criminal intelligence, because it is to be observed that the CJC themselves in arguing in support of their FOI exemption in relation to criminal intelligence material have indicated that much of the material they have is unproven and sometimes turns out to be wrong. It is also pertinent to observe that the CJC in its submission noted that, in 1993, there were, I think it says, three instances of unauthorised access to its criminal intelligence database—three. Now, that in itself is serious.

We need in Queensland to have a privacy commissioner that has the power to spot audit both the CJC in relation to its criminal intelligence database and the Queensland Police Service in relation to its criminal intelligence database. Some may say, "Not another watchdog". Well, it will not only perform that role. A privacy commissioner at State level would perform the same role as the privacy committee in New South Wales has performed since the mid-seventies and which the privacy commissioner in the Federal sphere carries out, that is, a data protection role in relation to State Government departments. I accept that time is limited, but there is a very strong case to be made out for a privacy commissioner in Queensland not only to spot audit the CJC and the Queensland Police Service, because you cannot rely upon the CJC to do that any more because of its growing closeness to the Queensland Police Service, but privacy laws and a privacy commissioner will mean that State Government departments in its data sharing can be monitored in the same way that the Federal privacy commissioner does with Federal Government departments, and a State privacy commissioner will be able to regulate certain aspects of the private sector. Consider the perennial *A Current Affair* program example where someone's medical records or pathology lab findings are found by the side of the road on the way to the dump because the pathology labs or the medical surgeries are not properly destroying them. I move on to consider witness protection—I think I will just mention that and then move off it.

I want to conclude, because I am conscious of the time, or make as my second last point the investigative hearing concept. It is our submission that the investigative hearing concept is being abused. No-one here, I dare say, has been to the CJC as a witness or as a target for an investigative hearing. I have been there on many occasions representing people. They are, in many respects, a farce. The CJC will say, "But you have got Supreme Court review." Our reply to that is that Supreme Court review is simply unattainable, it is illusory because the average individual cannot afford the costs of their own legal representation, let alone meeting the costs of the CJC when the CJC are successful. It is to be observed that the Supreme Court's so-called review of the CJC, particularly in its investigative hearing concept, is illusory because of the costs aspect. When a person wants to take the CJC to court—let's say because it says that in a particular investigative hearing the CJC is abusing its powers—the person is appealing to the Supreme Court in its civil jurisdiction. Therefore, when that person loses, he has to meet his own costs and the costs of the CJC. It is to be observed that the CJC, when it goes to court, always engages the State's leading Queen's Counsel, who often come at a high price. So it is to be observed that, in reality and in practice, the Supreme Court review is simply an illusion.

There are a number of cases that I have had where I have gone to the CJC representing a person on an investigative hearing and asked, "Can I be told please the dates in relation to which my client is here either as a witness or as a target?" "No." They will not tell you. When you argue a point, you cite authority, and you inevitably get pro forma so-called judgments back by the people who are so-called presiding. The investigative hearings are being—in our very strong submission—misused. They are being used both as a means by the CJC to augment its much-talked-about database. They are being used in circumstances where a mere record of interview would have got to the relevant result. But the CJC, particularly the Official Misconduct Division, rests secure in the knowledge that they can get away with it because they impose—as the previous speaker indicated—these prohibition orders which prevent anyone from speaking about

it. Other than the fact that I am here before a parliamentary committee under the guise of parliamentary privilege, I would probably be seen by certain people in the Official Misconduct Division as breaching a prohibition order.

In this regard, I seek to tender what I contend is a quite remarkable certificate which I came by last week. It is a certificate under the hand of the Chair, Mr O'Regan, QC, which reads as follows—

> "I, Robin Stanley O'Regan, Chairperson of the Criminal Justice Commission, hereby certify that by an Instrument of Delegation dated 28 February 1994, I delegated to Pierre Mark Le Grand, the holder of the office of Director of the Official Misconduct Division, each and every power conferred on me by the Criminal Justice Act 1989 generally and without any conditions imposed thereon."

I want to read that again—

> ". . . generally and without any conditions imposed thereon."

That, I contend, is not a certificate peculiar to a particular investigative hearing. What that certificate shows is what our concern has been for a long time: that the real operational power at the CJC is Mark Le Grand, not Robin O'Regan, not Max Bingham and not whoever the next Chairman is. It is our concern that as Chairs come and go, the bureaucratic stay-behinds like Mark Le Grand are the real power behind the throne. So what is happening is that here you have all of the Chair's powers delegated to Mr Le Grand generally and without condition.

I return to the investigative hearing concept. Therefore, what is increasingly happening, in my experience, is that the investigative hearing, which was supposedly—to the extent it was referred to in the parliamentary debates—to be used in respect of official misconduct, is being widened in relation to whatever so-called major criminal activity takes Mr Le Grand's fancy and however low level he may want to push it and, in one case particularly recently, in a situation where—if there had been by the Official Misconduct Division a record of interview done with the person who was dragged out there—facts would have been brought to light which would not have necessitated that person being subject to the trauma of an investigative hearing nor to the incredible costs. The investigative hearing is being misused and abused.

Finally, the Council would strongly contend that the Parliamentary Committee needs to look at bringing the Queensland Corrective Services Commission within the purview of the Criminal Justice Commission. It is our view that the Corrective Service Investigation Unit, which is a group of police who are seconded to the Corrective Services Commission, are simply too close to the police. They see crims as crims. There was one inquest last year that I was involved in where it was alleged by a number of people that an officer from the Corrective Service Investigation Unit stood in the fishbowl of the Arthur Gorrie Unit while a youth tried to hang himself in full view from a rafter. I refer particularly to the McNeil inquest, which was heard recently, and the coroner's decision handed down. The Corrective Services unit investigating transgressions in relation to police officers is a joke. It has absolutely no confidence in relation to complainant prisoners, and that area needs to be addressed.

Should the CJC investigate parliamentarians—I note the CJC have given parliamentarians a present and said, "We should not." I suspect there is a bit of a cynical motive there: that they want to get you all on side in order that they can go on with their unabashed march towards greater and greater powers to themselves. We take the view—unpopular though it may be with you individually—that the CJC needs to retain the power to investigate parliamentarians even in relation to non-criminal conduct.

What happens if you had a Terry Griffiths in Queensland—Terry Griffiths being the New South Wales Police Minister who, it is alleged, spent a substantial amount of his time in the office with doors closed touching his female staff? Even if that is not a criminal office, i.e., if there is doubtful evidence about lack of consent, there must be a mechanism for the CJC to examine that type of complaint. ICAC is currently looking into the complaint against Mr Griffiths and is looking into an allied complaint that members of the Premier's office and/or Griffiths' office tried to stifle it by buying off the staff. We will not wear any derogation from the CJC's power to investigate politicians.

This is literally my last point: the undercover operatives exercise. In the CJC's submission at pages 48 to 50, they recommend effectively that there be legislation allowing undercover

police to commit criminal offences with the written permission of the Chairman of the CJC. Notwithstanding their attempt to call in aid the recommendations of the Carter inquiry into Trident, we are utterly opposed to that. There is at the moment under section 84 of the Criminal Justice Act a provision which is, in itself, superbly objectionable. It says—

> "Where surveillance of any person is of a nature or is performed in such circumstances that . . . but for this subsection its performance would constitute an offence, the performance of such surveillance does not constitute an offence if it is performed by an officer of the Commission authorised in writing by the Chairperson."

Mr O'Regan is on record as saying, "I have never given such an authorisation for CJC personnel, whilst conducting surveillance, to break the law." But it is an extraordinary situation where there should be an argument that the CJC—clothed as it is with these remarkable powers—should be given further power in the person of the Chairman, who may perhaps again delegate it to Mark Le Grand entirely and without express or implied reservation, to allow police who work with them to break the law. It is obnoxious. That is our submission.

The CHAIRMAN: I will have to do this from the chair. I would like to ask Mr Quinn and Mr Herbert whether you have time to wait for questioning of Mr O'Gorman?

Mr Quinn: We have a little while.

Mr Herbert: For the questions, but I am not sure about the answers.

Mr Quinn: You will see, Mr Chairman, which one of us is the barrister.

The CHAIRMAN: We are running a bit out of time so if you can bear with us, that will give us the opportunity to ask Mr O'Gorman some questions before he leaves.

Mr O'Gorman, you mentioned the problems with complaints against the CJC. You also talked about the need for privacy legislation in Queensland. I will just make the comment that federally, for bodies such as ASIO, NCA and organisations such as that, they have an office of the Director-General of Intelligence and Security and people can go through that office if they want to complain about, for instance, staff matters—people who are actually employed by those organisations can utilise that function—and any other matters that they want to raise. I will just ask your comment. In Queensland we do have an Information Commissioner. I realise that his powers would have to be extended to bring him into the net, but would that be a possible alternative to another bureaucracy?

Mr T. O'Gorman: That, or a wider jurisdiction to the ombudsman. I have spoken personally a couple of times to Roger Holditch, who is the Inspector General of ASIO and ASIS. I have met him a couple of times in relation to other matters. Part of his problem is the usual problem: he is underresourced; there are him and two others. But if you deal with the resources problem, his enabling statute is far too narrow. I would not like to see the complaints procedure go the inspector-general way. There is some scope for a significantly enhanced role for the ombudsman. I have a difficulty with the apparently short-lived tripartite arrangement, because it is simply the law-enforcement club looking into their mates.

The CHAIRMAN: As we have commented in our recent report, under the tripartite arrangements, there is no requirement whatsoever to report to this Committee.

Mr T. O'Gorman: We need other powers to get anywhere near them. I would see the ombudsman as being perhaps the nearest thing to an existing enterprise, but he must report to this Committee because, without that sanction, his office can simply slip into a comfortable mode.

The CHAIRMAN: You were talking about costs of hearings and that possibly the CJC should have to pay for people who have to defend themselves. I would like to ask for your thoughts about the possibility of extending that even further to the public inquiries, which run organisations and individuals—through the need to be properly represented at those public inquiries for long periods of time—into thousands and thousands, tens of thousands and in some cases hundreds of thousands of dollars in legal expenses to be represented at those public hearings. I ask for your comments in relation to that. I do not think you specifically covered those types of hearings.

Mr T. O'Gorman: There was a royal commission on royal commissions in the U.K. in the seventies, which came up with a major recommendation to the effect that when a government sets up a royal commission it should establish a fund to ensure that persons who have to appear

before that commission are able to pay for legal representation. By extension, if a government seeks to set up a permanent standing royal commission, the same provision should ensue. The fact is that governments from time to time, when they want to, can find special amounts to pay certain people. Witness what happened when ICAC looked into the Metherell/Greiner matter, where a particular Minister had his entire costs paid out of a special grant that was made. The fact is that organisations, but individuals particularly, should be able to draw on a fund taken out of the CJC's budget, if there is no other source—and I certainly would not want to see it taken out of the strapped legal aid budget—to ensure that they are able to present their case and be properly represented.

The CHAIRMAN: Thank you. I will pass over to the other members of the Committee.

Dr WATSON: On page 9 and during your oral presentation you made the distinction between actual combating versus investigating organised crime. You seem to indicate that you have no problem with the CJC investigating; it is the combating of organised crime that you thought was the difficulty. You see almost a change in the role.

Mr T. O'Gorman: I do.

Dr WATSON: I am not quite sure that I understand exactly where the cut-off is. Where you move from investigating to combating, and vice versa? I understand in terms of the Army.

Mr T. O'Gorman: I understand your difficulty because I did not make the point very well. The distinction we would draw is this: there is a role for the CJC in developing, in consultation with the Queensland Police Service, an up-to-date, computer-based intelligence database. We would see that as being the investigative concept. But the actual combating is any step beyond the collection of data. It is in that regard—and I am conscious that time is against me—that many of the examples that are in the CJC submission, which I would add is the first time that we have seen hard examples, particularly Operation Whitewash, where Mr Onea was convicted and got 20 years, there were no special powers used. None at all. Indeed, if you go to some of the examples that are trumpeted here as being examples of the particular use of coercive and novel powers, when one goes to the facts, they are not.

The CHAIRMAN: Dr Watson, could I just follow up on that. Mr O'Gorman, in the Fitzgerald report—and I will give you a copy of pages 313 and 314—under "Powers" he said—

> "The Official Misconduct Division will have to have some special powers in each case subject to strict judicial controls to be established by legislation. The powers likely to be required include:"

He then goes through a whole range of powers—

> "compel the production of documents and things and to attend and give evidence;
>
> cause interception of or intercept telecommunications and post;
>
> monitor other communications (including by electronic means);
>
> carry out surveillance (if otherwise illegal);
>
> search and seize in respect of suspected criminal offences and to seize evidence of other serious offences, not the subject of the search warrant, but which evidence is found while executing a search warrant;
>
> detain persons for specified times and purposes, and under specified conditions;
>
> take samples or specimens of all sorts and anything from the person of anyone detained or arrested;
>
> cause arrested or detained persons to undergo examinations and tests;
>
> take possession of passports and other travel documents and financial documents including instruments of title or securities;
>
> photograph, fingerprint, palmprint, footprint or voice print or take samples of handwriting from any person detained or arrested."

And it continues. I ask: in view of your comments earlier and the comments that you were just making in response to Dr Watson's question, is that consistent with the line of argument that you are putting to us as a Committee?

Mr T. O'Gorman: If your question is: is what I am saying about the necessity to pull back the extreme powers of the Criminal Justice Commission in the area that you have outlined contrary to Fitzgerald, the answer is: yes. But I do not make any apology because it is pertinent to observe that Parliament in the passage into legislation of the Criminal Justice Act specifically left those powers out. It is our view that four years down the line, having regard to what we contend is the abuse—particularly of the investigative hearing—that, as well as the example that I gave you of the person who was arrested for 6 months on no evidence, is ample justification for saying, "That may have been what Mr Fitzgerald suggested, but Mr Fitzgerald was perhaps too ready to sacrifice longstanding rights."

Dr WATSON: There is a lot in your submission that we could have spent some time on. We will discuss it with other people. One item that you have discussed that is unique relates to the role of the appointment of the Commissioners—the Chairman of the Commission, the Commissioners and the role of the PCJC. I think most of us would probably agree that there may need to be some adjustment to that process. I am intrigued, or perhaps even concerned, about the proposal for extended confirmation hearings. Certainly from my observation of confirmation hearings, at least in the United States, there does not seem to be an absence of political point scoring. At times one may even see on both sides of the political spectrum, at least in the United States, the issue of the embarrassment of the President or whatever. I am also reminded of the fact that in the recent extension of the Chairman of the CJC most members of the PCJC found out the Attorney-General's proposals from the media rather than from the Attorney General himself. Would you like to elaborate on what you perceive to be the way that would function to get over some of the problems you have identified with respect to the personal embarrassments?

Mr T. O'Gorman: The reason we put up the Committee is that if the Committee really is to be the oversight of the Commission, it is simply a joke to say that the Committee cannot even examine a potential appointee, be he or she a Chair or a Commissioner. How do you get over the perceived excesses of the US system? In the same way that you get over the perceived excesses of the questioning of jurors prior to empanelling. I mean, it has been suggested that O. J. Simpson is going to take something like three weeks to get a jury. Currently, on proposals that have been put forward as a result of particularly the Herscu case, there is a Queensland adaptation in relation to the questioning of jurors from the American scene. We can do a similar adaptation here. Simply because there are confirmation proceedings suggested does not mean to say they need to go the way of Bork or Thomas when they got on to the Supreme Court of the United States.

Dr WATSON: Are you talking about a public confirmation? Certainly the Committee has the capacity, or at least does extend——

Mr T. O'Gorman: I am saying public.

Dr WATSON: To actually interview. You are saying it is a public process?

Mr T. O'Gorman: I am saying public and, of course, in relation to certain matters—and this is to be worked out—there may be certain matters that are inappropriate to be brought out publicly, but if notice is given of that to the potential appointee, he or she can decide if they are going to go on with the prospective appointment.

Dr WATSON: Let me just take it one step further. You say that you think that it is the ultimate right of the Government to choose the Chairman of the Commission, in other words, to make the recommendation and the Parliamentary Committee has a right, if you like, of veto. Do you think that it may be appropriate if the Parliamentary Committee had some greater process in the selection?

Mr T. O'Gorman: Yes, because the position of Chair of the CJC is, for all the reasons I have indicated, a very powerful one. The current Chair and the previous Chair, with the exceptions that I have indicated in relation to certain problems, have exercised their powers reasonably responsibly. That is not to say in the future we will not have some Government tame cat appointed with much abuse that can be perpetrated, because if you have got the wrong person in that job, a veritable litany of disasters can befall this State. I do not think that is being overly emotive when you look at the abuses that were done under the previous Government in relation to the Special Branch. So if you get the wrong appointment to the Chair position, you have got big problems on your hands, and that is why there should be public confirmation

hearings and, yes, I would think something greater than simply the Committee saying to the Government, "We do not like it." There, maybe, ought to be a special veto power.

The CHAIRMAN: Mr Briskey?

Mr BRISKEY: Just a question——

The CHAIRMAN: It is the final question.

Mr BRISKEY: In the council's submission, it states that it is a possibility that the Parliamentary Committee can be snowed by the CJC.

Mr T. O'Gorman: Yes.

Mr BRISKEY: Can you expand on that?

Mr T. O'Gorman: There is a suggestion to that extent in the hearings that you held in relation to the missing November 1993 report. There was a suggestion, which I could not see satisfactorily resolved in your report, that there was a move by some at the Commission to sanitise the information that was passed on to you as a Committee in relation to the monthly reports. You only have to have a look at the turbulent history of the NCA supervising parliamentary committee to realise—they just point-blank refused to make information available on operational matters, calling in aid the usual public interest immunity argument that law enforcers want to when it suits their case—there is a risk. There is a risk. I do not have any evidence because I do not work for the CJC, but there is a risk that that could happen. It has been adverted to in the November 1993 missing monthly report and it is an issue that should not be forgotten.

Dr WATSON: Can I just ask you, is that not true of any organisation? Without actually going down and doing the work, information can always be hidden.

Mr T. O'Gorman: Yes.

Dr WATSON: From any committee. How do you ever overcome that issue?

Mr T. O'Gorman: It is true of any organisation but, Dr Watson, the CJC is not "any organisation". The Parliamentary Committee was set up in the Fitzgerald report as a supposed answer to those people who said, "Hang on, do we need a permanent, standing royal commission, year in year out?" If the Parliamentary Committee, to do its job properly— particularly having regard to the fact that you change your membership every term, operatives such as Mr Le Grand stay there, and presumably will stay there for a long time, then there is a power in permanent operatives, if he or she is so minded—and I have no evidence to suggest that Mr Le Grand is doing this, but there is certainly a potential for permanent operatives to get to know how to assuage parliamentary committees to simply snow them. That, Mr Briskey, is the point of our submission.

Dr WATSON: Is that not an argument for not having?

Mr T. O'Gorman: Not having what?

Dr WATSON: An organisation with those coercive powers in the long run. The dangers are always going to be there because you are always going to have a supervisory, if you like, Parliamentary Committee—or whatever—with the change in membership and, if you like, a relatively permanent bureaucracy.

Mr T. O'Gorman: And that is why, with the NCA, the Federal Act was set up because of similar concerns that operated in the mid-eighties, as operates now in relation to the CJC. It says that before the NCA can do a multijurisdictional reference, it has to get the agreement of the politicians from the various jurisdictions. You will see that the CJC, in its submission, sees that particular protection as a possible inhibition. They criticise it.

The CHAIRMAN: Thank you very much, Mr O'Gorman, for your submission and taking the questions from the Committee. I now call the next witnesses. That is the Queensland Criminal Law Association represented by Mr Michael Quinn and Mr Shane Herbert.

SHANE HERBERT, examined:

MICHAEL QUINN, examined:

The CHAIRMAN: Mr Quinn and Mr Herbert, we have got the Criminal Law Association submission dated 1 August 1994. The procedure we have been adopting is to firstly ask you to speak to your submission if you so desire and make any comments on anything that you have heard up until now and, following that, take any questions from the Committee. So we are in your hands.

Mr Quinn: Thank you, Mr Chairman.

The CHAIRMAN: Do not be constrained by the time. Following you we have got left the Criminal Justice Commission, so take as much time as you like.

Mr Quinn: They have kept us waiting. Perhaps this is our chance to get back at them. Mr Chairman, our submission is succinct and to the point. There are a couple of matters that perhaps we might want to elaborate upon. Mr Chairman, can I firstly say this, because it may be of some relevance—it seemed to have been of some relevance at a previous hearing when I addressed the Committee—and that was the fact that I am a solicitor for the Queensland Police Union. Accordingly, I therefore have the honour of representing a great number of police officers who, unfortunately, find themselves down before the Criminal Justice Commission. It apparently has been suggested previously—I do not know whether it has been suggested on this occasion—that that is of some relevance to the subject matter of the submission. I do not think it should, but I openly declare that, Mr Chairman, in relation to it.

The CHAIRMAN: Thank you, Mr Quinn, anything further?

Mr Quinn: The only other thing that we would like to say is that the two main areas of concern are clearly identified in the submission: firstly, the investigative hearings, which I assume have already been the subject of considerable discussion during the hearings—and I certainly recall Mr O'Gorman referring to them; and, secondly, of equal importance is the concern about procedural fairness in the investigations and what happens to the reports subsequent to the investigation. We are gravely concerned that insufficient time and insufficient allowance is given to a person to be affected by the report to respond to the report and correct any inaccuracies in it. Those matters are set out in the submission, and I am happy to expand on them.

We do not wish to take the point about legal representation any further in the report. The media comments in relation to media releases also, I think, are quite succinct and speak for themselves.

Mr Herbert: I want to elaborate on about four specific matters that we have dealt with in the submission and which were dealt with also by Mr O'Gorman to some extent. It seems to me that they derive from one general problem, which is this: the starting point with the CJC was the success of what has come to be called the Fitzgerald inquiry. At that point, people of good faith, goodwill and even good intentions in the criminal justice system became rather too optimistic about the future. In the first careless rapture of it all, we came up with a body that was never really thought through constitutionally, whose position in the constitutional structure of Queensland is still poorly understood and is still being worked out, and which in the end has proven to be a horse of too many different colours.

It seems to me that no-one could argue against the retention on the part of the CJC of the jurisdiction in relation to police and police misconduct. To return to the old system would be a disaster. However, it is by no means as clear that some of the other roles should be vested in a body of this kind. The starting point, as it seems to me, is this: no-one questions the fact that this is supposed to be a free society and no-one questions the fact—so far—that we have a right to silence, for example, and numerous other derivative and parallel rights. This Act wipes them out. It just wipes them out. That should occur, we would say, only in exceptional circumstances.

The wiping out of people's rights of this type has become routine. It has become commonplace. It has become the normal method of proceeding. The worst feature is that this method of proceeding, both for reasons of the CJC culture—for there has come to be one—and the provisions of the Act are non-reviewable. As to investigative hearings—an important role is given to this body, and it is a role which is not exactly, I would think, a "super police force" as Mr O'Gorman described it, but it is something approaching that. These are hearings which strip citizens of their ordinary rights.

In Queensland, there is a tendency to think that the right to silence is not for real men; that we are all wimps if we talk about these things—for example, the right to not have your home trespassed. But these things are real, as anybody who is investigated, for example, for travel expenses could attest, as could any of the hundreds of citizens who have been dragged into that place for no proper reason, they would say. These are real things. If you want to challenge the holding of one of these extraordinary draconian hearings, you have a right to do so under section 34 of the Act.

You can head off to the Supreme Court and complain that an investigation that is being conducted is either unfair or is not warranted. In fact, the exact language of the section is that the complaint or information on which an investigation by the division is being conducted does not warrant investigation. It seems like a useful method of controlling this body. It seems to be a provision that we can all rely upon to provide some judicial review of this outfit. If it starts to do things that are not justified, we can do something about it—the Supreme Court can do something about it. The trouble is that the draftsman was not for real about this.

Firstly, if you want to make out a case that the complaint or information does not warrant an investigation, it is helpful if you can tell the court what the complaint or information is, because you bear the onus of proof. It is not merely a matter of costs—although that is terribly important, as Mr O'Gorman says—it is a matter of rights. You first have to prove that the complaint or information is this or that. You have to be able to tell the court what it is. The CJC will not tell you; that is its basic approach.

If you go to court and say, "Look, Your Honour, we say that this does not warrant investigation. We do not know why we are here." The judge would then say, "How would you know?" You would then have to say, "We don't know. We can't be told anything. The CJC will not tell us." The judge would then say, "Well, you can't prove your case."

That is especially so because of the provisions of section 120 (2) of the Act, which states that in proceedings on an application under section 34 made on the ground that any information or complaint does not warrant an investigation—that is the language of section 34—the applicant, the citizen, is not entitled to be provided by or on behalf of the Commission with particulars of the information or complaint or the source of the information or complaint. This is illusory; this judicial review is a joke.The legislation creates it and then completely removes it.

Whoever drafted this thing must have known it, because the language of section 120 is so absolutely precise. It picks up the precise language of section 34. It follows a provision that someone like me reviewing this Act—or this Bill as it was 48 hours before it was to be passed—might miss. Section 120 (1) provides for all of the wonderful remedies that a judge can give you when you apply for judicial review. It is subsection 2 that tells you that you cannot do it.

This is so because of the pervasive view on the part of the CJC that to let any information out would prejudice the investigation. To tell the person, the subject of the investigation—that is, what he or she is being investigated about—seems to be something that is sacred. To let that out of the bag might makes things worse for the investigation. The trouble is that it often might be able to be immediately answered. It might be that the person under investigation could say, "Look, that is a nonsense and the person telling you that is mentally ill", but, no, you are not to be told these things. That is a structural problem.

The difficulty is that to say that there is a problem with this is almost taken as some criticism of the people at the CJC. In the end, this legislation provides no protection, and the judicial review that it creates is illusory. Where it involves the type of example under section 34 that I mentioned, the Act itself conspires to defeat it. It is no protection to anyone, though, to have provisions such as those requiring a Supreme Court judge to issue a warrant, for example, or to give a commission under section 43 of the Invasion of Privacy Act, because there is no review and the process is not judicial.

There is only one party represented on an application of that kind. It is the CJC. The CJC makes the application, determines what evidence goes before the judge, is the only party who argues the case, is the only party who presents a point of view, and it is in a position to tailor what goes before the judge—and I do not say that mischievously. It is in a position to conceal or restrict on the basis of security or for whatever other reason it has not to reveal certain things. For example, it could tell the judge, "The information is too sensitive. Trust us." There is no judicial process involved in that. The judge does not choose between competing arguments. He is not

given the assistance of another point of view. It is all just one way. So it is a pity, in a way, that these so-called protections are in the Act. We really should remove them and just allow everything to be done by a certificate of the Commissioner, because that in practice is what happens in any area one would be concerned about.

The difficulty that I speak of with investigative hearings comes about, I think, because the CJC is given an impossible task. Those who work in it—and I do not know that one could be personally critical of any single individual at the CJC—are asked to have too many hands and to do too many different and contradictory things. How can you have a role of investigating major crime under the same roof as a body that is supposed to be independent, removed, impartial and distant enough to judge the manner in which the criminal justice system is operating? To do so under the same roof or in the same building as a super police force just seems to me to be silly, and I cannot imagine how anybody who is sensible could observe it to be anything other than silly. It does not seem to be a matter to me that requires argument.

How can you say, "Let us set up a body that will be completely independent, impartial, neutral and review the criminal justice system—how it is discharging its functions, is it fair, how is the accused being treated, how are complainants being treated, and so on", and at the same time say, "Go out there and bug and use covert methods and undercover agents and run operations to investigate anything that you reckon deserves the label 'major crime'"? This is just nuts. It may not have seemed that way when the legislation was drafted. All things seemed possible back then, did they not? We had this wonderfully effective Commission—and it had been; it was unique in the history of the world, probably—but the real world has shown that, unfortunately, you cannot get hundreds of Tony Fitzgeralds to staff something like the Criminal Justice Commission. You get ordinary people who are perhaps only a little better than the average defence lawyer.

I notice that Mr O'Gorman makes a point in his submission about the staffing of the CJC, about the CVs of many of its members. With all respect, I adopt some of that. The fact of the matter is that it is one body. You can say it has divisions, but it is one body, and the most important people in that body, to us on the outside, seem to be the super coppers, really. They seem to be the people who call the shots there. I would not like to be doing research out there and recommending that police be stripped of powers and that the CJC be restricted in its role and responsibilities or that these powers to investigate so-called organised crime can be misused and maybe are. I would not like to have a job out there doing that, and I do not think anybody would. That is a fundamental problem with the place.

We have set up this terrific thing that is going to make sure that the criminal justice system stays on the rails—not 40-odd Supreme Court judges and District Court judges and dozens of magistrates, Crown prosecutors and so on; they cannot be trusted to do the job. We will set up this other thing out there, and sometimes it can be reviewed by the Supreme Court, and sometimes it itself can review the Supreme Court, and its overall role is to tell us how the Supreme Court is going. It is a horse of too many different colours. It is being pulled in too many different directions.

The culture out there, with all respect, has become no different from what one might expect. Let me give you an instance of it. In a matter last year, originating summons 681 of 1993, a person went to the Supreme Court complaining that an investigation being conducted by the CJC of him was unfair. The judge ruled that, prior to the CJC producing a final report, it had to accord that man the rights of natural justice, which the judge went on to specify. He specified in particular that the ruling was made on a number of assumptions, including that all of the evidence would be revealed to the person being investigated; that that person would be given an opportunity to cross-examine the witnesses; and that the person would be given a full opportunity to participate in the process leading to the final report, which would then go to the Director of Prosecutions. That is what the judge said.

The CJC is doing none of those things and will do none of them, and it says that what it did was it chose a barrister, who it then briefed, asking, "What should we do?" That barrister, whose advice is not given to us or made public, apparently said something on which the CJC is willing to rely to say that they will give us a summary of the effect of the evidence and we can give them some submissions on that, and that is as far as it goes. Whoever is right—the judge—whoever is wrong—the judge or the barrister—whoever is right or wrong, is it a particularly

attractive culture that a person in charge of the Official Misconduct Division should be moved in response to a Supreme Court judge's ruling, not appealed against—perhaps it could not be—to say, "Oh, no, we will choose our own advice and we will follow it, and we will ignore what the judge said"? That is the culture that prevails there. That is not a personal criticism of anyone there; that is what I would expect to happen in a body with these powers.

Imagine being given the power to drag a citizen off the street and make him or her answer questions and produce documents—make them produce the evidence to convict them, actually. You can make them produce exhibits to convict them—force them under pain of prison. After a while, it may be that the judgment of anyone with those sorts of powers may become a little different from the judgment of the rest of us. None of this is to imply that there has been any power exercised by any person at the CJC for personal gain or anything of that kind; but it is to illustrate what I say is the fundamental problem with the place—that we ask far too much of it. It is not as bad as what that politician said about Alexander Downer apologising to the last pillow that he sat on. It is not quite like that. But the CJC is required to be too many things to too many persons, it seems to me, to do any of them in such a fashion that those whose interests lie in that direction can be fully comforted. For example, those who would class themselves as whistleblowers and would want a pretty gung-ho investigative hearing of things about which they complain may not go along with the views of people perhaps in the Research Division or something like that, who have a rather more fine and subtle appreciation of rights and how the existence of hearings like that affect people.

In the end, the submission I make to you is this: that such things as investigative hearings should occur only in what we would say are exceptional circumstances. My personal view—and I do not want to associate anyone else with it—is that at the end of the day we should reverse the onus of proof and require the CJC to justify in court these investigative hearings. One cannot do that with the stroke of a pen. Some consideration has to be given to questions of security and the efficacy of the investigation itself and so on, but, fundamentally, I think that we should reverse the onus of proof and say simply this: if you are going to embark upon widespread infringement of the rights of people who are presumptively innocent and free, then you will be required to justify it, instead of the situation now, where you are the victim of remarkable and draconian powers, a body that is by law not compelled to tell you a single thing, and you then try to take it to court against what Mr O'Gorman says are the best QCs in the State with the risk of costs, when you bear the onus and you do not even have the right to be told what you are being investigated about. It is almost like the experience that Joseph K. went through in *The Trial*, the book by Kafka. You do not know what is going on; you do not know what it is about; there is no-one you can go to for a review of it; and at the end of it you get stabbed between the shoulder blades. That is perhaps dramatic language, but that really is the result for many people or the view that many people have of these investigative hearings. They go too far; they are held too often.

Naturally, if you are in a position to receive complaints, you are going to think the complaint you receive is an important one; you investigate it, and therefore it is justified, and so on. Everybody can justify some particular concern, but what is given here are not minor concerns—not that someone is flogging too many tins of paint from the Government panel beating shop, or something like that. What is given at these investigative hearings are remarkable powers and they are powers that nobody in this room would think ought to be exercised against them. There is no particular reason to assume that those who are targeted should have them exercised against them either, and the purpose of my submission is to say that those who want to exercise them ought to be required to justify rather than the citizen always trying to defeat this body. Thank you.

Mr Quinn: If I might just follow up on that Supreme Court case, I think a copy of that case was annexed to our submission and the comments of the Supreme Court judge appear therein. I would urge members of the Committee to closely look at the recommendations which, I must concede, are not being followed by the Criminal Justice Commission in the way in which they deal with investigative hearings. If I could just use one example of a recent investigative hearing where clients of mine were summonsed down there. They gave evidence; a request was then made to us after being informed that a brief was being prepared to be sent to the Director of Prosecutions and asked us to make submissions. We were only given copies of the evidence that our clients gave anyway and then a short summary of some inconsequential evidence, but we were not provided with summaries of the evidence of the complainants. Might I add, in that regard, the

complainants themselves were not required to give evidence under oath, only the persons against whom the allegations were made were called for an investigative hearing. So the complainants, who one would think also would have an interest in the outcome, were not cross-examined, were not questioned under oath. We did not have an opportunity of questioning them at all and then subsequently we are told that there is a possibility of an adverse report—an adverse finding being made and asked for comments, but we were not told what complaint had actually been made and the details of that complaint and their evidence. So those are matters of considerable concern.

In relation to investigative hearings, beside the other concerns that have been expressed, a great deal of Criminal Justice Commission resources and time go into those investigative hearings—time and resources that we would think could be better utilised in more productive work such as delayed investigations and so on, those resources that are used in those areas of investigative hearings which could be quite easily conducted under normal circumstances—record of interview—normal investigative techniques. Perhaps I will leave it there for the moment.

The CHAIRMAN: I have read this out previously but I will do it again because you were not here at the time. This is the Fitzgerald report in relation to hearings. There is only a couple of paragraphs so it will not take long to read it out again. If you want the report to look at it, I will pass it down to you once I have read it out. It states—

> "The CJC will need to be able to conduct hearings of two types.
>
> It should be able to conduct public hearings on matters of general significance with respect to the administration of criminal justice in the way law reform commissions from time to time conduct such hearings. Equivalent mechanisms should be provided to it.
>
> The CJC from time to time may also need to conduct hearings for investigative purposes. Mention has earlier been made of the need for judicial control of that, along with other special powers. No such hearing should be possible without judicial leave."

They are the two types of hearings that it was intended that the Commission be able to carry out. From what you are saying, your description of what is happening out there at the moment does not appear to be consistent with what Fitzgerald intended.

Mr Herbert: They have become routine. They are not unusual; they are normal. That is the point. What I am sure Mr Fitzgerald there meant is when a lawyer says, "from time to time", he means pretty infrequently, and he was talking about the sort of thing almost that led to his inquiry. You see, there are always idiots going around thieving a dozen cars and chopping them up and selling them and people dealing here and there in half an ounce of heroin or so on. These are common or garden crooks. They are always around; the coppers are always chasing them; they are always getting arrested; they are always going in and out of the gaols. What he was referring to are things analogous to what had happened by the time his inquiry began. There, you had almost a challenge to the sovereignty of the State. You had a police force that from top to bottom was committed to profiting from and running crime rather than suppressing it, according to the report and according to much of what was said later. It had reached, I think, what Evan Whitton's analysis is of organised crime where one end of it is where the local beat copper accepts an apple from the grocer for having an extra look after hours up to the point of the police force itself organising and running crime. Now, it had almost gotten to that point, according to Fitzgerald. It was almost to the point where, in truth, the sovereignty of the State was being undermined by those people. It is things not necessarily that strong but things in that direction that need to be tackled with remarkable powers, not common or garden drug dealers, burglars, car thieves, those sorts of people.

Could I say this—the result has been, contrary to what Fitzgerald recommended, that we have to rely upon paradoxically, once again, the judgment of individuals. Fitzgerald recommended judicial review but also recommended, as I have just learned from you, Mr Chairman, that such a hearing should not happen without judicial leave. Instead, it is the contrary and you cannot stop them. You cannot get judicial leave to stop these things. Now, I would not suggest for a moment that we should not trust people who are there now, particularly like Rob O'Regan or Mark Le Grand, for heaven's sake—I would not suggest that for a moment—but to be blunt, I do not trust anyone and I do not think we should trust anyone to be exercising powers of this kind when they are unreviewable and in practice unreviewed. When someone goes to Rob

O'Regan with this beaut idea, "Let's have an investigative hearing about this, Mr O'Regan, this is dreadful what they are doing out there. They are getting $2 out of every raffle that the West End State School puts on." You know, is there someone there in the office arguing strongly the case against having an investigative hearing? Well, there is not; it is all one way. There is someone going and saying, "Let's have one", and then, "Yes, sure." Whoever suggests it presents the material that they want presented and so on. As the Chairman I think points out, what happens in practice is the opposite of what was intended.

The CHAIRMAN: Any further questions from anyone? I have got one. Mr Herbert, you said that police and police misconduct should stay with the CJC. Having a look at the submission that has been made by the association, you have not gone any further and said what the future of the CJC should be. We are pretty interested to know your thoughts on that. This is a major, three-yearly review of the CJC.

Mr Herbert: Mr Davies, Mr Quinn has thought that through rather more than me. I would prefer him to answer it and I might add something.

Mr Quinn: It is certainly not our submission that the CJC should be disbanded. We see certainly a role for the Criminal Justice Commission. I think in some respects it might have lost its way. We have identified the inappropriate investigative hearings, matters that are not of significant importance and should not be the subject of investigative hearings. I think it can also be said that the time has come for the passing off of a number of investigations from the Criminal Justice Commission to the Professional Standards Unit of the Queensland Police Service. That is not the old internal investigations, the Professional Standards Unit is very much an efficient body. A number of the investigations conducted by the Criminal Justice Commission are very mundane; they involve complaints against police but they certainly do not need to take up the time of the Criminal Justice Commission—inspectors there, lawyers there, staff there and so on. They could adequately be investigated by the Professional Standards Unit with, at all times of course, an overview by the Criminal Justice Commission with at some stage a report-back to them in relation to the investigation. But I think the time has now come for a number, perhaps I might even say a large number, of investigations which have been conducted by the Criminal Justice Commission, in particular in relation to police but in relation to other matters, can be hived off from that body to other bodies such as the Professional Standards Unit.

The CHAIRMAN: The CJC will probably respond to that, because I think it is probably in their submission. It was my understanding that a lot of complaints against police are actually sent back to the Queensland Police Service to be investigated.

Mr Quinn: I think that is a more recent development, and I think it can be expanded upon even more than what are being hived off now—should be hived off—to the Professional Standards Unit.

Mr BARTON: The comment you made about the appeal to the Supreme Court—the Kolovos case—tends to prove what you are saying. How do you see that case? Does that prove what you are saying about the capacity that Rob O'Regan, in effect—and I am not picking on Rob as an individual—but the Chairman of the CJC simply needs to say, I believe—

Mr Herbert: That is the result.

Mr BARTON: That, in effect, the court does not really have an effective capacity to overturn that.

Mr Herbert: Cannot go behind it. If you have to have someone in that job, I am happy to have him. I say that with respect.

Mr BARTON: I make the point that I am not picking on the current Chairman, but whoever is in that position——

Mr Herbert: Whoever is in that position has got an unreviewable, unreviewed power to do the most astonishing things. It is a situation that no-one ever intended.

Mr BARTON: We would want to be sure whoever it was did not go bad.

Mr Herbert: That is what I said earlier, paradoxically: we now have to rely on the people. The idea of the inquiry and this CJC thing was so we did not get a situation again where it was the particular individuals who called the shots and the system had no role, and those individuals—so it is said—turned out to be thoroughly rotten to the core. It is no answer to that to

say, "Well, that would be found out." According to this report, it was not for 20 years. Could I just answer Mr Davies' question? I think the Misconduct Division itself has to stay. I think the Misconduct Tribunals clearly have to go elsewhere or, alternatively, we perhaps should wait and see what happens with the new regime of District Court judges hearing those matters.

Mr Quinn: End of the year, I understand.

Mr Herbert: I would prefer to reserve judgment on that and see how that goes. I think that the current system—with all respect to the vast majority of individuals who have been there—has proven to be rather a failure. No-one is comfortable in it. No-one is comfortable with being the body that investigates and prosecutes and judges. That has been the problem. If you have got the tribunals themselves comprised of District Court judges, then I think that you will get a good, practical result. District Court judges are much more used to being much more distant from the parties and, in particular, to not hearing from one party absent the other. As it is now—with one Misconduct Tribunal recently, we learned that, as the hearing went on, someone was phoning the CJC every afternoon and talking to people like Mr Irwin and others out there and telling them to go and get files for him and all this sort of thing. That particular tribunal had the time to do that, but that is the sort of problem that arises because of this mixing of roles that is non-traditional and was never properly thought through or understood. I prefer to reserve judgment on that.

I cannot see why the Witness Protection Division is with the CJC. I think it may be there for odd historical reasons. During the inquiry, there were a number of people who had to be protected. Early on, some of those people were the ones who broke the ice with the Fitzgerald inquiry. I do not want to say her real name; I am trying to think of the name—Katherine James was one who actually helped in bothering the bad guys into getting pretty nervous. She had to be protected for a long time, and so did a number of other people. I think that maybe the Witness Protection Division has ended up with the CJC because of that historical fact. I see no reason for it to be there.

The Research and Coordination Division—my personal view is that it absolutely must be removed from the CJC. The Law Reform Commission is the proper home for the Research and Coordination Division. I think there can be no doubt about that. To have a body whose other roles are investigating, prosecuting and judging coppers—that is one role. The other role is looking after witnesses for the coppers or for the prosecution—witness protection. Intelligence is looking after investigations of criminals, and the major crime in organised crime is being a super sophisticated police force. I think it is ridiculous that a body that is so structured should also have the job of being an independent arbiter of the efficacy of the criminal justice system judged from the point of view not merely of kills and sentences but also from the point of view of the protection of people's liberties and rights. It cannot do it.

As to the Intelligence Division—I do not know enough about it. I am not qualified to talk about where it should be, because I really do not know what it does. But I know what the other things do. As I say, the mixing of roles with this thing has reached the point that it would be far better to break it down a bit. It would also mean that we do not have this great big thing called the CJC that we are all so terrified of, which has a budget of over $20m and is such a terribly important institution. After all, it is a number of different functions that have been rolled up into one and given a logo like the Commonwealth Bank has. After all, that is all it is. I think that sufficient history has now passed for us to see what its proper role should be and to see that they can be really adequately performed by other bodies that have now themselves been reformed. That is my analysis of what should stay.

The CHAIRMAN: Thank you, Mr Herbert. That concludes the formal submissions in the public hearing process. We now give the Criminal Justice Commission the opportunity to respond. We will now hear from Mr Rob O'Regan, Chairman of the Criminal Justice Commission.

ROBIN O'REGAN, examined:

The CHAIRMAN: Yes, Mr O'Regan?

Mr O'Regan: Perhaps I should begin, Mr Chairman and members, by responding to some of the remarks made by the various defence lawyers who have spoken—Terry O'Gorman representing the Council for Civil Liberties, and Michael Quinn and Shane Herbert representing the Criminal Law Association. Mr O'Gorman referred, I think somewhat unfairly, to the emotive tone of the Commission's submission to this Committee. He singled out for particular comment the phrase "outlaw motorcycle gangs". Well, the only reason we use that phrase is because that is what the bikies use themselves. It happens to be a term of art. It is the appellation applied to members of criminal gangs in the USA, and now in Australia, associated with motorcycles. May I suggest perhaps that the tone of his own submission was not entirely free from emotion.

It is emotive, for instance, to refer to the CJC as a super police force. It is emotive to say, as he says in his submission, that I tout a provision of the Criminal Justice Act to the effect that there is an opportunity for an aggrieved person to apply to the Supreme Court for redress. I do not tout. I do not know whether in using that word he was being gratuitously offensive or whether he had difficulty expressing his thoughts with clarity.

I do agree with him about one thing and that is the mystery surrounding the definition of organised crime. For our part, we adopt the definition or the explanation which appears in the Fitzgerald report itself. I am not a Fitzgerald fundamentalist, so to speak—and members of the Committee know that very well—but I espouse the philosophy which has been given expression in that report. The CJC, with respect to its organised crime function, operates strictly within the spirit of the report, in so far as it deals with the question of organised crime.

I was also mystified as he apparently was to find that we now are having a new Criminal Code with an offence relating to organised crime. I do not know anything about that, either. I have been too busy here to find out. Could I mention one other thing about organised crime? This goes back to a discussion yesterday concerning that difficult phrase in the Act that indicates that the CJC has this responsibility "for an interim period". What is the meaning of that particular phrase? Well, plainly it means that the CJC does not have that power indefinitely, but I think that the point is made, and well made, in the Fitzgerald report itself that organised crime, whatever its manifestations—and they are various—is properly likened, as Mr Fitzgerald himself likened it, to a Hydra, that is, a many-headed serpent. If you strike off one head, two others appear. That seems to me to indicate that, contrary to the observations of Mr Robertson, organised crime is not an ephemeral phenomenon. The investigations which have been conducted by the Commission itself in recent times certainly make plain that it is still a reality in our State and in our country.

I would turn to other observations made by Mr O'Gorman with respect to adherence to privacy principles. I think Mr O'Gorman did concede that the CJC in its Intelligence Division does conform to privacy principles as enunciated in Commonwealth legislation. That was a deliberate policy that has been endorsed by the Commission in the absence of a State legislative regime on the matter. The Commission is, therefore, doing all that it can do with respect to the preservation of privacy and it has voluntarily assumed obligations in compliance with the Commonwealth legislative scheme. Indeed, I recall speaking to Mr O'Gorman at the CJC about 12 months ago, with Mr Roger, and we asked him if he had any further proposals about the matter, would he please consider those proposals, write them down and send a letter to us so that we could give consideration to further refining our procedures. The rest, Mr Chairman and members, has been silence—apart from in a public forum like this, but there has been no literary expression of Mr O'Gorman's views on the matter.

Mr O'Gorman said, I think, that the Commission in its submission has chosen not to seek jurisdiction over members of Parliament with respect to allegations of official misconduct where such conduct does not involve the commission of a criminal offence. The reasons for the position taken by the Commission have been set out in detail in our submission, so I will not rehearse them again now. But I reject the suggestion that he made that it may be that the Commission had taken this position because it was engaged in some cynical deal to curry favour with politicians. I think all members of this Committee now know me well enough to realise that I do not curry favour with politicians and nor does any other member of the Commission.

Mr O'Gorman, Mr Quinn and Mr Herbert waxed lyrical about investigative hearings and the injustice that they asserted was necessarily involved in their conduct. They suggested that

investigative hearings were now routine. That suggestion is false. The Commission has conducted some 150 investigative hearings in the course of conducting some 9 000 investigations. Therefore, investigative hearings constitute 1.6 per cent of those investigations. So they are exceptional and in our submission they do not involve unfairness to the person subjected to the investigation. If an investigation is challenged, then, contrary to what was said by Mr Herbert, it is the practice of the Commission to detail with some particularity the nature of the investigation in order to argue the position that the investigation is warranted or that it is being conducted fairly.

A number of the speakers referred to the law-enforcement backgrounds of some senior officers of the Commission. Particular reference was made to Mr Le Grand and Mr Irwin and I was bemused to hear from one speaker that Mr Le Grand now effectively runs the Commission—I assure you that is news to me. Reference was made to those two gentlemen. Reference was not made to the fact that there are many other lawyers in the Commission with different backgrounds—Legal Aid backgrounds, defence counsel backgrounds and the like. Reference might also be made, if those who made submissions were disposed to be fair, to the fact that Mr Wyvill, QC, a Commissioner, is a former Chairman of the Council for Civil Liberties, represented today by its vice president, Mr O'Gorman, and that I am a bit of a civil libertarian myself; although, since I took this job, you will appreciate I have had to suppress any libertarian impulse ruthlessly. In short, the lawyers in the Commission come from different backgrounds and have had considerable experience, in some cases, on the defence side of the bar table.

Reference was made to the judgment of Mr Justice Derrington and to certain observations which he there made about according procedural fairness or natural justice to persons caught up in the toils of investigative hearings. But those who made that submission omitted to point out that what Mr Justice Derrington said about that particular matter in that case was what lawyers call obiter dicta—it did not form part of the reason for the decision of the case; it was a remark on the way through. We were, however, anxious to ascertain the extent to which the Commission should comply with the prescriptions made in that aside by Mr Justice Derrington and so we sought advice on the matter from two senior counsel, Mr Mulholland, QC, and Mr Hampson, QC. In the light of the advice which they gave, we have established a regime which, in our view, does accord procedural fairness.

There was a lot of anecdotal stuff in these submissions and it is really a bit tough to have to respond to that sort of thing without any great particularity or without notice, but in fairness to the Commission and to remove these recent myths and misconceptions about the Commission, I am happy to speak about them extempore. Mr Quinn referred to a case in which his clients, he said, should have been interviewed instead of being called to investigative hearings. Members of the Committee will be interested to learn that the reason why they were not interviewed, the reason why they were called to an investigative hearing, is that they refused to be interviewed. They did not volunteer to be interviewed. They refused to submit to an interview. That is why there was an investigative hearing, but that was not said by Mr Quinn.

It is true that the Fitzgerald report itself requires or contemplates that there would be judicial approval before an investigative hearing. That requirement, however, has not been translated into legislative form in the Criminal Justice Act, as members of the Committee would well know. What the Commission does is try to adhere to the provisions of the Act and to the spirit of the Fitzgerald report. It seems to me that in circumstances where there is a discontinuity between one and the other, our legal obligation is to conform to the Act. That is what we try to do. It is a bit tough being criticised for not complying with the Fitzgerald report when you are complying with the fruit of the Fitzgerald report, which is the Criminal Justice Act.

The CHAIRMAN: Can I just clarify, Mr O'Regan? I do not think that in any of the comments I made I criticised the CJC for not complying with the Act. I was pointing out and asking questions as to whether there were inconsistencies. You will recall I did that yesterday in relation to the section within the report which suggested that the parliamentary committee have the power to direct the CJC. That is not manifested in the report, but I was asking questions yesterday as to your view on that. As part of the overview process, it obviously means that we may revisit some of those recommendations which did not find their way into the Act.

Mr O'Regan: Yes, I understand that, Mr Chairman. Thank you. Now, if I could go back a little. Mr Jerrard referred to the absence of a protocol with the Bar Association of Queensland

concerning the extent of the information which should be given to a person summonsed to attend an investigative hearing. All I can do is to indicate that we are happy to talk to the association about that matter and establish a protocol. I was unaware until this afternoon that there was any problem there and none of my former colleagues at the Bar have referred to the matter.

Mr John Robertson, representing the Law Society, said a number of things which I wish to take up and they are as follows: he suggested that instead of having a cooperative arrangement between the Queensland Police Service and the CJC, it might be better if joint operations were mounted by the Police Service and the Australian Federal Police. This was said in the context of a discussion about coercive powers. Of course, the AFP does not have coercive powers, so I do not know that that sort of cooperation is likely to be fruitful. Mr Robertson also suggested that it may not be necessary to have coercive powers to effectively investigate organised crime, and he referred to Operation Whitewash. That is certainly a case where resort to traditional investigative techniques supplemented by sophisticated surveillance produced results. But that is not to say that those sorts of techniques suffice in other cases. Indeed, the Fitzgerald Commission itself demonstrated the efficacy of coercive powers in exposing corruption. As you have observed, Mr Chairman, all royal commissions in Australia in recent times have indicated the necessity for the existence of those powers and resort to them in appropriate cases.

With respect to Operation Whitewash, I should qualify one aspect of what I said a moment ago—a reference to traditional investigative techniques. It is also important to note that coercive powers were invoked to an extent with respect to financial investigations. In order to obtain bank records and the like and follow the money trail, it was necessary to serve notices on financial institutions to obtain the necessary material to follow the money trail. So that is a coercive power just as surely as is being called to an investigative hearing.

The CHAIRMAN: In fact, Mr Barton and I had a very brief discussion about that on the side.

Mr O'Regan: Yes, thank you.

The CHAIRMAN: We thought those types of powers had been exercised.

Mr O'Regan: Sorry, I did not mean to mislead you about that. Another suggestion from Mr Robertson was that the multidisciplinary teams of the sort that the Commission has might be transferred from the Commission to the Director of Prosecutions Office. I suggest—and this is with great respect to Mr Robertson, who is a very experienced practitioner and a good friend of mine—that that would be obnoxious in principle. That really means that the prosecuting authority becomes the investigating authority. That is not the present legislative regime with respect to the CJC. The CJC does the investigation, sometimes cooperatively with the QPS, but it is the relevant investigative authority. When it finishes the investigation, it refers the fruits of its labour to the prosecuting authority, the director-general of the department, the Commissioner of Police or whatever it might be. Our role finishes after the investigation. I really do not see that as a tenable proposition.

The CHAIRMAN: It is also the type of principle that Fitzgerald was suggesting in the separation of the prosecutions function from the Queensland Police Service.

Mr O'Regan: Yes, it comports with that notion. Mr Robertson concedes that the Commission should have coercive powers with respect to the investigation of official misconduct but baulked at the notion that there should be like powers with respect to the investigation of organised crime. That really is a distinction without a difference. As members of this Committee well know, the two are often associated. For organised crime to flourish, there must be, at least in some cases, some contribution, direct or indirect, some neglect of duty, some compromise by people working in the public sector. So it is not possible to draw the hard and fast distinction, which is their suggestion.

Mr John O'Gorman suggested that police officers had been inhibited by the presence of the CJC in deciding whether or not to prosecute high profile defendants. I think the notion was that they did it because they were scared that they would get into trouble if they did not. However, he did not indicate or suggest with any particularity any case in which that had happened. We do not know of that happening. I think it is inconsistent with what Commissioner O'Sullivan said yesterday, but we are happy to look into that. We do not think that there is any substance to the

allegation. I am sorry about going all over the place, but a lot has happened this afternoon and yesterday.

The CHAIRMAN: That is okay, Mr O'Regan.

Mr O'Regan: I will go back to what the Commissioner said yesterday. I think Mr O'Sullivan suggested at one stage that it might be an idea to consider the amalgamation of the CJC Intelligence Division with the Police Service intelligence function. Mr Chairman, you correctly noted the Fitzgerald recommendations about the need for the CJC's intelligence unit to be separate from the Police Service. Given that and the oversight responsibilities of the Commission's intelligence unit and the need for accountability, the Commission submits that there is a continuing need at this time for the two units to remain distinct, although, of course, there is a great deal of cooperation between the two.

The other point suggested by Mr O'Sullivan yesterday was that there may have been times when CJC intelligence was not made available to the QPS when it would have been advantageous had that been done. The Commission is not aware of any occasion when this has occurred, but we are certainly happy to take it up with the commissioner. The situation is this: the Commission's Intelligence Division responds regularly to requests for information in respect of its holdings. If satisfied that the inquiry is from a bona fide law enforcement agency, such as the QPS, and has a justified need and right to know, the division will provide any criminal intelligence that it holds that is relevant to the request.

The only circumstances where the division may initially withhold investigation is when there is a direct connection to an ongoing Official Misconduct Division investigation. In these circumstances, the division will refer the matter to the director and the director will liaise with the inquiring officer. Such circumstances have occurred and such liaison has prevented duplication of effort. The Commission has never been aware of any dissatisfaction with these procedures.

Something was said yesterday about the tendency in the past for the Research and Coordination Division's projects to be associated with law enforcement matters, and reference was made to the police powers reports. Of course, that is so, but henceforth now that the prescribed agenda—that is, the agenda prescribed by the Fitzgerald report—has almost been completed, the Research Division will have more discretion in determining the priority of its research projects. I assure the Committee that it certainly will not be confined to law enforcement issues.

This morning, the Whistleblowers Action Group submitted a considerable body of evidence, documentary and oral, detailing specific grievances about the Commission. It is really not possible to deal with those without notice; they were not in the WAG submission.

The CHAIRMAN: When you get a copy of *Hansard*, you may want to make a further submission to us in relation to those, Mr O'Regan.

Mr O'Regan: Actually, they were all before my time, so I could not respond first hand. However, Mr Le Grand could.

The CHAIRMAN: Do you want Mr Le Grand to take the chair with you?

Mr O'Regan: Yes, if he could deal with that after I have finished the other matters. Would that be convenient?

The CHAIRMAN: Yes, that is fine.

Mr O'Regan: Could we also have leave to put in a more comprehensive submission about those in a written form?

The CHAIRMAN: Yes.

Mr O'Regan: Thank you. Mr MacDonald, from the justices association, said this morning that the Commission is involved in anything it elects to do. That is the note which has been made by that authoritative scribe Marshall Irwin. There is nothing wrong with that. The Commission after all is simply doing its duty under the Act. It has a discretion under the Act to decide what matters to investigate and what matters not to investigate, provided, of course, they are within the ambit of its official misconduct jurisdiction or some other head of jurisdiction. So we are simply acting in accordance with our statutory obligations in proceeding with discretion in that fashion.

I think that both Mr Robertson and Mr Terry O'Gorman criticised the Commission for exercising its coercive powers with respect to investigative hearings after people had been charged. The situation is that that has been done in only six of 9 000 cases, and it has been done only in exceptional circumstances where the evidence indicated, or there was a suggestion, that attempts were being made by persons associated with the investigation to abuse the process of the court by falsifying evidence and things of that sort. That is a power of last resort. It is certainly not one exercised routinely. I accept that that sort of thing should happen only rarely.

There was some discussion at one stage concerning the possible transfer of the Witness Protection Division to the Queensland Police Service. However, I think it is important to remark that, as the Commissioner indicated yesterday, there was certainly no assurance that funds would be forthcoming to sustain that sort of operation within the ambit of the Police Service. Indeed, this was a matter we took up with the other body which is reviewing the CJC, that is, the interdepartmental working group. The police representative at that meeting last year, in response to a question from Assistant Commissioner McDonnell, indicated that he could not give any assurance that the QPS would be able to sustain funding for witness protection if that function were to be located within the Queensland Police Service. Indeed, one can appreciate that, in that sort of environment, the imperatives of other operational matters might dictate the diversion of funds from that sort of thing.

Mr John O'Gorman referred in the written submission—and he spoke to it today—to what he calls the failure to advise members of the union in writing for attendance at interviews. The response of the Commission is this: the Commission is not prepared to provide special treatment for police officers. Indeed, the previous disparate treatment in the investigation of police officers and other members of the community was much criticised in the Fitzgerald report. Fitzgerald found that the Internal Affairs Section was "grossly biased in favour of police officers". The Commission cannot be hamstrung in the way recommended by the Police Union. Efficient investigation often requires prompt attendance and interviewing of all relevant witnesses in the immediate facility. To require the Commission to serve a written notice seven days in advance would be to tie the Commission's hands.

Mr O'Gorman also referred to what he perceived to be the absence of natural justice in investigations conducted by the CJC with respect to minor misconduct and disciplinary matters. There is nothing in that, for the simple reason that we just do not conduct any of those investigations. Mr O'Gorman's appreciation of the position is not current.

Interviews by telephone—interviews with members of the Police Union are conducted by telephone only by way of preliminary investigation to deal with peripheral matters. Only in urgent circumstances is this arrangement varied. Telephone interviews are not conducted with the subject officer, nor where issues of credit are to be determined. Given the enormous size of Queensland and the decentralised nature of much of its population, to debar the Commission from telephone interviews would again be to force upon it an impracticable regime. If officers have concerns about the identity of the caller—and Mr O'Gorman indicated that that was a concern—the solution is readily to hand: they simply ring the Commission's toll-free number. It is no big deal.

Failure to provide all information to a member attending a hearing or an interview—I will not go into this in detail, apart from referring members of the Committee to references in the Fitzgerald report which deals with it at pages 81 to 89. It is a question of not giving special treatment to police officers.

Investigative hearings—my recollection is that Mr O'Gorman suggested that that power should be reserved or, under the Act, that power was reserved for official misconduct. That is just not true as a matter of statutory construction.

Mr O'Gorman said he had a strong suspicion for believing that the Commission was issuing notices to discover information for the purpose of ascertaining the private telephone records of police officers for the purpose of disciplinary hearings. If I can quote Mr O'Gorman against himself, he is seeing shadows where there is no need for concern. I give the Committee an unqualified assurance that nothing of that sort has gone on or will go on. Anyway, we do not deal with disciplinary matters.

Mr O'Gorman said that the Research and Coordination Division did not consult sufficiently with members of his union. The division does consult with members of the Police Service

extensively. I should have thought it has no special obligation to consult with the office bearers of the Police Union. It is, after all, an industrial union. In any event, consultation with the members of the Police Service generally with respect to the police powers reports has been very extensive indeed. I am informed by Dr Brereton that the Commission received and reviewed more than 100 submissions from various individuals, including the QPS, the Police Union and a considerable number of serving police; conducted public hearings where police and union representatives spoke; sought and received from assistant commissioners of every region details on practical problems encountered by police in their region; directly spoke to more than 70 police officers of various rank throughout the State; spoke to police officers seconded to the CJC, who are members of both unions; and spoke to police officers in other jurisdictions. There is just no substance in the claim.

Mr O'Gorman complained about what he called section 6.7 of the Act in relation to frivolous or vexatious complaints. His complaint is out of date. It appears to have been made in ignorance of the amendment made to the Criminal Justice Act late last year, and members of the Committee would be well aware of that, so we have a much better section now.

Mr Terry O'Gorman, if I can go down the family, referred to three incidents where unauthorised access had been gained to the intelligence database. It is important that I stress to the Committee that the Commission's submission itself refers to unauthorised access to intelligence information, not the database. The database has never been breached. There has never been any unauthorised access to the database; nor has any personal information ever been accessed unlawfully.

I do not know who was responsible for this one, but it was suggested that the NCA might take over the organised crime function. Well, the NCA coordinates State-based task forces and the joint organised crime task force here in Queensland is that task force. The NCA only uses compulsory powers upon the granting of a reference requiring the approval of all Commonwealth, State and Territory governments through the intergovernmental committee of ministers and the Commission is not subject to direction in ordering its priorities. I suggest it might take a while to get that sort of reference, but it is really a matter of policy and it is a matter for a decision to be made by the legislators.

There was a suggestion that the CJC should not use QPS investigators. We have addressed that to some extent but may I make the additional point that inspectors of the QPS attached to the Complaints Section have a right to enter any police establishment in the State and the right to require subordinate members to answer questions in respect of disciplinary matters. Without that facility, investigations of complaints would be much more difficult, and that seems to me to be quite a good reason for its retention. I am sorry this is going on for a while, Mr Chairman.

The CHAIRMAN: That is okay.

Mr O'Regan: Publication of complaints—this is Mr Terry O'Gorman. The context of this was the fact that before an election it is not uncommon for candidate A to complain about something candidate B has done. The CJC in 1991 recommended that the Act be amended to make it an offence for a person to disclose the fact that a complaint had been made and the first Committee of the CJC gave general endorsement to that amendment in its three-year review. I do not think that has been enacted, but the Commission, for its part, sees that it is an abuse and would like something to be done about it.

The CHAIRMAN: It has not been enacted. I think it was, from memory, report No. 13.

Mr O'Regan: Then there is the point about the Le Gros and Jackson case. The Law Society observed in its submission, through Mr Robertson, that the Court of Appeal appears to have effectively ruled that material in the possession of the CJC is not available for subpoena and can only be released with the express authority in writing of the Chairman. Now, in that case, the Commission itself was not a party to the decision in which the Court of Appeal refused an order sought by one of the parties that the Commission provide certain material. The Commission does not object to subpoenas on the basis of this decision in all cases, it is only in those cases where there does not appear to be any relevance in the material and where a question of public interest immunity arises in respect to confidentiality and the like.

There is the question of whether the research function should be assigned to the Law Reform Commission. I discussed that briefly yesterday and indicated the view that that would not be appropriate. In any event, it would be interesting to ascertain what the Law Reform Commission thought about that. I doubt whether it is a proposal they would embrace.

Mr Terry O'Gorman was very excited about a delegation in general terms which I had given to Mr Le Grand. There was nothing sinister about that. Power to delegate arises under section 140 of the Criminal Justice Act. The reason for the grant of that delegation, and fairly recently, was because of the amendment of the Act. It was necessary to rejig the thing simply because the section numbers of the Act had changed and, to have an efficacious delegation, it was necessary to execute a new one, that is all. I assure you that anyone who exercises a delegated power from me under the Criminal Justice Act does so under supervision and there is frequent consultation, and there is the added protection which lies in the fact that the Commission itself comprises community members, one of whose tasks it is to monitor the work of the Commission to ensure that it does not abuse what I acknowledge to be the very substantial powers which have been reposed in it. The quality of those part-time members is, in my submission, such as to give the Committee and, I suggest, the community, confidence that those powers are not being abused.

The CHAIRMAN: It is probably important to say as well that the Committee could at any stage ask to audit those types of records.

Mr O'Regan: Quite so.

The CHAIRMAN: So if a particular organisation such as the Queensland Council for Civil Liberties had a concern about something, it could ask us, time permitting, to conduct an audit of those types of records.

Mr O'Regan: Yes. Perhaps it might be opportune if Mr Le Grand could come forward now and could I make one closing remark after that?

The CHAIRMAN: Yes.

Mr Le Grand: Can I just set the record straight? It is an outrageous statement by Mr O'Gorman to suggest that I effectively control the Commission—absolutely outrageous. He has no basis upon which to make that assertion. Indeed, every morning of every working day I report to the Chairman and several times during the day. Every substantial matter that we deal with is a matter of discussion and consultation with the Chairman. For him to make that outrageous suggestion in a total vacuum without any knowledge I think is totally gratuitous and totally unwarranted.

I would just like to address some of the matters raised by the WAG group this morning. I have had no notice prior to hearing those matters this morning so this response is rough and I would like to reserve the right to give a more considered response to the Committee later. I think the first matter they raised was the Cirby case. It is a case of the shire clerk of the Eidsvold Shire Council. We received a complaint from that clerk about inappropriately applied flood funds to other works. He, that is the shire clerk, told the council, who moved to suspend him in a subsequent meeting. We immediately warned the council that they should not take that action. We advised them of the provisions of the Criminal Justice Act and they then suspended rather than dismissed him. We investigated the matter immediately; we immediately flew investigators up; we called all councillors and the council foreman and acting shire clerk to investigative hearings.

Having obtained that information, we placed all that material before Mr Mulholland, QC, of counsel to peruse to see whether we had the basis upon which it was appropriate to take action to protect the shire clerk under the provisions of the Act. He advised that we could not discharge the evidentiary onus of showing a causal link between the dismissal and the giving of information to the CJC. In fact, on evidence, all the witnesses denied on oath that they were motivated by his complaint but simply by the performance of his duties. In fact, we were able to ascertain that for two years the accounts were not able to be audited by the Auditor-General prior to this time because of their state, and for two years mistakes had been made in the rate that had been struck and the rate that had been distributed, causing great embarrassment to the council. Further, there was a breakdown in relationships between other senior staff and Mr Cirby, such that the foreman, the health surveyor and the acting shire clerk were all about to quit. In the end

result, there was no evidence for the CJC to move to prevent his sacking or to seek his reinstatement as a result of that complaint. We did everything we could. Frankly, there simply was not the evidentiary base there for the CJC to take action.

The next matter raised was the matter of—I think it was referred to as the Albert Shire Council case. In fact, that complainant had been sacked before the complaint was made to the Commission. He, in fact, was dismissed in July 1992. The complaint was first made to the Commission formally by way of Phil Dickie, who was then a member of the Commission's research staff—not so much research staff, but he was said to be special adviser to the chairperson. But the information provided via that contact was not sufficient to enliven our jurisdiction. Subsequently, more information was provided by the complainant in August 1993. The complaint was about his dismissal and about a building inspector apparently approving the plans for a house allegedly improperly.

The result of that investigation was that certain approvals were, we believe, improperly granted—our view was from slackness rather than corruption; we could not show any corruption. We recommended disciplinary action against an inspector for granting the approval not in accordance with the appropriate procedures. But in effect, we could not take any action in respect of his sacking because he was sacked some 13 months before the substantive complaint to the CJC. Contrary to what we were told this morning, the matter was finalised, and he was advised by letter on 22 June 1994. So it is not right to say the matter is still outstanding and that he has not heard from the Commission.

Finally, in respect of Margaret Harvey—that complaint was received in June 1991—not from her, but from two students who were board members of the Griffith University Student Representative Council. We interviewed Harvey at the suggestion of the students and came to the view that we had no jurisdiction. In October 1991, Harvey advised the Commission that the union executive was moving to suspend her. Out of an abundance of caution—although we had no jurisdiction—she had been interviewed as part of a CJC preliminary investigation. We interviewed her at her request in the presence of a union representative that she nominated. There was a union election during that period. The new chairperson of the Student Representative Council moved to prevent her dismissal and to reinstate her to the SRC. We finalised the case. We heard nothing further until reading an article in the *Sunday Mail* in March 1992 relating to her suspension in January 1992. She had not approached us about that activity, and we could not relate that matter to any assistance she had provided to the CJC. In fact, it appears that there is cogent evidence that there has been ongoing dispute between her and various executives of the union going back to 1990.

The CHAIRMAN: You said the CJC did not have jurisdiction?

Mr Le Grand: No, we did not have jurisdiction. The whistleblowers do provide vexed questions; I think that is clear. Ultimately, only in a minority of cases—no matter how well we investigate—will we ever be able to substantiate the conduct complained of. This is because of the circumstances of the Commission; it might be word against word and you cannot take it forward; it might be a lack of admissible evidence; or it might be a multiplicity of other reasons that surround any particular event. Therefore, unfortunately, there is going to be a growing pool of frustrated people who know the truth—or they believe they know the truth—but there cannot be any action taken to substantiate the matter or to finalise the matter to their satisfaction. Prior to the establishment of the Commission, their frustrations were being taking out on the world. Now, because there has been a complaint to the Commission, it is being taken out on the Commission. We have become the focus. Frankly, I do not know what we can do about it. I know we can try counselling. We are conscious of the need to try better in that area, but I do not think there are ultimately any solutions to that sort of disillusion.

Frankly, also, sometimes people have axes to grind. Sometimes people seek to manipulate the Commission. Sometimes people with a history of unsatisfactory work performance might see the axe about to fall and reach for some matter to report to the Commission and seek to interpose the Commission between themselves and ultimate dismissal. We have to be very careful that we are not sucked into that situation. We can only continue to try, but it is a very vexed area. I would be doing the Committee a disservice to indicate otherwise. There are no easy solutions here.

There is just one other thing—if I could set the record straight. Mr MacDonald quoted me as saying in March 1994 that I did not believe that police corruption existed any longer in the Police Service. He said that I prevaricated a bit about that statement. In fact, what I said—and in response to a Senate Committee hearing on whistleblowing, which I was before—I made an honest answer to the best of my ability based upon the information available to me—based upon 13 000 complaints received by the Commission, I said that, on the information currently available to the CJC, the endemic and systemic corruption reported by Fitzgerald no longer exists. That was my honest answer at that time based upon the information before me. I never said—and it would be ludicrous to say—that corruption does not exist. Indeed, every month I place before you many examples of corrupt activities; but I am simply talking about systemic and endemic corruption of the proportions identified by Fitzgerald. Thank you.

The CHAIRMAN: From the Committee's point of view, I think it is important to note, in relation to whistleblowers, that to this point in time we still have not got what could be regarded as high-quality whistleblower legislation in Queensland. At this point in time we are very much operating on an interim legislative framework. We acknowledge—and we have certainly discussed this with the Commission—that it has been difficult for the Commission to perform that role properly given the framework that currently exists. But, nevertheless, we have applauded in private session the decision of the Commission to appoint a manager to that position. I think it is important for the Committee to put that on the record publicly.

Mr Le Grand: There is one other thing that I should mention. Mr Jerrard mentioned a matter this morning about people coming down from Townsville for a hearing and being stopped at the airport. In fact, my instructions are that that contact was made with the solicitors yesterday. The reasons for that were matters that had developed. If those persons are out of pocket, then certainly the Commission would look favourably on any claim. It was out of our control that that had to occur. We made the earliest request to them to desist. They were flying down at the expense of the Commission anyhow. I cannot report openly on why that happened, but I could report to you privately why that happened.

The CHAIRMAN: Thank you Mr Le Grand and Mr O'Regan.

Mr O'Regan: Mr Chairman and members, there was one matter that I omitted to mention and that relates to corruption prevention and the suggestion that that function might be assumed by the PSMC. I touched on this briefly yesterday, but there are two other things that I wish to mention. One is that the range of agencies covered by the Commission is wider than that currently covered by the PSMC. The PSMC does not currently undertake corruption or crime prevention training and has shown no inclination to do so. Furthermore, the Commission's corruption prevention program has at its disposal confidential information that enables it to provide timely and cost effective advice and training in a way that would be difficult for the PSMC or other agencies to match.

The only other thing is that Paul Roger, who is an extremely keen auditor, said that when I was speaking about what the Commissioner said yesterday concerning occasions when CJC intelligence, as he understood it, had not been made available to the QPS, I meant to say that the Commission has never been aware of any dissatisfaction with its procedures. Apparently I said "satisfaction". I ask that *Hansard* be corrected. Those are the only things that I wish to mention. I wish to thank the Committee for the opportunity to respond to the submissions that have been made.

The CHAIRMAN: Thank you very much Mr O'Regan. Before you leave the chair I indicate to you that further responses from the CJC will be tabled in the Parliament as will the transcripts of the proceedings of the last couple of days. I will now present my closing remarks.

The parliamentary Committee has now concluded its public hearings in relation to the three-yearly review of the operations of the CJC. The Committee takes this opportunity to formally and publicly thank the Criminal Justice Commission and the various organisations and individuals who have given evidence during the past two days and have also made submissions to us. I am sure I speak for my parliamentary colleagues when I say that I have been impressed by the calibre of the oral and written submissions, and the meaningful and constructive debate that has ensued. The Committee will now undertake the daunting task of analysing and evaluating submissions and evidence, undertaking its own detailed research and preparing its report to the Parliament.

As I noted in my opening remarks to the public hearings, the CJC is a unique organisation in Australia, being a permanent commission of inquiry combining under the one umbrella activities as diverse as intelligence gathering and analysis, law reform, research, official misconduct and organised crime investigations, overseeing police reforms, complaint resolution, corruption prevention and education, and witness protection. The Committee's report will involve an objective and comprehensive analysis of the full scope of the CJC's activities and functions. The Committee takes this important task of reviewing the operations of the CJC most seriously and ensures the people of Queensland that it will strive to recommend in its report a most comprehensive and constructive blueprint for the future operations of the Criminal Justice Commission—at least until the next three-yearly review. The public hearings are now closed.

The Committee adjourned at 6.04 p.m.