

LEGISLATIVE ASSEMBLY OF QUEENSLAND

PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE

Three Yearly Review of the Criminal Justice Commission

A report of a review of the activities of the Criminal Justice Commission
pursuant to section 118(1)(f) of the *Criminal Justice Act 1989*.

Report No. 55

PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE REPORTS		DATE TABLED
1.	Progress Report of the Committee being the Minutes of Evidence taken on 16 and 17 July 1990 at a public hearing in relation to the Report of the Criminal Justice Commission entitled "Report on Gaming Machines Concerns and Regulations".	22 August 1990
2.	The Committee's Report No. 1 Relating to the Report of the Criminal Justice Commission entitled "Report on Gaming Machine Concerns and Regulations".	4 September 1990
3.	Progress Report of the Committee being the Minutes of Evidence taken on 6 and 7 August 1990 at a public hearing in relation to the Report of the Criminal Justice Commission entitled "Reforms in Laws Relating to Homosexuality - An Information Paper".	4 September 1990
4.	The Committee's Report No. 2 into the Report of the Criminal Justice Commission entitled "Reforms in Laws Relating to Homosexuality - An Information Paper".	2 October 1990
5.	Report into Allegations made in South Australian Legislative Council on 10 October 1990 by Mr Ian Gilfillan, Leader of the Australian Democrats against the Criminal Justice Commission's Director of Operations, Commander Carl Mengler.	4 December 1990
6.	Report into the issues of legal representation of witnesses at public hearings of the Parliamentary Criminal Justice Committee.	6 December 1990
7.	Minutes of Evidence taken on 15 April 1991 at a public hearing between the Parliamentary Criminal Justice Committee and the Criminal Justice Commission and other material provided by the Commission to the Committee in relation to the roles and functions of the Committee and the Commission.	22 May 1991
8.	Minutes of Evidence taken on Friday 24 May 1991 in relation to the Committee's review of its monitoring and reviewing functions and related matters.	17 June 1991
9.	Review of the Committee's operations and the operations of the Criminal Justice Commission Part A, Submissions, Volume 1 - Public Submissions, Volume 2 - CJC Submissions and Minutes of Evidence taken on 6 and 13 June 1991.	16 July 1991
10.	Report of the independent investigation into the allegations made by Robert David Butler and Channel 7 regarding former Inspector John William Huey and the Queensland Criminal Justice Commission.	16 July 1991
11.	The Term of Sir Max Bingham QC, Chairman of the Criminal Justice Commission.	2 August 1991
12.	Report on Prostitution.	12 November 1991
13.	Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission.	3 December 1991
14.	Report of the names of the Members of the 1986-1989 Queensland Legislative Assembly referred to in the Criminal Justice Commission's <i>Report on an investigation into possible misuse of Parliamentary travel entitlements by Members of the 1986-1989 Queensland Legislative Assembly</i> (December 1991)	7 February 1992
15.	Review of the recommendations arising out of the Criminal Justice Commission's <i>Report on an Investigation into Possible Misuse of Parliamentary Travel entitlements by Members of the 1986-1989 Queensland Legislative Assembly</i> .	13 April 1992
16.	Report on the public hearing held on 25 June 1992 into allegations made by Mr Richard Chesterman QC (Past member of the Misconduct Tribunals), on 23 June 1992 in <i>The Courier-Mail</i> and <i>The Australian</i> newspapers.	13 July 1992
17.	The Committee's recommendations on changes to the method of appointment and conditions of service of members of the Misconduct Tribunals.	28 July 1992
18.	Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission. Part C - A report pursuant to section 4.8(1)(f) of the <i>Criminal Justice Act 1989-1992</i> .	13 November 1992
19.	Review of the Criminal Justice Commission's <i>Report on S.P. Bookmaking and Related Criminal Activities in Queensland (August 1991)</i> .	12 October 1993
20.	Review of the Criminal Justice Commission's use of its powers under section 3.1 of the <i>Criminal Justice Act 1989</i> . Part A- Submissions and Minutes of Evidence taken on 30 April 1993.	12 May 1993
	Review of the Criminal Justice Commission's use of its powers under section 3.1 of the <i>Criminal Justice Act 1989</i> . Part B - Comment, Analysis and Recommendations	12 October 1993
21.	Report into allegations made by Robert David Butler and Christopher Charles Adams regarding former Superintendent John William Huey and the Criminal Justice Commission.	9 November 1993

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22.	A review of the past twelve months operation of the Parliamentary Criminal Justice Committee of the 47 th Parliament.	10 December 1993
23.	Review of the Criminal Justice Commission's <i>Report on a Review of Police Powers in Queensland</i> Volumes I-III. Part A - Minutes of Evidence taken on 16 and 17 December 1994.	18 February 1994
	Part B - Comment, Analysis and Recommendations	30 August 1994
24.	Report of the unauthorised release and publication of a Committee document.	16 February 1994
25.	Report on the Inquiry into the CJC's failure to account for two copies of the November 1993 monthly report to the PCJC and related matters.	5 August 1994
26.	A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the <i>Criminal Justice Act 1989</i> .	21 February 1995
27.	Report on the Review of the Criminal Justice Commission's Report on a Review of Police Powers in Queensland Volume IV: Suspects' Rights, Police Questioning and Pre-Charge Detention.	23 May 1995
28.	Report on the Review of the Criminal Justice Commission's Report on a Review of Police Powers in Queensland Volume V: Electronic Surveillance and Other Investigative Procedures	23 May 1995
29.	A review of the Criminal Justice Commission's Report on Telecommunications Interception and Criminal Investigation in Queensland.	23 May 1995
30.	A review of the Criminal Justice Commission's <i>Report on the sufficiency of funding of the Legal Aid Commission of Queensland and the Officer of the Director of Public Prosecutions, Queensland</i> .	23 May 1995
31.	The CJC's response to an article appearing in <i>The Sunday Mail</i> newspaper on 28 April 1996	2 May 1996
32.	Report on Operation Melody	15 May 1996
33.	Report on section 23(c) of the <i>Criminal Justice Act 1989</i> (Qld)	16 May 1996
34.	Outstanding Parliamentary Criminal Justice Committee Recommendations	23 July 1996
35.	Annual Report 1995/96	8 August 1996
36.	Report on Operation Melody - No. 2	12 September 1996
37.	Report on a Review of the Criminal Justice Commission's Report on Cannabis and the Law in Queensland	14 November 1996
38.	Report on the Accountability of the CJC to the PCJC	9 May 1997
39.	The CJC's Jurisdiction with Respect to Elected Officials	11 July 1997
40.	Annual Report 1996/97	28 October 1997
41.	Report on the Visit to Washington DC, New York, London and Amsterdam	25 November 1997
42.	Interim Report in response to recent allegations and comments regarding the Criminal Justice Commission's investigation of matters concerning paedophilia	25 November 1997
43.	Interim Report in response to allegations appearing in <i>The Courier Mail</i> newspaper on 1, 2, 4 and 5 November 1997	8 May 1998
44.	The Criminal Justice Commission's Report on its consideration of disciplinary action against the Director of the Corruption Prevention Division	14 May 1998
45.	A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the <i>Criminal Justice Act 1989</i>	10 June 1998
46.	Annual Report 1997/98	6 October 1998
47.	A report in relation to statements allegedly made by a member of the Parliamentary Criminal Justice Committee, Mr Jack Paff MLA	4 March 1999
48.	A report on protocols for dealing with misconduct complaints against personnel of the Criminal Justice Commission	17 September 1999
49.	A report on an investigation by the Parliamentary Criminal Justice Commissioner into the alleged unauthorised disclosure of confidential information concerning an investigation by the CJC in respect of Mr Norman Alford	28 October 1999
50.	A report on the introduction of the telecommunications interception power in Queensland – balancing investigative powers with safeguards	9 December 1999
51.	A report on an investigation by the Parliamentary Criminal Justice Commissioner into the alleged	13 December 1999

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	unauthorised disclosure of confidential information concerning an investigation of allegations made by Jack Kelvin Paff MLA	
52	Annual Report 1998-99	21 January 2000
53	Examination of the CJC's Annual Report for 1998/99	28 April 2000
	Issues Paper: Dealing With Complaints Against Police	24 August 2000
54	Annual Report 1999-2000	14 November 2000
	Submissions to Three Yearly Review of the CJC	8 December 2000
	Submissions to Issues Paper: Dealing With Complaints Against Police	8 December 2000

PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE

MEMBERSHIP

49TH PARLIAMENT

CHAIRMAN	Mr Paul Lucas MP ¹	<i>Member for Lytton</i>
DEPUTY CHAIRMAN	Hon Vince Lester MP	<i>Member for Keppel</i>
MEMBERS	Mr John Hegarty MP ²	<i>Member for Redlands</i>
	Mr Bob Quinn MP	<i>Member for Merrimac</i>
	Ms Karen Struthers MP	<i>Member for Archerfield</i>
	Mr Geoff Wilson MP	<i>Member for Ferny Grove</i>
RESEARCH DIRECTOR:	Mr David Groth	
SENIOR RESEARCH OFFICER:	Mr Stephen Finnimore	
A/SENIOR RESEARCH OFFICER:	Ms Sarah Lim	
EXECUTIVE ASSISTANT:	Ms Andrea Musch	

¹ Mr Paul Lucas MP resigned as a Member of the Committee on 21 February 2001 due to his pending appointment as Minister for Innovation and Information Economy, Sport and Recreation. Hon Vince Lester became Acting Chairman pursuant to SO 188(c) of the *Standing Rules and Orders of the Legislative Assembly*.

² At the 17 February 2001 election, Mr John Hegarty was not returned as the Member for Redlands, however he remains a member of the Committee until the appointment of a new Committee by the Parliament, or upon his resignation.

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CHAIRMAN'S FOREWORD

I am pleased to present to the Legislative Assembly this report by the all-party Parliamentary Criminal Justice Committee, on its three yearly review of the Criminal Justice Commission (CJC). This report is the fourth three yearly review of the CJC. The Committee is required by section 118(1)(f) of the *Criminal Justice Act 1989* to conduct such a review.

This report is the culmination of a review process which formally commenced in mid-May 2000, when the Committee wrote to the CJC and other key agencies advising that the Committee was then about to advertise calling for submissions to assist it in conducting its three yearly review of the CJC.

On 26 May 2000, the Committee advertised in *The Courier-Mail* newspaper calling for public submissions in relation to this review. The closing date for submissions was set as 14 July 2000. A number of agencies, including the CJC, sought an extension of time within which to provide a submission.

On 24 August 2000 the Committee released an Issues Paper in respect of a key issue which had emerged, titled *Dealing with complaints against police*, which called for further written submissions from interested individuals and organisations.

The Committee received a total of 31 submissions to the review. The Committee gave careful consideration to each and every submission, notwithstanding that not all submissions were considered appropriate for tabling.

On 14 and 15 December 2000, the Committee held public hearings in relation to the review. At these hearings, 25 witnesses attended and gave evidence, including 12 witnesses representing 12 community and professional organisations, the Commissioner of Police and the Assistant Commissioner in charge of the Ethical Standards Command within the Queensland Police Service.

This report is structured in four parts:

- **PART A: Introduction.** This Part examines the basis for this report and the review process.
- **PART B: Structure, functions, powers, and operations of the Criminal Justice Commission.** This Part reviews the activities of the CJC through an examination of the operations of its various organisational units and functions.
- **PART C: External accountability of the Criminal Justice Commission.** This Part examines the role of the Parliamentary Committee as the primary oversight mechanism. This part will also examine the background to the creation of the Office of the Parliamentary Criminal Justice Commissioner, the present role, functions and powers of the Parliamentary Commissioner, and what reforms, if any, may be appropriate.
- **PART D: Legislative changes required.** This Part details recommendations for amendments to the *Criminal Justice Act 1989*, and other relevant legislation including the *Crime Commission Act 1997* and the *Police Service Administration Act 1990*.

The Committee is required to table this report before the new Legislative Assembly sits. In finalising this report, the Committee has therefore operated to some extent under time-limitations. The Committee acknowledges that, as a result, this report is not as comprehensive as it would have preferred. The Committee has, however, detailed a significant number of recommendations for amendments to the *Criminal Justice Act* and other relevant legislation in *Part D* of this report.

The Committee is confident that the changes recommended by the Committee will provide guidance for the future direction of the CJC and will deliver a more effective CJC. The Committee has resisted the temptation to recommend change for change's sake.

The Committee is firmly of the view that 10 years on from the CJC's creation, there remains a need in Queensland for an independent agency charged with the task of investigating and reducing the incidence of police misconduct and public sector corruption, monitoring and reviewing reform of the police service, and playing a central role in effective reform of the criminal justice system.

The Committee is also firmly of the view that the CJC should be held accountable. The Committee is of the view that a properly funded and empowered Parliamentary Committee which has an on-going role in monitoring and reviewing the CJC is the mechanism which most appropriately provides for that accountability. The Committee is also of the view that Parliamentary committee oversight, of itself, cannot provide the detailed scrutiny of operational matters that is required to provide an appropriate level of accountability without compromising the operational integrity of the CJC and the confidentiality of witnesses and informants. The Parliamentary Commissioner provides the necessary expansion of the Committee's oversight role in this respect.

The Committee would like to acknowledge the considerable assistance provided by the CJC and the other agencies and informed members of the public who provided written submissions to the Committee or who gave evidence at the public hearings conducted by the Committee. The Committee would like to particularly acknowledge the assistance of the Chairperson of the CJC, Mr Butler SC, the other Commissioners of the CJC and the senior officers of the CJC. The CJC was invited to make a submission on all aspects of the operations of the CJC and the *Criminal Justice Act*.

The CJC responded by providing the Committee with:

- an initial comprehensive submission on 11 September 2000;
- a supplementary submission in relation to the Committee's Issues Paper on dealing with complaints against police on 24 August 2000;
- on 12 December 2000, detailed comments in respect of several of the key submissions received by the Committee; and
- a further supplementary submission on 22 February 2001, in response to a supplementary submission from the Queensland Police Service on 8 February 2001.

In addition, the Committee has had the benefit, throughout its term, of access to the minutes of all key internal meetings held by the CJC including meetings of the CJC Commissioners. The Committee would also like to acknowledge that in responding to issues and queries raised by the Committee, the CJC has provided this Committee with information which, in previous times, may not have been provided.

Finally, on behalf of the Committee, I wish to acknowledge and sincerely thank the staff of the Committee secretariat, Mr David Groth, Research Director, Mr Stephen Finnimore and Ms Sarah Lim, Senior Research Officers, former Senior Research Officer, Ms Louise Gell, and Ms Andrea Musch, Executive Assistant, who assisted the Committee in the review and in the preparation of this report.

Hon Vince Lester MP

Acting Chairman

19 March 2001

ABBREVIATIONS AND ACRONYMS USED IN THIS REPORT

AFP	Australian Federal Police
Connolly / Ryan Inquiry	Commission of Inquiry into the Effectiveness of the CJC established by Order in Council dated 7 October 1996.
CJC	Criminal Justice Commission
CRI	Connolly / Ryan Inquiry
DPP	the Director of Public Prosecutions
EARC	Electoral and Administrative Review Commission
Fitzgerald Report	Report of a Commission of Inquiry Pursuant to Orders in Council, 3 July 1989, Brisbane.
ICAC	Independent Commission Against Corruption
NCA	National Crime Authority
OMD	Official Misconduct Division
PCJC	Parliamentary Criminal Justice Committee
QCC	Queensland Crime Commission
QPS	Queensland Police Service
QPSRC	Queensland Police Service Review Committee
the Act	the <i>Criminal Justice Act 1989</i> (Qld)
the Committee	the current Parliamentary Criminal Justice Committee

PART A: INTRODUCTION

1. BACKGROUND TO THIS REPORT

1.1 Introduction

The Parliamentary Criminal Justice Committee (the Committee or the PCJC) is established by section 115 of the *Criminal Justice Act 1989* (Qld) [the Act].

Section 118(1)(f) of the Act provides that it is a function of the Committee:

(f) at a time appropriate to allow tabling of its report under this paragraph in the Legislative Assembly by which it was appointed, being a time near to the expiry of 3 years from its appointment –

(i) to review the activities of the Commission during such three years; and

(ii) to report to the Legislative Assembly and to the Minister as to further action that should be taken in relation to this Act or the functions, powers and operations of the Commission.

The current Parliamentary Criminal Justice Committee of the 49th Parliament was appointed in July 1998. This Committee is the fourth Committee established to monitor and review the Criminal Justice Commission (the CJC).

1.2 Previous three yearly review reports by predecessor Committees

The first PCJC of the 46th Parliament tabled three reports in relation to the discharge of its responsibilities under section 118(1)(f) (then section 4.8(1)(f)). They are as follows:

- Report No. 9 tabled in July 1991 titled *Review of the Committee's operations and the operations of the Criminal Justice Commission Part A, Submissions, Volume 1 – Public submissions, Volume 2 - CJC Submissions and Minutes of Evidence taken on 6 and 13 June 1991*
- Report No. 13 tabled in December 1991 titled *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission*
- Report No. 18 tabled in November 1992 titled *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission. Part C - A report pursuant to section 4.8(1)(f) of the Criminal Justice Act 1989-1992*

The second PCJC of the 47th Parliament tabled its report on its three yearly review of the CJC, Report No. 26, titled *A report of a review on the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, in February 1995.

The third PCJC of the 48th Parliament tabled two reports in relation to the discharge of its responsibilities under section 118(1)(f) (then section 4.8(1)(f)). They are as follows:

- Report No. 38 tabled in May 1997 titled *Report on the accountability of the CJC to the PCJC; and*
- Report No. 45 tabled in June 1998 titled *A report of a review on the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989.*

1.3 Preparation of this report

1.3.1 The Review process

This report is the culmination of a review process which has involved the Committee taking a number of actions.

In mid May 2000, the Committee wrote to the Criminal Justice Commission and other key agencies advising that the Committee was then about to advertise calling for submissions to assist it in conducting its three yearly review of the Criminal Justice Commission (CJC).

On 26 May 2000, the Committee advertised in *The Courier-Mail* newspaper calling for public submissions in relation to this review. The closing date for submissions was set as 14 July 2000.

A number of agencies, including the CJC, sought an extension of time within which to provide a submission.

On 24 August 2000 the Committee released an Issues Paper in respect of a key issue which had emerged, titled '*Dealing with complaints against police*', which called for further written submissions from interested individuals and organisations.

The Committee gave careful consideration to each and every submission received by the Committee.³

On 8 December 2000, by resolution pursuant to the *Parliamentary Papers Act 1992 (Qld)*, the Committee tabled in the Legislative Assembly the submissions considered appropriate for tabling. Most of the submissions received were tabled. The Committee felt that it was not appropriate to table all of the submissions it received. In respect of few submissions which were tabled, one or more excerpts from those few submissions were excised as falling into one or more of the following categories:

1. irrelevant to the Committee's review pursuant to section 118(1)(f) of the *Criminal Justice Act 1989* which requires the Committee:
 - (f) *near to the expiry of 3 years from its appointment—*
 - (i) *to review the activities of the Commission during such 3 years; and*
 - (ii) *to report to the Legislative Assembly and to the Minister as to further action that should be taken in relation to this Act or the functions, powers and operations of the Commission;*
2. confidential and/or not suitable for public tabling; or
3. more appropriately dealt with as a complaint to the Committee; or
4. has previously been processed as a complaint by the Committee and been finalised.

On 14 and 15 December 2000, the Committee held public hearings in relation to the review. At these hearings, 25 witnesses attended and gave evidence, including 12 witnesses representing 12 community and professional organisations, the Commissioner of Police and the Assistant Commissioner in charge of the Queensland Police Service Ethical Standards Command.

³ List of submissions tabled are attached to this report at Appendix 1.

The witnesses appearing were as follows:

14 December 2000

Name	Title	Representing
Brendan Butler SC	Chairperson	Criminal Justice Commission
Theresa Hamilton	General Counsel	Criminal Justice Commission
David Bevan	Director, Official Misconduct Division	Criminal Justice Commission
Helen Couper	Chief Officer & Deputy Director, Complaints Directorate	Criminal Justice Commission
Paul Roger	Director, Intelligence and Information Division	Criminal Justice Commission
Andy Kidcaff	Asst Commissioner / Director, Witness Protection Division	Criminal Justice Commission
David Brereton (Dr)	Director, Research and Prevention Division	Criminal Justice Commission
Timothy Carmody	Crime Commissioner	Queensland Crime Commission
Terry O'Gorman	President / Vice President	Australian / Queensland Council for Civil Liberties
Gary Long	Presiding Member	Misconduct Tribunal
Mark Lauchs	Acting Team Leader, Ethics and Integrity Area	Office of Public Service Merit and Equity
Noelene Straker		Youth Advocacy Centre
Kevin Smith	Chief Executive Officer	Aboriginal and Torres Strait Islanders Corporation for Legal Services
Jim Wauchope	Acting Executive Director	Department of Aboriginal and Torres Strait Islander Policy and Development
Richard Perry		Public Interest Monitor

15 December 2000

Name	Title	Representing
Tim Prenzler	Lecturer	School of Criminology & Criminal Justice, Griffith University
Robert Atkinson	Commissioner	Queensland Police Service
John McDonnell	Assistant Commissioner	Queensland Police Service
Merv Bainbridge	General Secretary	Queensland Police Union of Employees
Jeffrey Backen	Assistant Secretary	Queensland Teachers' Union
Jonathon Lunn	Manager, Industrial Services	Queensland Public Sector Union
Brendan Butler	Chairperson	Criminal Justice Commission
Margaret Steinberg (Dr)	Commissioner	Criminal Justice Commission
Sally Gould OAM	Commissioner	Criminal Justice Commission
Ray Rinaudo	Commissioner	Criminal Justice Commission

The Committee received requests from numerous individuals who expressed a desire to give evidence before the Committee at the hearings. The Committee had determined to take evidence at public hearings only from the officers of the CJC and from representatives of various community and professional organisations. The purpose of these hearings was to hear the various viewpoints on relevant issues and to allow the Committee to ask questions of representatives from a cross-section of interested organisations.

The Committee would like to acknowledge the considerable assistance provided by the CJC and the other agencies and informed members of the public who have provided written submissions to the

Committee to assist it in on all aspects of the operations of the CJC and the *Criminal Justice Act*. The Committee refrained from limiting or defining the scope of the CJC's submission. The CJC responded by providing the Committee with:

- an initial comprehensive submission on 11 September 2000⁴;
- a supplementary submission in relation to the Committee's Issues Paper on dealing with complaints against police on 24 August 2000;
- on 12 December 2000, detailed comments in respect of several of the key submissions received by the Committee; and
- a further supplementary submission on 22 February 2001, in response to a supplementary submission from the Queensland Police Service on 8 February 2001.

In addition, the CJC has provided the Committee with the minutes of all its internal meetings including meetings of the CJC Commissioners. The Committee would also like to acknowledge that in responding to issues and queries raised by the Committee, the CJC has provided the Committee with information, which, in previous times may not have been provided.

1.3.2 Finalisation of this report

In finalising this report, the Committee had been working on a timetable based on an understanding that an election was not due 'before May 2001'.⁵ However, subsequent events resulted in an election at an earlier time.

The Committee acknowledges that this report might have been more comprehensive in different circumstances had time permitted.

For example, the Committee would have given broader consideration to the operation of the *Criminal Justice Act*. The Committee has, however, detailed a significant number of amendments to the *Criminal Justice Act* and to other relevant legislation in Part D of this report.

1.4 Structure of this report

This report is structured in four parts:

- PART A: Introduction. [This part examines the basis for this report and the review process.]
- PART B: Structure, functions, powers, and operations of the Criminal Justice Commission. [This part reviews the activities of the CJC through an examination of the operations of its various organisational units and functions.]
- PART C: External accountability of the Criminal Justice Commission. [This part concentrates on the role of the Parliamentary Committee and the Office of Parliamentary Criminal Justice Commissioner.]
- PART D: Legislative changes required. [This Part examines legislative changes to the *Criminal Justice Act* and the *Crime Commission Act* which the Committee consider are desirable.]

⁴ CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane.

⁵ See Hansard of 30 July 1998 at 1356 and a letter from the Premier, the Hon Beattie MP to Mr Wellington MP dated 25 June 1998.

PART B: STRUCTURE, FUNCTIONS, POWERS, AND OPERATIONS OF THE CRIMINAL JUSTICE COMMISSION

2. STRUCTURE, FUNCTIONS AND RESPONSIBILITIES OF THE CRIMINAL JUSTICE COMMISSION

2.1 The Fitzgerald Report

One of the main recommendations made in the Fitzgerald Report was the establishment of the Criminal Justice Commission (CJC). Mr Fitzgerald QC reported that the administration of criminal justice should be independent of Executive controls, apolitical, open to public review and accountable to Parliament. He also stated that the overview and assessment of the police force should not be regarded as an isolated exercise, since it is an integral function of criminal justice administration.⁶

The Fitzgerald Report determined the following:

A Criminal Justice Commission is recommended to be permanently charged with the reviewing, coordinating and initiating reform to the criminal justice administration. The Criminal Justice Commission will report to a standing parliamentary committee initiating reforms to the criminal justice administration known as the Criminal Justice Committee. The Commission's role will include:

- *acquiring resources for criminal justice administration;*
- *advising Parliament on the implementation of this report;*
- *keeping Parliament informed on the effectiveness of the criminal justice system;*
- *monitoring the performance of the police force;*
- *providing the Commissioner of Police with policy directives based on CJC research, analysis and investigation;*
- *researching, generating and reporting to Parliament on proposals for reform of the criminal law;*
- *undertaking criminal justice functions not appropriately carried out by the Police Force, including:*
 - *witness protection;*
 - *investigation of official misconduct; and*
 - *overseeing criminal intelligence matters and managing criminal intelligence with a special significance to major and organised crime.*⁷

The Fitzgerald Report recommendations envisaged that the Commission would consist of a chairman and four community members, with the chairman being a person eligible for appointment as a judge of, or former judge of, the High Court, the Federal Court, or a Supreme Court in Australia.⁸ The CJC was to comprise of the following divisions:

⁶ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC), 1989, Brisbane, at 366.

⁷ Note 6 at 366.

⁸ Note 6 at 367.

- *the Official Misconduct Division, which will continue the work of this Inquiry and make investigations as it sees fit...;*
- *the Misconduct Tribunal, which will review decisions on disciplinary matters within the Police Force, and make original administrative decisions in relation to allegations of misconduct on the part of police and other officials;*
- *the Witness Protection Division, which will provide a complete system for witness protection...;*
- *the Research and Coordination Division, which will continually review the suitability of the criminal law, the exercise of investigative powers and the effective use of resources; and*
- *the Intelligence Division, which will provide a central repository for criminal intelligence as a hub to an integrated approach to major crime, especially organised crime.⁹*

Fitzgerald QC made very specific and detailed recommendations for his vision of the Commission. These were realised in the *Criminal Justice Act 1989*.

2.2 The Criminal Justice Act 1989

2.2.1 Structure of the Commission

The *Criminal Justice Act 1989* (the Act) establishes the Criminal Justice Commission, certain divisions and staffing. Section 6 of the Act establishes the CJC as corporation with perpetual succession and an official seal. Section 8 of the Act provides that the Commission consists of a chairperson and four other members.

Originally, the Act provided for the establishment of the following divisions in accordance with the recommendations of the Fitzgerald Report:

- Official Misconduct Division;
- Misconduct Tribunals;
- Witness Protection Division;
- Research and Coordination Division; and
- Intelligence Division.

The Commission was also empowered to establish and maintain any other organisational units the Commission considered to be necessary and desirable.

Section 19 of the Act was amended in 1997 to provide that the Official Misconduct Division is established and that there may be established any other organisational units that the Commission considers necessary. The section provides examples of witness protection, intelligence and research units.

Under the Act as originally enacted, the Commission was to, ‘*continually monitor, review and coordinate and, if the Commission considers it necessary, initiate reform of the administration of criminal justice*’, and to, ‘*discharge the functions in the administration of criminal justice as, in the Commission’s opinion, are not appropriate to be discharged, or cannot be effectively discharged, by the Police force or other agencies of the State.*’

⁹ Note 6 at 367.

The responsibilities given to the Commission are currently prescribed in section 23 of the Act. These responsibilities remain largely as they were when the Commission was established, with the removal of the Commission's responsibility for organised crime.

The Commission is empowered to employ such Directors and other staff as are necessary for the effective and efficient discharge of the functions and responsibilities.

2.2.2 *The Chairperson and part-time Commissioners*

As envisaged by Mr Fitzgerald QC, the Act establishes, in section 8, a Commission consisting of a full time Chairperson and four part-time community members as Commissioners. The Chairperson is to be a person who is qualified for appointment as a judge of the Supreme Court of Queensland or any other state or territory, or the Federal or High Court, pursuant to section 9 of the Act.

The part-time members are to fulfil certain criteria:

- At least one person shall be in actual practice as a legal practitioner who has demonstrated an interest in civil liberties, under section 9(2)(a) of the Act; and
- Three shall be persons who have demonstrated an interest and ability in community affairs, of whom at least one has proven senior managerial experience in a large organisation, under section 9(2)(b) of the Act.

Commissioners are to have limited tenure. A Commissioner may be appointed for a term of between 2 and 5 years, pursuant to section 14(1) of the Act. A chairperson may be reappointed for a term of not more than 3 years under section 14(4) of the Act. However, pursuant to section 14(5) of the Act a person is not eligible to be reappointed if the total of his or her terms as chairperson would be more than 5 years. A part-time member may be reappointed for a term of not more than 5 years under section 14(6) of the Act.

The Minister's intention to select a person to be Chairperson or Commissioner must be advertised, under sections 11(1) and 12(2). The Minister must consult with the PCJC before making a selection pursuant to section 11(3).

Current members of the Commission are:

Chairperson:	Mr Brendan Butler SC (appointed November 1998)
Commissioners:	Mrs Dina Browne AO (appointed September 1996; reappointed December 1999)
	Mrs Sally Goold OAM (appointed July 1999)
	Mr Ray Rinaudo (appointed September 1999)
	Associate Professor Margaret Steinberg (appointed September 2000)

2.3 **Current structure, functions and responsibilities**

Since the last three yearly review of the CJC there have been some major organisational changes and some structural changes to the CJC. The CJC submits that, *'These changes will make us more able to meet our legislative obligations and the specific organisational objectives contained in our*

Strategic Plan'.¹⁰ The CJC has also had the opportunity to refocus its direction after the removal of its responsibilities for organised and major crime and the misconduct tribunals.

2.3.1 Current structure

The currently established Divisions of the CJC are as follows:

- Official Misconduct Division;
- Research and Prevention Division;
- Witness Protection Division;
- Intelligence and Information Division;
- Corporate Services Division;
- Office of the Commission; and
- Office of General Counsel.

In its submission to this review, the CJC points out major changes to its organisational structure that have been made to assist the CJC in meeting legislative obligations and organisational objectives contained in the Strategic Plan.¹¹ The CJC informed the Committee of the following changes:

- *To more fully integrate our research activities and preventive strategies the Research Division and the Corruption Prevention Division have been merged to form the Research and Prevention Division.*
- *An Office of the Commission has been established to focus on corporate governance issues, external liaison, publications and communications.*
- *The Official Misconduct Division has been restructured to:*
 - *provide for a more client-focused Complaints Section*
 - *an investigative arm*
 - *a Major Projects Unit designed to undertake projects of significant public interest that may require public hearings or reports, immediate action and/or an integrated response.*
- *The operational functions of surveillance and technical support have been transferred to the control of the Director, Operations and Witness Protection Division (Assistant Commissioner of Police) to ensure the more effective utilisation of these resources.*
- *The information management function - incorporating information technology and records management - has been transferred from the Corporate Services Division to a new Information Division, which has been amalgamated with the Intelligence Division; the security function has been transferred from the Corporate Services Division to the Intelligence and Information Divisions; and the management of all registry activities has been centralised within the Intelligence and Information Divisions.*

Information is a critical resource in all organisations, but particularly in an agency with the functions and responsibilities of the CJC. The CJC's information resources are diverse, ranging from extensive physical holdings, internal electronic documents, and external data sources. The way in which this information is managed is a major factor in how successfully

¹⁰ CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane, at 3.

¹¹ The CJC's *Strategic Plan 2000-2004* is attached to this report in Appendix 3.

*the operational areas perform their roles.*¹²

The CJC informed the Committee in its submission that:

*We are moving away from dividing the CJC's work along the lines of the various functional groups within isolated divisions. Instead, the focus is on what the CJC is dedicated to achieving, namely, reducing police misconduct, identifying risks to public sector integrity, and then determining how the skills and attributes of various disciplines can be deployed to deliver the desired outcomes. By combining the insights of professionals from diverse fields, new and innovative strategies will emerge. A key mechanism for promoting greater integration is the Committee for Operations and Projects (COP). This high level internal committee, which was established early this year (2000), approves and monitors all new projects and covert operations. COP places strong emphasis on ensuring that there is a whole-of-Commission approach to important issues.*¹³

Appendix 2 to this report details the CJC's current organisational structure.

Application of CJC policy is carried out by the Executive Management Group. This Group is made up of senior executives who manage the organisation within the parameters of delegations afforded by the Commission.¹⁴

The CJC has strengthened and reorganised its operational committee structure. The current committees are outlined in the CJC's *Annual Report 1999-2000* and are as follows:

- Audit Committee - assists in ensuring that effective financial management and internal control systems are in place;
- Finance Committee - oversees the budget and financial management practices;
- Information Steering Committee - ensures the effective use of information infrastructure and resources;
- Legislation Committee - ensures compliance with relevant legislation and reviews the applicability of the legislation governing the CJC;
- Risk Management and Fraud Prevention Committee - ensures risk is minimised and fraud prevented;
- Equal Employment Opportunity Consultative Committee - ensures administrative practices throughout are fair and equitable;
- Workplace Health and Safety Committee - monitors and implements strategies to safeguard health and safety; and
- Commission Consultative Committee - provides a forum in which employees and senior management can exchange ideas, concerns and points of view.¹⁵

2.3.2 Current functions

The functions of the CJC are prescribed in section 21 of the Act. The CJC retains the function of monitoring, reviewing and, if necessary, initiating reform of the administration of criminal justice. However, the CJC no longer has the function of '*discharging the functions in the administration of criminal justice as, in the Commission's opinion, are not appropriate to be discharged, or cannot*

¹² Note 10 at 3.

¹³ Note 10 at 3.

¹⁴ CJC, *Annual Report 1999-2000*, 2000, Brisbane, at 10.

¹⁵ Note 14 at 10.

be effectively discharged, by the Police Force or other agencies of the State'.¹⁶ Section 21 of the Act prescribes the CJC's functions as follows:

- (1) *The commission shall—*
 - (a) *continually monitor, review and, if the commission considers it necessary, initiate reform of the administration of criminal justice;*
 - (b) *discharge other functions appropriate to the objects of this Act.*
- (2) *In discharging its functions the commission shall—*
 - (a) *wherever practicable, consult with persons or bodies of persons known to it to have special competence or knowledge in the area of the administration of criminal justice concerned, and seek submissions from the public; and*
 - (b) *in its report present a fair view of all submissions and recommendations made to it on the matter in relation to which it is discharging its functions, whether such submissions and recommendations are supportive of, or contrary to, the commission's recommendations on the matter.*
- (3) *Subject to section 26, the commission shall report to the parliamentary committee—*
 - (a) *on a regular basis, in relation to the commission's activities;*
 - (b) *in relation to a matter specified by the parliamentary committee concerning a function of the commission or the administration of criminal justice;*
 - (c) *when the commission thinks it appropriate to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice.*
- (4) *The commission shall monitor, review, coordinate and initiate implementation of the recommendations relating to the administration of criminal justice contained in the report of the commission of inquiry, and to that end, having regard to that report, shall prepare a program of priorities.*

2.3.3 Current responsibilities

The responsibilities of the CJC are set out in section 23 of the Act. The wording of the section remains largely unchanged since the last three yearly review of the CJC. The section has been updated, however, to reflect the removal of the CJC's jurisdiction in relation to organised crime, particularly in subparagraph 23(d). The section reads as follows:

23. *The responsibilities of the commission include—*
 - (a) *the acquisition and maintenance of the resources, skills, training and leadership necessary for the efficient administration of criminal justice;*
 - (b) *monitoring and reporting on the use and effectiveness of investigative powers in relation to the administration of criminal justice generally;*
 - (c) *monitoring and reporting on the suitability, sufficiency and use of law enforcement resources and the sufficiency of funding for law enforcement and criminal justice agencies including the office of the director of public prosecutions and the Legal Aid Commission (so far as its functions relate to prescribed criminal proceedings within*

¹⁶ This function was removed by section 13 of the *Criminal Justice Legislation Amendment Act 1997*.

the meaning of the Legal Aid Act 1978);

- (d) undertaking intelligence activities to support its responsibilities in relation to official misconduct or alleged or suspected misconduct by members of the police service;*
- (e) researching, generating and reporting on proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice, including assessment of relevant initiatives and systems outside the State;*
- (f) in discharge of such functions in the administration of criminal justice as, in the commission's opinion, are not appropriate to be discharged, or can not be effectively discharged, by the police service or other agencies of the State, undertaking—*
 - (i) research and coordination of the processes of criminal law reform;*
 - (ii) matters of witness protection;*
 - (iii) investigation of official misconduct in units of public administration;*
- (g) monitoring the performance of the police service with a view to ensuring that the most appropriate policing methods are being used, consistently with trends in the nature and incidence of crime, and to ensuring the ability of the police service to respond to those trends;*
- (h) providing the commissioner of the police service with policy directives based on the commission's research, investigation and analysis, including with respect to law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources;*
- (i) overseeing reform of the police service;*
- (j) reporting regularly on the effectiveness of the administration of criminal justice, with particular reference to the incidence and prevention of crime and the efficiency of law enforcement by the police service;*
- (k) reporting, with a view to advising the Legislative Assembly, on the implementation of the recommendations in the report of the commission of inquiry relating to the administration of criminal justice, and to the police service;*
- (l) taking such action as the commission considers to be necessary or desirable in respect of such matters as, in the commission's opinion, are pertinent to the administration of criminal justice.*

2.4 Resources and staffing

2.4.1 Staffing Establishment

The staffing establishment for the CJC since the last three yearly review is outlined in the following table. The notes to the table, provided by the CJC, explain the fluctuations.

	As at 30 June 1999		As at 30 June 2000		As at 1 February 2001	
	Staffing Establishment	Staff on Hand	Staffing Establishment	Staff on Hand	Staffing Establishment	Staff on Hand
Executive (including Office of General Counsel and Office of the Commission)	11	10	10	15	12	12
Official Misconduct Division	141	140.6	109	89	98	91.3
Operations and Witness Protection Division	29	25.8	55	50.4	53	46.4
Research and Prevention Division	20	30.9	29	29	28	26.6
Intelligence and Information Division	20	21	46	46.8	43	42.7
Corporate Services Division	33	37	14	15	14	15
Total	263	265.3	263	245.2	248	234

Notes:

- During 1999/2000, the organisational structure of the CJC was reviewed, which resulted in the following changes:
 - Transfer of responsibility for surveillance activities from the Official Misconduct Division to the Operations and Witness Protection Division;
 - Transfer of responsibility for Information Management from the Corporate Services Division to a new Division, and its amalgamation with the Intelligence Division (Intelligence and Information).
- During 2000/2001, the staffing establishment was rationalised and the established strength was reduced from 263 permanent positions to 248 permanent positions.

2.4.2 Resource allocation to sub-output

The CJC's total budget for 1999/2000 is \$29 541 000.

The following table outlines the resource allocations to each sub-output in the years since the last three yearly review of the CJC.

Sub-output	Note	1997/1998	1998/1999	1999/2000
Research and Prevention		1,857,868	2,098,000	2,685,805
Official Misconduct	1	11,288,091	13,262,400	10,569,766
Intelligence and Information	2	1,549,621	1,450,090	3,143,520
Operations and Witness Protection	3	2,096,756	2,005,490	6,294,756
Corporate Support	4, 5	6,145,664	6,024,020	6,847,153
TOTAL		\$22,938,000	\$24,840,000	\$29,541,000

Notes:

- 1 Surveillance and Technical Unit transferred to Operations and Witness Protection from 1999/2000*
- 2 Includes Information Management from 1999/2000*
- 3 Includes Surveillance and Technical Unit from 1999/2000*
- 4 Information Management transferred to Intelligence and Information from 1999/2000*
- 5 Includes Terrica Place lease incentive for 1999/2000*

3. THE JURISDICTION OF THE CJC

3.1 Introduction

This section examines some aspects of the jurisdiction of the CJC, specifically whether or not that jurisdiction should be extended in the following areas:

- Organised and major crime;
- Privately operated correctional centres; and
- Private entities exercising public functions.

3.2 Jurisdiction over organised and major crime

3.2.1 Introduction

The CJC's previous jurisdiction in respect of the investigation and combating of organised and major crime ceased in May 1998, when these responsibilities passed to the then newly-created Queensland Crime Commission. This move was at the time, and afterwards, strongly opposed by the CJC.

Some problems do arise from separating the functions of investigation of corruption and investigation of organised crime, because there is in practice frequently a link between the two areas of crime. Often, organised crime thrives because those involved are bribing or otherwise corrupting police officers or public officials.

3.2.2 Background

In October 1998 the CJC argued:

.... to separate the investigation of organised crime from the investigation of the associated corruption is illogical, inefficient and sows the seeds of eventual failure. Although significant arrests will be made, the organisation will remain intact and the principals will largely escape prosecution. This situation has been reported on again and again by commissions of inquiry both within Australia and overseas. A community which ignores the lessons of history is condemned to repeat its mistakes.¹⁷

At that time, the CJC also argued that the division of responsibilities had given rise to some duplication, including in the areas of criminal intelligence, duplicate management and command structures, investigative support infrastructure (such as surveillance personnel and equipment, and hearing rooms and attendant facilities) as well as general organisational infrastructure (such as computer networks), and external oversight mechanisms.¹⁸

3.2.3 This review

The CJC made no submission to the present review that the jurisdiction for organised and major crime ought to be returned to the CJC.

¹⁷ CJC, *Organised crime investigation overview and corruption nexus*, (unpublished), October 1998, at 8.

¹⁸ CJC, *Duplication between Criminal Justice Commission and Queensland Crime Commission*, (unpublished), October 1998, Brisbane.

However, at the hearings held as part of this review, CJC Chairperson, Mr Butler SC, told the Committee:

.....one would think that it would be hard for some forms of sophisticated organised crime to exist without the assistance of corrupt officials. At the same time, if officials are to be corrupted, generally it is going to be by some person involved in criminal activity. An example of that more recently is our investigation of the sale of licences to individuals. We carried out an extensive investigation in relation to Transport Department employees that resulted in various charges that are before the courts. As a result of that investigation, we involved the Queensland Police Service and the New South Wales Police Service in other extensive investigations, and arrests were carried out amongst a criminal group that were involved in changing the registration numbers of stolen vehicles. So you certainly see that link.¹⁹

Queensland Crime Commissioner, Mr Carmody, noted in evidence to the Committee:

Organised crime and corruption have traditionally been linked, and the extent to which corruption and organised crime go hand in hand depends a lot on your definition of "organised crime". But there are plenty of forms of organised crime within the definition of the Crime Commission Act that are conducted quite separately from corruption or official misconduct. There are other types where official misconduct in respect of public officials is closely connected, and that is really the whole purpose of having section 33 in the Crime Commission Act, so that if the Crime Commission is investigating an organised crime matter that does involve corruption or official misconduct, it has a statutory obligation to inform the Criminal Justice Commission, and where it does not feel it can do that without jeopardising its own investigations its obligation is to refer it to the Parliamentary Commissioner who then monitors the investigation to ensure that we have an overlap. There is nothing wrong with overlaps—some people criticise them—I do not think there is anything wrong with overlaps between agencies. The danger is when you have gaps between agencies and things fall between the gaps. The overlap is like a good suit; it ensures that you have a seamless framework and nothing falls through.

The experience in Australia and other western countries is that there is no practical need to have the organised crime function merged with the anti-corruption function. No other State in Australia does it. The experience is that both investigations can be conducted compatibly, cooperatively and effectively and they are best kept separate so that your core business can be focused on, and you are not then having to decide between allocations of budget as to which will get priority. If one agency has it, it has that dilemma. If your sole business is organised crime, you have a budget dedicated to that, you have specialist investigators and you develop your own techniques and approaches that are best practice.²⁰

3.2.4 Analysis and comment

The Committee considers it self-evident that inevitably there has been some duplication of infrastructure following the creation of the QCC. The precise extent of such disadvantages is unclear, as is the extent of any advantages of the sort alluded to by Mr Carmody. Be that as it may, no submissions were made to the present review that the jurisdiction for investigation of organised and major crime should be returned to the CJC. The Committee is also conscious that less than three years have elapsed since the establishment of the QCC and the passing of this jurisdiction to it from the CJC.

¹⁹ Transcript of Public Hearing - Three Yearly Review of the CJC, 14-15 December 2000, Brisbane, at 29.

²⁰ Note 19 at 32.

3.2.5 Conclusions

Conclusion 1

The Committee considers that there is no evidence that any problems or disadvantages arising from the CJC not having jurisdiction for the investigation of major and organised crime are so great as to warrant any detailed consideration of whether the function should again come under the CJC umbrella.

Conclusion 2

The Committee believes it is very important that the CJC cooperate to the fullest extent possible with the QCC.

3.2.6 Recommendation

Recommendation 1

The Committee does not recommend any change in the present arrangements whereby the Queensland Crime Commission and not the Criminal Justice Commission has jurisdiction in respect of the investigation of major and organised crime.

3.3 Jurisdiction of the CJC over Queensland's correctional facilities - private correctional centres²¹

3.3.1 Background

Initially, the CJC's jurisdiction did not extend to correctional facilities. This meant that alleged or suspected misconduct by a person employed by a Queensland prison could not be investigated by the CJC.

In late 1997, the CJC was given jurisdiction in relation to the Queensland Corrective Services, by virtue of the definition of "unit of public administration" being changed to include the Queensland Corrective Services Commission. The effect of this amendment was to bring officers of the Queensland Corrective Services Commission, including all officers of prisons managed by it, within the Commission's jurisdiction. This extension of the CJC's jurisdiction was in accordance with a recommendation of the second PCJC,²² and was noted with approval by the third PCJC.²³ This extension of jurisdiction however did not apply to privately run correctional centres.

In its submission to the former Connolly / Ryan Inquiry, prepared prior to the introduction of the *Criminal Justice Legislation Amendment Act*, the CJC submitted that:

It would be most unsatisfactory if the Commission had jurisdiction to investigate complaints against staff in a QCORR correctional centre, but did not have jurisdiction in respect of complaints from staff or prisoners at a privately managed correctional centre. It seems appropriate that a private company or group exercising the powers of a public authority (namely the QCSC under the Corrective Services Act 1988) pursuant to a contractual

²¹ This topic is also discussed at paragraph 15.2.1 below.

²² PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, Legislative Assembly of Queensland, 1995, Brisbane, at 84.

²³ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 45, Legislative Assembly of Queensland, 1998, Brisbane, at 45.

*arrangement be subject to the same systems of accountability in its operations as the public authority.*²⁴

In the last three yearly review of the CJC, the third PCJC whilst noting that the jurisdiction of the CJC over officers employed by private agencies performing functions traditionally performed by government 'is a significant and complicated issue which extends beyond correctional facilities', nonetheless specifically commented in respect of private prisons:

*the Committee considers that it is fundamental to the equitable treatment of inmates of correctional facilities that their avenues of redress not be dependent upon the correctional facility in which they are housed. The Committee considers that this issue is particularly significant in view of the fact that prisoners have no choice about the correctional facility in which they will be incarcerated.*²⁵

That Committee concluded thus:

The Committee believes in principle that staff of privately managed correctional facilities should come within the jurisdiction of the CJC.

*The Committee considers that an assessment of the feasibility of including staff of private correctional centres within the jurisdiction of the CJC be undertaken as a matter of urgency. This assessment should be undertaken with a view to enacting legislation which brings these staff within the CJC's jurisdiction, in the absence of insurmountable obstacles.*²⁶

3.3.2 The CJC's submission

In its submission to this review, the CJC has observed:

*It is noteworthy that inmates in the three other Australian jurisdictions which have private prisons (namely New South Wales, Victoria, and South Australia) have access to the same complaints mechanisms regardless of whether they are held in publicly or privately operated correctional facilities.*²⁷

The CJC also stated:

*the Commission has previously proposed that the definition of 'unit of public administration' should be amended to include privately managed corrective services facilities within the definition. The Commission continues to urge such an amendment.*²⁸

The Director of the CJC's Official Misconduct Division, Mr Bevan, advised the Committee at its public hearing in December 2000 that:

*As a result of an amendment to the Corrective Services Act in November of this year, the CJC will soon have jurisdiction over official misconduct by staff of engaged service providers prescribed by regulation. That term "engaged service provider" includes corporations responsible for the management of private correctional facilities in Queensland. The regulation to prescribe these service providers for the purpose of giving us jurisdiction is currently being drafted.*²⁹

²⁴ CJC, *Criminal Justice Commission Submission to the Commission of Inquiry into the Effectiveness of the Criminal Justice Commission*, 1997, Brisbane, at 136.

²⁵ Note 23 at 75.

²⁶ Note 23 at 76.

²⁷ CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane, at 25.

²⁸ Note 27 at 44.

²⁹ Note 19 at 16.

3.3.3 Analysis and comment

The Committee is of the view that prisoners in privately run facilities should have the same avenues of redress as other prisoners. Regardless of the broader issue of whether the CJC ought to have general jurisdiction over private agencies performing public functions, the Committee believes that there are obvious distinguishing features of the operations of a correctional centre that warrant separate consideration of such centres. Such centres and their staff have great power and control over the inmates of such centres. The Committee believes it is appropriate in these circumstances that such centres come under the oversight mechanism of the CJC.

3.3.4 Conclusion

Conclusion 3

The Committee endorses the conclusion of its predecessor that in principle staff of private correctional centres should be within the jurisdiction of the CJC. It is of course imperative that the CJC be adequately funded so that it can discharge this additional responsibility.

3.3.5 Recommendation

Recommendation 2

The Committee recommends that staff of private correctional centres be brought under the jurisdiction of the Criminal Justice Commission. The CJC must be adequately resourced for this extension of its functions.

3.4 Private bodies exercising public functions³⁰

3.4.1 Background

In recent years, there has been an increasing trend towards corporatisation and privatisation of many bodies which carry out functions which might be loosely described as “public” functions, and which were previously performed by clearly public entities, typically government departments and statutory authorities. Also, public functions increasingly have been outsourced to private sector entities. Such functions include activities that can be regarded as essential government services.

Against this background, the question arises as to whether or not it is appropriate that the CJC have jurisdiction over the activities of such bodies.

3.4.2 The CJC’s submission

In its submission to this review, the CJC noted that it did not have a final position on this issue.³¹

In evidence to the Committee, the Chairperson of the CJC, Mr Butler SC, expanded on the CJC’s position:

The Commission has not addressed this as a body. We have not called for an extension of our jurisdiction in this area. We have noted in our submission, though, that it is an issue that needs to be considered for the future. It needs to be considered, I suppose, as much because the nature of Government and the delivery of Government services is changing as for any other

³⁰ This topic is also discussed at paragraph 15.2.3 below.

³¹ Note 27 at 9.

reason. It perhaps also needs to be considered because, as we note in the submission, in other places, for example in New South Wales, bodies such as ours do have a broader jurisdiction. The Independent Commission Against Corruption has a jurisdiction that extends to a much broader range of bodies than the CJC's jurisdiction in Queensland. I also note that more recently the commissioner of the ICAC, Ms Irene Moss, has suggested that perhaps there should even be some extension of the jurisdiction of the ICAC in New South Wales.

I cannot speak for the commission as a body, but for myself I think this will need to be addressed in the future. Perhaps it is a matter that the CJC itself might look at in more detail and gather some research to form an opinion in the area. It is not necessarily the case that, even if these issues of an extension of Government services and the delivery of Government services by private bodies requires greater accountability mechanisms and integrity mechanisms in the delivery of those services, an extension of the jurisdiction of a body like the CJC needs to be the way to deal with it. The CJC is just one part of a package of integrity mechanisms that exists in Queensland. What will need to be looked at, I think, in this area is how all of those various integrity mechanisms extend into this area of delivery of Government services.³²

In its submission, the CJC notes that, as there is an increasing move towards corporatisation and privatisation of ‘even essential government services such as health, transport and corrective services, it may be a good time to consider whether all entities that carry out such public functions should be subject to scrutiny by the CJC, especially where public funding is involved’.³³

3.4.3 Analysis and comment

The Committee believes this is a complicated and difficult issue. Quite aside from the complex policy considerations involved, and as the CJC has pointed out, it would be difficult to draft a definition of “unit of public administration” which would cover all appropriate bodies, but not extend to bodies which ought not be covered. It is beyond the scope of the time constraints of the present review to consider the matter in any detail.

3.4.4 Recommendation

Recommendation 3

The Committee recommends that the next Parliamentary Committee give consideration to the complex issue of the extent to which if any, private bodies exercising public functions and the jurisdiction of the Criminal Justice Commission should be extended to cover such bodies.

³² Note 19 at 5.

³³ Note 27 at 9.

4. THE OFFICIAL MISCONDUCT DIVISION

4.1 Introduction

This chapter examines the Official Misconduct Division (OMD) of the Criminal Justice Commission (CJC). It looks both at the recent changes in its structure and operations and at the philosophy behind those changes.

A number of specific issues are also considered. These include:

- the optimal approach to the investigation of complaints against police;
- the employment by the CJC of serving Queensland Police Service officers as investigators of complaints against police;
- the timeliness of the CJC's complaint resolution process;
- the covert taping by CJC officers of telephone conversations with the public;
- the CJC's use of the media;
- the CJC's provision for complainants with special needs; and
- the effect of the resignation of a subject officer upon a misconduct investigation.

4.2 Background

The OMD has been an integral part of the Criminal Justice Commission since the CJC's creation following the Fitzgerald Report. The OMD is the CJC's investigative unit. It responds to complaints regarding alleged misconduct, and can also operate on its own motion.³⁴

4.3 Functions of the OMD

The OMD is the largest division of the CJC. It is charged with the investigation of alleged and suspected official misconduct and police misconduct. The previous jurisdiction in respect of organised and major crime was lost to the Queensland Crime Commission in May 1998, whilst there is newly acquired jurisdiction in relation to prisons, shortly to be extended to private prisons.

Police "misconduct" is conduct that:

- (a) is disgraceful, improper or unbecoming an officer; or*
- (b) shows unfitness to be or continue as an officer; or*
- (c) does not meet the standard of conduct the community reasonably expects of a police officer.³⁵*

In broad terms, "official misconduct" in essence is conduct on the part of a public official:

- (i) that involves dishonesty or partiality;*

³⁴ *Criminal Justice Act 1989*, s. 29(2).

³⁵ *Police Service Administration Act 1990*, s. 1.4.

(ii) *that constitutes or involves a breach of the trust placed in the person; or*

(iii) *that involves the misuse of information or material,*

and in any such case is serious enough to amount to a criminal offence or to reasonably warrant the person's dismissal.³⁶

The number of complaints processed by the OMD continues to grow. The CJC's Annual Report for 1999-2000³⁷ includes the following statistics regarding standard complaints received annually in recent years:

Year	Number of Complaints
1995-1996	2335
1996-1997	2673
1997-1998	2512
1998-1999	2768
1999-2000	2861

The number of complaints received in the six months ended 31 December 2000 was 1588, the highest ever.³⁸ The month of November 2000 saw 303 standard complaints received – the highest monthly total ever.³⁹

4.4 Structure and processes of the OMD

The OMD has a staffing establishment of 98 as at 1 February 2001. This staff includes lawyers, financial analysts, intelligence analysts, investigators, and support staff.

The OMD includes the Complaints Section, Investigations, and the recently established Major Projects Unit.

Within the Complaints Section, there is the Receivals and Assessment Unit, the Complaint Resolution Team, and the Review, Evaluation, and Monitoring Unit. The Whistleblower Support function of the CJC was transferred to the Complaints Section in 1999. That function is considered elsewhere in this report.⁴⁰

The Receivals and Assessment Unit assesses complaints received, and determines how they should be dealt with, including whether to refer them to the Complaint Resolution Team, which is responsible for investigation of complaints.

³⁶ *Criminal Justice Act 1989*, s. 32(1).

³⁷ CJC, *Annual Report 1999-2000*, 2000, Brisbane, Appendix B, at 70-72.

³⁸ Unpublished letter to the PCJC from CJC dated 23 January 2001.

³⁹ PCJC, Transcript of Public Hearing - Three Yearly Review of the CJC, 14-15 December 2000, Brisbane, at 17.

⁴⁰ Chapter 9 (Whistleblower Support).

The Review, Evaluation, and Monitoring Unit assesses and reviews the complaints handling and investigation processes and performances of external agencies, including the Queensland Police Service.

4.5 Recent changes in approach

4.5.1 The changes

The CJC has in recent years increasingly pursued a more proactive, integrated, preventative, and multi-disciplinary approach to its functions, including investigations. It has also adopted a more client-focused approach to complaints. In March 1998, the CJC appointed external consultants to carry out an organisational review of the CJC. The review confirmed the appropriateness of the new philosophical approach of the CJC to its functions, and the review's conclusions and recommendations were adopted by the CJC, through the Strategic Implementation Group (SIG).⁴¹

The CJC established the Strategic Implementation Group (the SIG) in 1999 to review the business processes and organisational structure of the CJC in light of the CJC's *Strategic Plan 1999-2002*. The SIG was a small internal working party formed to review the CJC's processes, structures, reporting relationships and relationships with customers. The SIG finalised its report, *Continuing the Reform Process: The Report of the Strategic Information Group*, in December 1999.

The methodology of the SIG included analysis of 100 complaints files, interviews with focus groups and stakeholders within the CJC, interviews with other similar agencies, perusal of material from other similar agencies, examination of external documents and reports and review of the management literature.⁴²

The SIG intended the report to be a, '*practical blueprint for the implementation of revitalising initiatives to best meet the new strategic directions of the CJC*'.⁴³

In May 2000, the Commission endorsed an implementation plan in respect of the recommendations made in the SIG report.

The SIG urged a more client-focused approach by the Complaints Division. The CJC has moved towards finding ways to resolve complaints other than by the traditional investigative approach. The Receivals and Assessment Unit has adopted this approach, reducing the number of complaints that are passed on to the Complaint Resolution Team for investigation.

The Committee is strongly supportive of the increasing use by the CJC of a proactive and integrated approach to its functions, in particular the investigation of police and official misconduct.

The recommendations in the report of the SIG included proposals for structural changes to the CJC's divisional areas, aimed at reflecting and enhancing the new approach. This led to changes to both the structure and the processes of the OMD.

As with other areas of the CJC, the OMD has undergone considerable structural change since the last three yearly review, in line with the recommendations of the SIG, and following the organisational review of the CJC by the Consultancy Bureau in 1998.⁴⁴

⁴¹ CJC, *Continuing the Reform Process: The Report of the Strategic Information Group*, 1999, Brisbane.

⁴² Note 41 at 2.

⁴³ Note 41 at 2.

The CJC retained the consultancy bureau, a private management consulting firm, to construct an organisational review of the CJC in the context of amendments to the *Criminal Justice Act* made in the *Criminal Justice Legislation Amendment Act 1997*. This legislation removed the CJC's responsibilities for major and organised crime which were transferred to the Queensland Crime Commission. The review was referred to the Consultancy Bureau in the following terms:

*The CJC proposes to undertake an Organisational Review Project for the purposes of clarifying its functions and responsibilities and reviewing its current program and organisational structures in light of certain legislative action initiated by the Government towards the end of 1997, and at the same time reviewing its senior management staffing structure.*⁴⁵

The Bureau conducted its review through workshops, consultation with external stakeholders and senior CJC personnel, data analysis and options development, staff feedback, resource assessment, reviewing senior executive position descriptions and reporting on all aspects of the review and resultant findings and recommendations.⁴⁶

The Consultancy Bureau's *Report on an Organisational Review of the Criminal Justice Commission* was finalised in June 1998.

Recent or imminent changes to the OMD, aimed at increasing efficiency and at ensuring that due regard is had to the "prevention imperative", include:

- the temporary location of Research and Prevention Officers within operational teams where appropriate;
- the establishment of a Covert and Sensitive Investigations Unit (replacing the previous Project Shield), to handle all highly sensitive investigations of police and public sector misconduct, or investigations which require a covert investigative capability;
- the combining of the other two multi-disciplinary teams (public sector and corrective services) into a new Complex Investigations Unit;
- the establishment of a Major Projects Unit to undertake projects of significant public interest, which might require public hearings or reports, or immediate action or an integrated response;
- the relocation of the former Surveillance and Technical Unit away from OMD;
- the permanent co-location of a Prevention Officer within the Complaints Section;
- a full-time Research Officer position to support the Complaints section;
- an increased client focus by the Complaints Section;
- placing of more financial analysts, intelligence analysts, and research and prevention officers in OMD, and in the complaints section;
- an increased rigour in initial assessment of complaints;
- fully revised policy and procedures for the Complaints Section;
- proposed new protocols between the CJC and local governments, and between the CJC and departments and agencies, regarding discipline matters;

⁴⁴ Consultancy Bureau, *Report on an Organisational Review of the Criminal Justice Commission*, (unpublished), 1998, Brisbane.

⁴⁵ Note 44 at 4-7.

⁴⁶ Note 44 at 4-7.

- the introduction in May 2000 of COMPASS - a new computer system for management and processing of complaints; and
- formal case management of investigations.

4.5.2 Analysis and comment

In broad terms, the Committee applauds the efforts of the CJC in reassessing its approach to investigations and in introducing initiatives aimed at improving service delivery and enhancing the emphasis on prevention and a proactive integrated approach. The Committee endorses the CJC's endeavours to broaden its response to complaints beyond the investigative approach. The Committee supports the CJC's initiatives in changing its structures and processes to reflect the changes in philosophical approach. These recent changes – both to structures and processes - have not been in place long enough to allow for any considered assessment of their success or otherwise. The Committee believes there should be ongoing monitoring of the impact of the new changes by the next Committee.

4.5.3 Conclusions

Conclusion 4

The Committee strongly supports the steps taken by the CJC to reassess its approach to investigations and to introduce initiatives aimed at improving service delivery and enhancing the emphasis on prevention and a proactive integrated approach.

Conclusion 5

The Committee endorses the CJC's endeavours to broaden its response to complaints beyond the investigative approach.

Conclusion 6

The Committee supports the CJC's initiatives in changing its structures and processes to reflect the changes in philosophical approach.

4.5.4 Recommendation

Recommendation 4

The Committee recommends that its successor Committee monitor the effectiveness of the recent changes in the structure and processes of the Official Misconduct Division including the Complaints Section.

4.6 Complaints against police

4.6.1 Introduction

A critical aspect of the Official Misconduct Division's operations is the investigation of alleged or suspected police misconduct. This jurisdiction arises from the Fitzgerald Inquiry recommendations. In his report, Fitzgerald QC stated:

All misconduct or suspected misconduct by police officers other than of a purely disciplinary significance should be required to be reported to an independent body. All ranks should have

*an obligation to make such report.*⁴⁷

The *Criminal Justice Act 1989* reflected this conclusion. By section 29(3)(d)(i) of the Act it is a function of the Official Misconduct Division of the CJC ‘to investigate cases of alleged or suspected misconduct by members of the police service’.

Section 38(4) of the Act provides that:

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

On the basis of this provision, the CJC is able to refer the investigation of alleged or suspected police misconduct, which would not, if proved, constitute official misconduct, to the Queensland Police Service for investigation. In some cases the CJC refers such investigations to the Queensland Police Service and reviews these investigations, rather than conducting the investigations itself.

4.6.2 Prior consideration of the issue

Both the second PCJC and the third PCJC examined the issue of the optimal mechanism for the investigation of complaints against police, in particular the extent to which such complaints ought be investigated by an independent body, and the extent to which such complaints should be dealt with by the Queensland Police Service itself.

The second PCJC concluded that it was ‘absolutely essential’ that the independent complaints process (in respect both of police and of public officials) continue operating as then constituted as it appeared to be working successfully.⁴⁸ At the same time, that committee did not regard it as necessary that all complaints be investigated by the independent body. That committee’s position as to the appropriate balance between internal and external responsibility for complaint investigation was as follows:

..... it is neither desirable nor possible for all complaints against police or other public officials to be investigated by the Commission. The Fitzgerald Report did not intend that the Commission investigate all complaints against police or public officials. The Committee considers that there needs to be an efficient mechanism in place within the Queensland Police Service and other government bodies to investigate and determine minor or purely disciplinary matters. The Commission should be able to refer matters of a minor or disciplinary nature to the Queensland Police Service or the relevant Department. This process is an efficient manner of handling complaints and also aids the Queensland Police Service and Government Departments in taking responsibility for the actions of its personnel. However, at all times the Commission must maintain a supervisory role to ensure that:

- *adequate investigations are undertaken, by properly trained officers;*
- *complainants are being informed and are assured that their complaints are being properly processed;*
- *any disciplinary or other action that is warranted is promptly taken; and*
- *appropriate penalties are being imposed.*⁴⁹

⁴⁷ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC), 1989, Brisbane, at 295.

⁴⁸ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, Legislative Assembly of Queensland, 1995, Brisbane, at 82.

⁴⁹ Note 48 at 88.

The third PCJC also concluded that an external organisation with the role of investigation of complaints against police is ‘*an essential element of an effective criminal justice system*’ and considered that this function was one of the core functions of the CJC.⁵⁰ That Committee accepted that the Queensland Police Service’s own systems were not then sufficiently developed to enable the broadening of the service’s internal discipline system.⁵¹ The Committee also expressed the view that:

*In the long term ... it would be preferable if the jurisdiction of the Commission were reduced in relation to police misconduct.*⁵²

In 1996 the issue had been considered in detail in the report of the Queensland Police Service Review Committee (QPSRC). The QPSRC contemplated that the Queensland Police Service ought be able to have an increased internal responsibility for investigation of complaints against its officers, but that Committee advised that:

*The committee concludes that the QPS system is not yet sufficiently developed to enable the broadening of the QPS’s internal disciplinary jurisdiction.*⁵³

The Honourable Justice Wood, in his report on the NSW police service, accepted that there was a need for an independent body to investigate complaints against police. He acknowledged that the NSW police service needed to have some responsibility for its own disciplinary processes, and indicated that the service ought to:

*...endeavour to move from the formal adversarial model to a more managerial model that places the responsibility on commanders at patrol or equivalent level to deal with complaints and matters of discipline.*⁵⁴

The third PCJC considered this issue and the findings of the QPSRC, and concluded:

The Committee accepts the findings of the QPSRC that the Queensland Police Service system is not yet sufficiently developed to enable the broadening of the Queensland Police Service’s internal disciplinary jurisdiction.

The Committee also considers it relevant that to transfer the jurisdiction for the investigation of all misconduct matters to the Queensland Police Service would require additional resources for the Ethical Standards Command. Accordingly, transferring the function would merely result in a transfer of the resources, rather than any significant saving.

Given these facts, the Committee considers that it would not be appropriate at this point in time to reduce the jurisdiction of the Commission in relation to the investigation of these complaints.

However, the Committee is supportive of a long-term strategy which incorporates the concepts identified by both the New South Wales Royal Commission and the Queensland Police Service Review Committee. The Committee considers that both the Commission and the PCJC should monitor the implementation of the recommendations made by the NSW Royal Commission, and

⁵⁰ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 45, Legislative Assembly of Queensland, 1998, Brisbane, at 52.

⁵¹ Note 50 at 46.

⁵² Note 50 at 46.

⁵³ Queensland Police Service Review, *Report on the Review of the Queensland Police Service Review*, 1996, Brisbane, at 240.

⁵⁴ Royal Commission into the New South Wales Police Service 1997, *Final Report*, (Commissioner the Hon JRT Wood), Sydney, at 330.

*monitor the effectiveness of the approach outlined by that body.*⁵⁵

4.6.3 *Basis of this Committee's approach*

The present Committee readily accepts that there is a continuing need for a body which is independent of the police service to investigate complaints against police and that the appropriate independent body is the CJC. Further, the Committee is confident that there is broad public support for such a role being maintained by the CJC. The Committee therefore believes that little would be gained by a detailed examination of that question.

However, the Committee considers that it is an opportune time to closely examine the question of the appropriate balance between external oversight by the CJC and internal complaint handling by the Queensland Police Service itself. It is this issue that the Committee has focused on as part of its review, and which is addressed in this section.

4.6.4 *The Committee's issues paper*

As part of this review, the Committee published an issues paper in August 2000,⁵⁶ which called for submissions on the question of dealing with complaints against police. A number of submissions were received in response. Those submissions contained varying views on how best to deal with allegations of police misconduct.

In the issues paper, the Committee noted that whilst there is clear empirical evidence of improved standards of management in the Queensland Police Service and standards of police conduct since the pre-Fitzgerald era, there nonetheless remains a need for ongoing vigilance regarding police conduct.⁵⁷

As improvements have been made to internal police management systems since the time of Fitzgerald, consideration has been given to whether the Queensland Police Service should assume greater responsibility for handling complaints of misconduct.

As noted in 1996, the Queensland Police Service Review Committee (QPSRC) found that the Queensland Police Service was not ready at that stage to assume greater responsibility for misconduct matters.⁵⁸ The QPSRC made particular reference to an independent review conducted by Hon W Carter QC which raised concerns about the outcome of many disciplinary matters (criticising the outcome in 31 of 73 cases in which a disciplinary charge had been substantiated.)

As noted above, the previous Committee in its last three yearly review of the CJC accepted the findings of the QPSR, but expressed in principle support for the QPS being given greater autonomy over misconduct matters in the longer term.⁵⁹

In its issues paper, the Committee set out arguments both for and against a police service assuming greater responsibility for handling complaints against its officers.

Without attempting to be exhaustive, arguments in favour include:

- it increases the responsibility of the Police Service for its internal management;

⁵⁵ Note 50 at 46.

⁵⁶ PCJC, *Dealing with Complaints Against Police*, Issues Paper, Legislative Assembly of Queensland, 2000, Brisbane.

⁵⁷ Note 56 at 1.

⁵⁸ Note 53 at 240-242.

⁵⁹ Note 50 at 45-48.

- it avoids the long delays sometimes caused by an external investigation, thus increasing the efficiency and effectiveness of the complaint handling system, reducing stress on officers who are the subject of complaints and increasing complainant satisfaction;
- it allows the CJC to redirect its limited resources to other areas, including more serious corruption and misconduct;
- it could be expected that a partial devolution of complaints to the QPS would be overseen by the CJC, which would be able to take control of investigations where appropriate.

Arguments against giving greater responsibility to the police service include:

- on the basis of previous experience, as graphically outlined during the Fitzgerald Inquiry, there is a public mistrust of police having responsibility for investigating police;
- a hierarchical police culture tends to emphasise discipline rather than remedial managerial action, and hence discourages honest reporting of mistakes;
- in the past, police internal investigation units have tended to be biased in favour of police officers who are subject to complaints. They may also see an important part of their role to be deflecting criticism of their agency; and
- there is a need for independent assessment of whether investigations are full and fair, findings are impartial and any disciplinary penalties imposed are adequate.

The CJC's jurisdiction over complaints against police is unique in that other Australian jurisdictions have tended to rely on external oversight of internal police investigations by agencies such as the ombudsman. In more recent years, specific anti-corruption agencies have been established to investigate and deal with more serious allegations of corruption and criminality involving police officers.

In NSW, the model that was adopted following the 1997 Royal Commission was the establishment of a new independent agency, the Police Integrity Commission, to focus on police corruption and serious police misconduct. The Police Integrity Commission is prohibited from employing current or former NSW police officers. Other less serious complaints are investigated by the NSW Police Service and are overseen by the Office of the NSW Ombudsman, which has the power to conduct its own investigations but rarely does so in practice. The least serious matters of internal management are not reportable to the Ombudsman, but can be subject to random audits by that office.

Another model is that proposed by the Australian Law Reform Commission in its 1996 examination of the complaints and disciplinary systems of the Australian Federal Police and the National Crime Authority.⁶⁰ It recommended the establishment of a single external agency to investigate complaints and allegations of corruption in those two organisations. The new body was to conduct its own investigations of complaints involving corruption, serious criminality or significant public interest. In relation to less serious misconduct matters, it was to either conduct its own investigations or supervise investigations by the responsible agency. However, those recommendations have not yet been implemented, and complaints against federal police officers are in almost all cases still investigated by the Australian Federal Police and reviewed by the Commonwealth Ombudsman.

⁶⁰ Australian Law Reform Commission, *Integrity: but not by trust alone - AFP and NCA complaints and disciplinary systems*, Report No. 82, AGPS, 1996, Canberra.

The PCJC issues paper suggested some points for discussion, including:

- Is it appropriate that certain complaints of police misconduct be handled by the QPS, subject to oversight by the CJC or some other body, or should the CJC continue to have responsibility for investigating complaints of misconduct as well as official misconduct by police?
- What are the advantages of having the QPS deal with certain complaints against police?
- What are the disadvantages? How might they be overcome?
- Is the QPS ready to assume responsibility for handling complaints of misconduct?
- How should public concerns about ‘police investigating police’ be addressed?
- Does the fact that serving QPS officers on secondment to the CJC currently investigate complaints against police weaken the argument that police should not investigate police?

In response to the issues paper, the Committee received a number of written submissions. Some further submissions were made at the Committee’s public hearings in December 2000. These submissions are discussed below.

4.6.5 *Project Resolve*

4.6.5.1 Introduction – public expectations

In 1995, a survey commissioned by the CJC disclosed that 87% of respondents agreed with the proposition that complaints against police should be investigated by an independent body and not by the police themselves. A similar survey of public attitudes in 1999 resulted in an almost identical percentage of respondents making the same response.⁶¹

The later survey also asked some new questions, in relation to which entity persons believed should investigate complaints against police, containing allegations of varying levels of gravity.

Almost sixty per cent of respondents considered the Queensland Police Service was the best entity to deal with a complaint involving rudeness by a police officer, whilst twenty per cent suggested the CJC. Again, almost sixty per cent believed the CJC was the best body to handle an allegation of police bribery, with twenty-three per cent nominating the Queensland Police Service. For a complaint alleging assault by a police officer, almost forty per cent nominated the Queensland Police Service, and an only slightly smaller proportion chose the CJC.

The CJC advised the Committee that:

Since its inception, the Commission has sought to progressively hand back to the QPS responsibility for responding to complaints against its members. The CJC recognises that lasting improvement in the conduct of officers can only be achieved if the Service accepts that it is primarily responsible for dealing with complaints in a constructive manner.

The Commission judges that the circumstances are now right for a further increase in the role of the QPS in dealing with complaints against its members. To this extent, through its involvement with the QPS in Project Resolve, the Commission has expressed its confidence in the ability of the QPS to assume responsibility for handling complaints involving less serious misconduct.⁶²

⁶¹ CJC, *Public Attitudes Towards the CJC*, 2000, Brisbane, at 4.

⁶² CJC, *Submission to PCJC Issues Paper on Dealing with Complaints against Police*, October 2000, Brisbane, at 6.

4.6.5.2 What is Project Resolve?

Project Resolve, a joint initiative of the CJC and the Ethical Standards Command of the Queensland Police Service, is a trial of a new method of dealing with complaints against police. It involves both:

- A partial devolution of responsibility to the Queensland Police Service; and
- The utilisation of a range of managerial responses to complaints against police.

The trial ran for six months commencing 3 July 2000, in the Southern and South Eastern Regions of the Queensland Police Service. Evaluation of the trial is in process. The CJC sees Project Resolve as representing its intended approach to Queensland Police Service internal investigations of misconduct.⁶³

The impetus for the trial lay in concerns about the efficiency and effectiveness of the usual investigative approach to complaint resolution, particularly in the case of less serious complaints. It was also considered that in many cases a formal investigation, focused on reaching a determination of whether disciplinary or criminal action should be taken against an officer, was not an appropriate response to a complaint, and often not a response that the complainant sought. In many cases, a complainant is concerned that it be acknowledged that an officer has behaved wrongly, and that steps are taken to ensure the behaviour is not repeated.

Over the course of its existence, the CJC has slowly changed its approach to complaints against police, with an increasing responsibility being given to the QPS. The Director of the CJC's Official Misconduct Division, Mr Bevan, explained this process:

The CJC has gradually devolved to the QPS responsibility for the investigation of categories of misconduct of increasing levels of seriousness. It has done this in recognition of the growing level of sophistication and capacity of the QPS in relation to internal complaints handling processes. At the same time, the CJC has continued to provide external oversight of QPS investigations, in most cases by reviewing the reports of the investigations.

The CJC's intended approach to QPS internal investigations of misconduct, which is an approach being trialed at present in Project Resolve, is a tiered one which, in ascending level of intervention, involves periodic audit, review of the investigation report, active monitoring during the investigation of the investigation process, and conducting or taking over the investigation. The commission, in deciding whether it should investigate a matter, considers first and foremost the seriousness of the alleged improper conduct. It also considers other factors, such as the complaints history and seniority of the officer involved.⁶⁴

The CJC further stated:

The CJC supports the QPS supervisors taking greater responsibility for complaints handling and discipline but only if the CJC has the right to monitor, review, audit and, where necessary, take over the investigation. Any significant diminution of CJC input runs the risk of loss of public confidence in the complaints process. This devolution of responsibility should proceed by way of a trial that is subjected to proper evaluation, as is currently happening in Project Resolve. This can all be achieved by administrative arrangement and does not require legislative amendment.

Finally, the CJC should retain primary responsibility for the investigation of serious improper conduct, whether misconduct or official misconduct or both, as experience in Queensland and many other jurisdictions shows that the public will not have confidence in a system where

⁶³ Note 39 at 13.

⁶⁴ Note 39 at 13.

*police have responsibility for such investigations.*⁶⁵

It can be seen that under Project Resolve, the gradual devolution of responsibility to the Queensland Police Service was to continue. At the same time, the CJC would retain the right to intervene, with the nature and extent of intervention dependent upon the seriousness of the alleged conduct.

4.6.6 *The submission of the Queensland Police Service*

In a submission to the Committee's review, the Queensland Police Service (QPS) expressed the view that the Service ought have responsibility for allegations of misconduct, and the CJC only have responsibility for allegations of official misconduct.⁶⁶ The QPS also argued that the CJC should '*progressively hand over responsibility for investigating some matters of official misconduct and corruption to the QPS*'.⁶⁷ The QPS submits that:

*The resources of the CJC should be focused on improving the public sector through education, a consultancy capacity, research and, in the limited number of serious complaints, investigation and public inquiry.*⁶⁸

Under the proposals of the QPS, the CJC would continue to have an oversight role, but one of random audit only:

*.... it is very clearly our submission that, in our view, the CJC will always retain an audit capability which would be at its determination in terms of the percentage of matters it would want to audit. It is our view that the CJC would always have the right to call for any investigative file in terms of misconduct that we had and review it at any time. So we are not advocating a total lack of involvement of an oversight body or the role of the CJC, it is just that we think in the first instance we should have the responsibility for dealing with matters of misconduct rather than going to the CJC and then being allocated back to us.*⁶⁹

The CJC has been critical of the suggestion made by the QPS that the CJC's role under this approach would be one of audit only. Mr Bevan pointed out that this approach would place the '*largest body of improper conduct of police outside the effective scrutiny of the oversight body*'.⁷⁰ The CJC argued that there was extensive research to support the view that the public would not have confidence in such an approach, and that such an approach would in fact result in there being far less CJC oversight than at present.⁷¹ Mr Bevan also submitted to the Committee:

*It needs to be appreciated that the QPS already has substantial responsibility for investigating misconduct or other unprofessional and unethical conduct of its officers. This is made clear by an analysis of complaint statistics. In the last three years, about 4,900 police misconduct complaints have been received. The CJC dealt with about 60% of those and the QPS dealt with the remaining 40%. This 40% constitutes a large group of matters—about 1,950 for the last three years. External oversight solely by way of audit would represent far less scrutiny than currently exists in Queensland and far less oversight than in New South Wales. The CJC can only have confidence in an arrangement whereby such a large body of misconduct complaints is investigated by the QPS if there exists a system that provides for effective CJC oversight...*⁷²

⁶⁵ Note 39 at 15.

⁶⁶ Queensland Police Service, *Submission to the PCJC review of the CJC*, dated July 2000, at 1.

⁶⁷ Note 66 at 2.

⁶⁸ Note 66 at 3.

⁶⁹ Note 39 at 91.

⁷⁰ Note 39 at 14.

⁷¹ Note 39 at 14.

⁷² Note 39 at 14.

4.6.7 *The CJC's submission*

In a written submission to the Committee's review, the CJC put its position:

- As QPS processes have improved, the CJC has referred back to the service increasing numbers of less serious misconduct matters for investigation, and more recently, for managerial resolution;
- The CJC can effectively oversee these matters through administrative arrangement;
- The CJC presently provides an effective legislative structure to allow for an appropriate balance between CJC oversight and QPS responsibility;
- Serious misconduct matters should remain with the CJC, to ensure public confidence is met, and because there is an overlap between official misconduct and misconduct which makes it "difficult and undesirable" to split responsibility for the two;
- A simple division of responsibility for misconduct on the one hand, and official misconduct on the other, also would not be appropriate because *'it is wrong to assume that misconduct matters are always less serious than official misconduct'*;
- The CJC continues to find deficiencies in the QPS's disciplinary processes and complaint investigations;
- Public confidence requires that the CJC has proper oversight;
- The CJC should retain its statutory role of ensuring complaints against police are dealt with impartially and effectively; and
- It was appropriate that further responsibility be given to the QPS with oversight by the CJC.⁷³

The CJC believed that this devolution could be achieved within the existing legislative framework, noting that:

*The Criminal Justice Act has provided a legislative framework guaranteeing effective oversight while being sufficiently flexible to allow devolution of increasing responsibility to QPS over time.*⁷⁴

4.6.8 *Other submissions*

4.6.8.1 Introduction

A number of bodies made written submissions to the Committee or raised this issue in evidence at the Committee's public hearing. Some of those submissions are summarised in this section.

4.6.8.2 The Queensland Police Union of Employees

The Queensland Police Union of Employees argued that the QPS should have responsibility for complaints, with oversight by the CJC. The Union described the CJC as having become *'too involved and hands-on in its approach'*, and asserted that it had *'exceeded the role that was envisaged by Fitzgerald.'*⁷⁵

⁷³ Note 62 at 6.

⁷⁴ Note 62 at 8.

⁷⁵ Queensland Police Union of Employees, *submission to PCJC issues paper on dealing with complaints against police*, 2000, Brisbane, at 5.

The Union believed the CJC should have jurisdiction in respect of criminal and ‘serious corruption’ matters, and an audit role which would be by way of ‘spot check’ of police handling of matters. The CJC should only oversee ‘*the processes of the discipline system and not the issues of penalties and/or decisions*’.⁷⁶

The Union expressed the view that there was “inordinate delay” on the part of the CJC in investigations of police officers, and believed that the Union’s proposals would reduce these delays.⁷⁷ A similar view was expressed by the Bar Association of Queensland.⁷⁸

On this question of alleged delay, the CJC responded that statistics regarding present rates of complaint resolution did not support the proposition that complaints would be more quickly resolved if more responsibility passed to the QPS:

An analysis of the matters which the CJC refers to the service for investigation and the matters investigated by the CJC this year indicates that there is very little difference in the average time and median time taken to investigate by the CJC or the QPS. The median time for the commissioner for investigations is 123 days and for QPS investigations it is 110. The average time taken by the CJC is 122 and by the QPS it is 115. Given that the QPS is investigating less serious misconduct and the CJC is investigating more complex matters that involve more serious misconduct, the statistics do not suggest that there necessarily will be a reduction in time if the service were to deal with all matters of misconduct.

*Although the new processes have only been in place for a short while, statistics show an improvement in the average and median times for completion of investigations. It is anticipated that the majority of matters investigated in the complaints resolution team will be completed within six months.*⁷⁹

4.6.8.3 The Bar Association of Queensland

The Bar Association of Queensland submitted that the QPS could now be given responsibility to investigate allegations of police misconduct, and the CJC be limited to responsibility for official misconduct, and the oversight of police investigations of alleged police misconduct.⁸⁰ Such arrangement should be reviewable after two years.

The Association expected that investigations by police would be completed in less time than that presently taken by the CJC, provided the relevant police unit was adequately resourced.

4.6.8.4 Youth Advocacy Centre

The Youth Advocacy Centre opposed the QPS having responsibility for investigation of allegations of misconduct against its own officers, arguing:

- complaints handled by police are often ignored or not dealt with promptly;
- young people are in an inequitable position of power when involved in dealings with police, and frequently fear reprisal if they complain about police, and therefore ought not be required to lodge a complaint directly with police; and

⁷⁶ Note 66 at 4.

⁷⁷ Note 39 at 96.

⁷⁸ Bar Association of Queensland, *submission to PCJC issues paper on dealing with complaints against police*, 2000, Brisbane, at 2.

⁷⁹ Note 39 at 19.

⁸⁰ Note 78.

- it is important that young people see that a complaint has been dealt with fairly and impartially. Young people are often not confident they will receive an impartial investigation, and often believe the CJC is biased towards police, and such attitudes would be accentuated if there was internal QPS resolution of complaints.

4.6.8.5 Aboriginal and Torres Strait Islanders Corporation for Legal Services

The Aboriginal and Torres Strait Islanders Corporation for Legal Services opposed internal QPS responsibility for complaints against police, saying that internal investigation of police had a 'history of failure'.⁸¹ The Service argued:

*To return police complaints to the Police Force is to deny the lessons of history already learnt in Queensland law enforcement. Such return can only be regarded as a cynical disregard of citizens' rights to a fair and fearless investigation where allegations of misconduct have been made against police.*⁸²

Further, the Service had concerns that the CJC's approach was defective.⁸³ The Service argued that complaints to the CJC often involve allegations of misconduct arising from an incident where the person is charged with assaulting police or obstructing police. These complaints usually do not have a positive outcome for the complainant, as the CJC relies on the outcome of the court proceedings rather than an independent investigation. In oral evidence, the Service submitted that:

*..... that there are major perception problems with the indigenous community as to the independence of the CJC, and I think that is reinforced by the fact that virtually one third of the CJC's investigative staff are police officers or are seconded from the Police Service.*⁸⁴

The Service therefore urged the creation of a new independent review body, and suggested a new inquisitorial police complaints tribunal to deal with all complaints against police.⁸⁵ The tribunal would need to be able to make independent findings, free of intervention by the QPS or the Minister, and outcomes would be made public. The tribunal ought to be constituted by at least one senior police officer, a suitably experienced lawyer, and an independent person (to be an indigenous person in the case of an indigenous complainant).

4.6.8.6 Department of Aboriginal and Torres Strait Islander Policy and Development

The Department of Aboriginal and Torres Strait Islander Policy and Development submitted that the CJC should retain responsibility for dealing with misconduct by police. Matters assessed as less serious misconduct could be investigated by the QPS but would need to be supervised by the CJC. The Department expressed the view that the *Project Resolve* model did not appear to respond to two key issues for indigenous persons, namely the need for demonstrated impartiality in investigations, and a fear of police victimisation of the complainant. An indigenous investigator should participate in investigations involving an indigenous complainant.

⁸¹ Aboriginal and Torres Strait Islanders Corporation (QEA) for Legal Services, *submission to PCJC Issues Paper on Dealing with complaints against police*, October 2000, Brisbane, at 1.

⁸² Note 81 at 3.

⁸³ Note 81 at 5.

⁸⁴ Note 39 at 66.

⁸⁵ Note 81 at 6.

4.6.9 *Analysis and comment*

4.6.9.1 The desired features of a system of investigation of complaints against police

The Committee sees it as critical that there be in place an effective police complaints mechanism which, as much as possible, achieves these aims:

- satisfies public expectations, and thereby enhances and ensures public confidence in that complaints process and in the QPS generally;
- allows the QPS to have an appropriate degree of autonomy and responsibility for its own management and discipline processes;
- maintains and increases Service morale and ethical standards;
- ensures that there is effective independent oversight of the complaint handling process;
- provides a timely and cost-effective resolution of complaints; and
- allows for efficient utilisation of the CJC's resources (and those of the QPS).

The Committee applauds the recent achievements of the QPS in establishing improved structures and processes for dealing with issues of accountability and discipline. The Committee believes that in the last ten years there has been a major increase in the level of public confidence both in the service itself and in its management and disciplinary processes.

The Committee does not believe that it is appropriate that the oversight role of the CJC should be one of audit only. This would not provide an adequate degree of independent oversight. Further, the Committee is satisfied that it is unlikely that such a system would meet with public approval, nor enhance public confidence in the QPS. It is necessary that the CJC have the right not only to audit an investigation, but also to monitor, oversee, and if need be assume control of an investigation.

At the same time, the Committee believes it is important that the QPS be given a greater degree of control over the investigation of complaints against its members. The Committee believes that this would be in the best interests of the "organisational health" of the service, would boost police morale, and would benefit the service managerially. It is however paramount that public confidence in the service be maintained, and for this reason there must continue to be effective and cogent oversight by an independent body.

The Committee accordingly believes that overall responsibility for dealing with complaints against police must remain with the CJC. At the same time, the Committee supports an increasing devolution of responsibility to the QPS, subject always to oversight by the CJC. Such oversight must involve more than a power to audit. The Committee believes that the public interest requires that the degree of oversight must be greater for more serious matters.

The Committee does not see a need for any legislative changes in this regard.

4.6.9.2 Issues of timeliness

The Committee is keenly aware of the importance of timely resolution of complaints against police officers. This can be of great importance not only to the subject officer, but also to the police service as a whole, the complainant, colleagues and families of those involved, and the whole community. However, the Committee is not satisfied that any problems that exist with timely resolution of complaints would necessarily be alleviated if the proposals submitted by, for example the Queensland Police Union of Employees, were taken up. The Committee believes any issues of

timeliness are better addressed by reforms to systems and procedures, such as those recently adopted by the CJC, and discussed elsewhere in this chapter.⁸⁶

4.6.9.3 Who should perform the initial assessment?

The question arises as to who ought to have responsibility for determining which entity should deal with any specific complaint. In other words, who makes the assessment, upon receipt of a complaint, as to by whom the complaint is to be handled.

The Queensland Police Union of Employees argued that all criminal matters, complaints of official misconduct, misconduct, and discipline matters should initially be referred to the Commissioner of Police to determine which body is to handle the matter.⁸⁷

The previous PCJC noted that, in its submission in 1997 to the Connolly / Ryan Inquiry, the CJC stated:

*That assessment process would still need to be performed by the Commission to determine whether there are grounds for official misconduct, regardless of where responsibility for misconduct lies. It is therefore both logical and coherent for the Commission to retain overall responsibility for misconduct matters, while continuing to refer appropriate matters back to the QPS for investigation.*⁸⁸

The previous Committee responded:

*The Committee does not necessarily concur with the Commission's submission that the assessment process would still need to be performed by the Commission. Clearly with respect to complaints made directly to the Commission it would be necessary for the Commission to conduct the assessment, however, for other complaints the Committee considers that in the long-term it may be appropriate that the Queensland Police Service conduct this assessment. However, the Committee does not consider that there is any value in exploring this issue any further at the present time, as it would appear to be clear that the disciplinary investigation systems of the Queensland Police Service are not currently of a standard where it would be appropriate to refer all matters of misconduct to the Queensland Police Service for investigation.*⁸⁹

With all respect to its predecessor, the present Committee believes that the initial complaint assessment process must be performed by the CJC. If the initial assessment were to be made by the QPS, there would be a danger that the independence of the complaints process and the efficacy of the oversight by the CJC might be undermined. If the oversight is to be provided by the CJC, it appears logical that the initial assessment process ought also be with the CJC.

4.6.10 Conclusions

Conclusion 7

The Committee supports overall responsibility for investigation of complaints against police officers remaining with the independent body, the CJC.

⁸⁶ See paragraph 4.8 below.

⁸⁷ Note 75 at 1.

⁸⁸ CJC, *Criminal Justice Commission Submission to the Commission of Inquiry into the Effectiveness of the Criminal Justice Commission*, 1997, Brisbane, at 116.

⁸⁹ Note 50 at 47.

Conclusion 8

The Committee supports the gradual devolution of increasing responsibility for investigation of more matters to the Queensland Police Service itself, but overall oversight must remain with the CJC.

Such oversight must be more than a mere audit role, and should include, as now, the power to audit, monitor, review, or take over, as appropriate, any investigation being conducted by the Queensland Police Service.

Conclusion 9

The Committee supports the increasing use of managerial resolution of matters, as trialed in Project Resolve.

Conclusion 10

The Committee is of the view that responsibility for the initial assessment as to by which entity any particular matter should be dealt with must remain with the CJC.

Conclusion 11

The Committee is satisfied that there is no need for legislative change in this area.

The Committee believes such an approach strikes the appropriate balance between meeting public expectations and confidence in a clean police service and ensuring proper oversight and accountability on the one hand, and giving an apt degree of self-management and responsibility to the Queensland Police Service on the other.

4.6.11 Recommendations

Recommendation 5

The Committee recommends that the CJC continue with its present policy of gradually devolving responsibility to the Queensland Police Service for the handling of complaints against police officers, with the CJC always to retain an oversight role.

Recommendation 6

The Committee further recommends that such oversight role is to continue to include the power to audit, monitor, review, or take over, as appropriate, any investigation being conducted by the Queensland Police Service.

Recommendation 7

The Committee further recommends that the CJC should continue to make the initial assessment of how a complaint is to be dealt with.

4.7 Employment of police officers by the CJC

4.7.1 Background

The CJC employs a number of current QPS officers as investigators. As such, they are involved in the investigation of allegations against police officers. Over past years, the issue of whether it is appropriate for the CJC to have ‘police investigating police’ has been raised on numerous occasions. This issue has again been raised in this review.

4.7.2 Previous PCJC conclusions

In 1995, the second PCJC concluded:

*The Committee believes that it is necessary that strictly vetted police investigators from the Queensland Police Service are attached to the Commission.*⁹⁰

In the course of its three yearly review of the CJC in 1998, the third PCJC concluded:

... at this time the employment of police investigators by the Commission is necessary if the Commission is to successfully recruit sufficient suitably qualified and experienced staff. Such officers should continue to be strictly vetted at the recruitment stage, and the structure of the Commission should continue to be such that police officers are supervised by civilians.

*In addition, the Committee considers that the recommendation of the program evaluation relating to greater diversification of investigators should be implemented to the greatest degree possible by the Commission.*⁹¹

That Committee was satisfied:

*... that it would not be realistic to expect the Commission to recruit sufficient appropriately skilled and qualified investigators if officers of the Queensland Police Service were disqualified.*⁹²

4.7.3 The issue

The question is whether it is appropriate that police officers be used by the CJC when the CJC is investigating allegations against QPS officers. The argument is put that this detracts from the objectivity (either real or perceived) of the investigation, particularly bearing in mind what has historically been a strong police culture of loyalty amongst officers.

Dr Prenzler of Griffith University in a written submission to this review, argued:

*The rationale behind the creation of the CJC was that investigation of police corruption and misconduct needs to be controlled by a body independent of the police in order to mitigate the undue influence of group loyalties. This principle is weakened at present because of the large number of police seconded to the CJC to conduct investigations. In order to avoid real or apparent compromise, no serving or former Queensland police officer should work in the CJC in areas directly related to the investigation and adjudication of cases involving police.*⁹³

⁹⁰ Note 48 at 88.

⁹¹ Note 50 at 68.

⁹² Note 50 at 69.

⁹³ Dr Tim Prenzler, School of Criminology and Criminal Justice, Griffith University, submission, *Parliamentary Three Yearly Review of the Criminal Justice Commission*, dated 14 July 2000, at 1.

In its submission in response to the Committee's issues paper on dealing with complaints against police, the Department of Aboriginal and Torres Strait Islander Policy and Development expressed the view that the CJC should no longer employ or second current or former QPS officers. The fact that the CJC did so made it '*arguable whether the CJC is an independent body*'.⁹⁴

4.7.4 The CJC's response

The CJC's view is set out in its submission to the Connolly / Ryan Inquiry,⁹⁵ in its submission to the last three yearly review,⁹⁶ and in submissions to the present review.⁹⁷ Factors put forward by the CJC in favour of its present practice include:

- CJC investigations into police misconduct are not carried out solely by police.
- Complaints pass through a multi-level process of assessment at the CJC.
- Police seconded to the CJC work alongside lawyers, financial analysts, intelligence analysts, and civilian investigators.
- Complaints and multi-disciplinary teams are lead by lawyers, with one exception, therefore at all stages of the investigation, police are subject to civilian direction and supervision.
- The Commission has built up a core of experience and expertise among its civilian staff so as to ensure that there is a balance to any negative aspects of police culture brought across by seconded police.
- Police seconded to the Commission are subject to detailed vetting processes aimed at identifying officers with a work history that would indicate they are unsuited to discharging their responsibilities at the Commission.
- There are substantial practical problems in finding sufficient experienced investigators from other sources.⁹⁸

Further, the CJC has asserted that, rather than being undesirable, the practice in fact has advantages:

There are considerable operational advantages in using experienced police to conduct investigations, especially in light of the very great difficulties that the CJC has experienced in recruiting suitably qualified civilian investigators. For example, police officers:

- *are trained in investigative techniques and in giving evidence in criminal proceedings;*
- *can exercise their powers as police officers, although they are conducting CJC investigations;*
- *can direct subordinate officers to answer questions or otherwise assist in an investigation;*
- *are familiar with the Queensland Police Service disciplinary process and with the organisational structure, general internal processes and machinery of the Service; and*
- *receive more co-operation from other officers than civilians do.*⁹⁹

⁹⁴ Department of Aboriginal and Torres Strait Islander Policy and Development, *Submission to PCJC Issues Paper on Dealing with Complaints against Police*, October 2000, Brisbane, at 2.

⁹⁵ Note 88 at 117-119.

⁹⁶ CJC, *CJC Submission to the Three Yearly PCJC Review of the Criminal Justice Commission*, 1998, Brisbane, at 21.

⁹⁷ CJC, *Comments on Dr Tim Prenzler's submission to the PCJC three year review*, Brisbane, at 1; and note 62 at 8.

⁹⁸ Note 88 at 117-118; and note 62 at 8.

⁹⁹ Note 96 at 21.

The CJC stated that the employment by it of police officers also benefits the QPS. The CJC argues that seconded QPS officers who, in their time at the CJC, are encouraged to make validly based, impartial recommendations for criminal or disciplinary action against their fellow officers, are more likely to take ‘unpopular’ management decisions when they return to mainstream policing. This aids the QPS in then having ownership of its own processes, including effective mechanisms for investigation, where appropriate, of allegations of misconduct against its own officers.¹⁰⁰

4.7.5 Analysis and comment

As noted by the previous Committee in its review¹⁰¹, the Fitzgerald Report stated that:

*Any ICAC or equivalent body has to find and depend upon honest, dedicated police officers.*¹⁰²

This Committee, like its predecessors, is satisfied that the advantages of employing suitably experienced and strictly vetted QPS officers outweigh the risks involved. Moreover, the Committee is satisfied that such risks are minimised by the structure of civilian oversight and supervision at the CJC, and by the CJC’s vetting procedures. These elements ensure that the independent investigation body, the CJC, remains in control of the investigation process notwithstanding the use of QPS officers as investigators.

The Committee is also satisfied that it is not possible for the CJC to obtain adequate numbers of suitably experienced and qualified investigators from outside the present ranks of the QPS.

4.7.6 Conclusion

Conclusion 12

The Committee concludes that the employment by the CJC of QPS officers as investigators is both necessary and desirable.

4.8 Time taken to finalise complaints

4.8.1 Introduction

The time taken by the CJC to finalise complaints to it was considered in the previous three yearly review of the CJC.¹⁰³ This issue has also been raised in a number of submissions to this review. It is also a theme of many of the individual complaints made to the Committee regarding the CJC.

That this is so reflects the critical importance of timeliness on the part of the CJC in its investigations. Having an investigation finalised as quickly as possible is clearly important to the person who is the subject of the investigation. It is also of importance to any organisation employing that person, and often to any complainant. It is also of vital importance to the wider public that complaints against police officers and public officials are resolved as expeditiously as possible.

¹⁰⁰ CJC, *CJC Overview: Supplementary Material for the PCJC*, July 1998, Brisbane, at 1-6.

¹⁰¹ Note 50 at 68.

¹⁰² Note 47 at 301.

¹⁰³ Note 50 at 70 and following.

4.8.2 Background

The previous Committee, noting that delay in some investigations continued to be of concern to a range of stakeholders, concluded that the timely investigation of complaints should be an extremely high priority for the CJC in developing its systems and structures and allocating its resources.¹⁰⁴

4.8.3 The submissions

Submissions to this review raising the issue of timeliness included that received from the Queensland Law Society (QLS).

In its submission, the QLS commented:

*The Society remains concerned about the timeliness of complaint resolution, and notes that this has been a matter mentioned in many previous submissions concerning the CJC's operations. Members of the Society's Criminal Law Committee continue to report that delays in investigation remain of concern, and in many cases cause significant and unnecessary hardship to the person being investigated. Such stressors include both personal and professional embarrassment and anxiety to the person under investigation. Often the person concerned is stood down or suspended from duty, causing significant financial and professional detriment to be suffered.*¹⁰⁵

As noted above,¹⁰⁶ the Queensland Police Union of Employees expressed the view that there was 'inordinate delay' on the part of the CJC in its investigations of police officers,¹⁰⁷ and a similar view was expressed by the Bar Association of Queensland.¹⁰⁸

4.8.4 The CJC's response

Since the last review, the CJC has taken a number of steps to reduce the time it takes to finalise complaints. In referring to the times taken to dispose of complaints, CJC Chairperson, Mr Butler SC, informed the Committee:

*..... it is important that the CJC be working to constantly bring those times down. We have put in place a number of processes recently that will contribute to that, including some structural changes in the areas that deal with complaints, a new computer system that has significantly enhanced our ability to process complaints and to be responsive in that area and to case manage the complaints. A number of these initiatives, of course, are in quite early stages. So we will need to wait a little longer to see all the positive benefits of them.*¹⁰⁹

The CJC's Chief Officer, Complaints, Ms Couper, gave the Committee more detail of some of the difficulties faced by the CJC in its efforts to finalise investigations promptly:

We acknowledge that that is an important issue to our stakeholders. Obviously, there will always be some investigations that will inevitably take substantial time to complete due to the complexity of the matter, such as where there is extensive financial analysis in the development of a financial profile which necessitates the progressive delivery of notices to produce to financial institutions to obtain documentation. There will be other occasions, for example, when vital witnesses will not be available or forensic examination of documents is required,

¹⁰⁴ Note 50 at 73-74.

¹⁰⁵ Queensland Law Society, submission, *Three Yearly Review of the Criminal Justice Commission*, dated 9 October 2000, at 3.

¹⁰⁶ At 4.6.8.2.

¹⁰⁷ Note 39 at 96.

¹⁰⁸ Note 78 at 2.

¹⁰⁹ Note 39 at 7.

*such as handwriting analysis, which can take some time. These complaints investigations I will be speaking about are, of course, distinct from proactive covert operations and operations and investigations carried out by the Complex Unit, which are of necessity by their very nature lengthy investigations. In the past, there have been occasions when a complaints investigation has taken a significant period of time. It is also the case that from time to time the commission gets blamed for delay in investigating a matter when in fact it is not in the hands of the commission at all but another agency and is a matter that we are overseeing.*¹¹⁰

The initiatives taken by the CJC aimed at reducing time frames for completion of assessments, investigations, and reviews include:

- a new computer system for complaints management – COMPASS;
- structural changes to the Complaints Section, including enhanced assessment and review units;
- the introduction of formal case management; and
- refined audit and review processes.

Ms Couper provided further detail of these initiatives:

The introduction of the complaints management processing and statistical system—COMPASS—in May of 2000 has greatly enhanced complaints processing. Through its functionality, management can keep better track of the progress of matters. Also, the restructuring and refocussing of the section has allowed us to implement strategies designed to enhance timeliness. For example, in the receival and assessments unit we now have a position called the officer in charge of finalisations, who is dedicated to dealing with finalising matters that do not necessitate any further inquiry other than review of the material that has been provided by the complainant. That then allows the Deputy Chief Officer, Assessments, to focus on those matters which do require preliminary investigation. COMPASS provides for the allocation of specific assessment tasks to officers, with expected completion times, and also provides for reports for regular review by team management of those matters.

Formal case management has been introduced with the benefit of COMPASS functionality in the complaints resolution team—that is, the investigative team. A plan is developed in consultation between the team management, the investigator, the responsible legal officer and other relevant specialists, such as the financial analyst, the intelligence analyst and corruption prevention officer, at the very beginning to focus the investigation and identify the expected outcomes. The necessary investigative steps and review stages in the investigation are identified up front and the case plan outlines and allocates the various tasks and sets expected completion dates. Team management holds regular meetings with the investigative team to assess the progress of the investigation. This enables management to keep matters on track and to identify at an early stage if a matter is not able to be further productively investigated and either bring it to a conclusion there or reassess and refine the outcomes through the case management plan.

The Review Evaluation and Monitoring Unit is currently developing new procedures for new bases of review audit and monitoring. Those new approaches are designed to take less time and to be more efficient in responding to the matters that we have oversight of. In addition to the team management's overseeing of progress of matters, senior management in the division—the director and I—also oversee investigations through the report functionality of COMPASS, as does the executive assessment committee. The executive assessment committee is made up of the chairperson, the directors of the Official Misconduct Division, Research and Prevention and Intelligence and Information and me. We meet each morning to consider significant complaints newly received and we also regularly review priority matters to maintain an

¹¹⁰ Note 39 at 18.

*oversight and make sure there is progress. Exception reports can be provided by COMPASS if a matter is going over time to make sure that we do not lose track of those matters.*¹¹¹

The CJC expects that efficiency will also be improved by the creation of the Executive Assessment Committee, described by the CJC as:

*a cross-divisional Committee comprising the Chairperson, the Directors of OMD, Research and Prevention, Intelligence and Information, and the Chief Officer, Complaints, that has been established mainly to assist the Chief Officer with the assessment and management of more sensitive and serious matters.*¹¹²

4.8.5 Analysis and comment

It is clear from the statistics set out earlier in this chapter,¹¹³ that the CJC is receiving an ever-increasing number of complaints. The Committee appreciates that the thorough investigation of allegations of misconduct will often necessarily take some time to be finalised. The Committee also notes that, in some cases, agencies other than the CJC are involved in the process of resolution of complaints.

Delay in finalising complaints can disadvantage a number of those involved, including the complainant, the subject, and the agency employing the subject. The delay can cause considerable stress, not only to those involved, but also family and in some cases colleagues.

The Committee is satisfied that the CJC is aware of the need for timeliness, and that the CJC has taken, and is continuing to take, steps to improve its processes with a view to reducing delays.

In 1997-1998, the median time for completion of matters was 12 days, the previous year was 13 days. In 1997-1998, 25% were finalised within five days, 50% within 14 days, and 12.4% took longer than six months.

The CJC provides complaint statistics to the Committee on a monthly basis. Statistics for December 2000 disclose that 61.1% of matters received in November 2000 were finalised within two weeks; 76.6% of matters received in November 2000 were finalised within four weeks; 86.5% of matters received in October 2000 were finalised within eight weeks; and 89.0% of matters received in September 2000 were finalised within 12 weeks.

The CJC's *Annual Report 1999-2000* notes that in that year a greater number of complaints were finalised 'within the desired 12 weeks than ever before', notwithstanding that the CJC actually received a record number of complaints.¹¹⁴

The previous Committee concluded that the timely investigation of complaints should be '*an extremely high priority*' for the CJC in developing its systems and structures and allocating its resources.¹¹⁵ The present Committee is satisfied that the CJC has acted in accordance with this conclusion.

The Committee is very conscious of the importance of this issue to many persons. The CJC also appears to be sensitive to the importance of the issue.

¹¹¹ Note 39 at 18-19.

¹¹² Note 37 at 25.

¹¹³ See paragraph 4.3 above.

¹¹⁴ Note 37 at 25.

¹¹⁵ Note 50 at 73.

The Committee applauds the CJC's achievements in resolving the majority of complaints in acceptably short time-frames. The Committee commends the CJC's continuing efforts to improve its performance in this respect. Given the importance of this matter to many persons and the high level of public interest involved, the Committee recommends that the performance of the CJC in this respect continue to be closely monitored by the next Committee.

4.8.6 Conclusion

Conclusion 13

The Committee is satisfied that the CJC places a very high emphasis on the timely resolution of complaints, and that the CJC continues to take steps to improve its already good performance in this regard. The CJC must continue its endeavours to work towards an even better achievement in this regard.

4.8.7 Recommendation

Recommendation 8

The Committee, having particular regard to the very high degree of public interest in the timely resolution of allegations of misconduct, recommends that its successor Committee closely monitor the performance of the Criminal Justice Commission in relation to the time taken to finalise investigation of complaints.

4.9 Taping of telephone conversations by CJC officers

4.9.1 Background

In recent times, the Committee has on occasion received complaints from members of the public, expressing concern that their telephone conversations with CJC officers had been taped without their knowledge or consent.

As an example, one complainant to the Committee was a person who was spoken to by the CJC as a potential witness in an investigation of allegations against a third party. The complainant was not the subject of the investigation, nor was he the maker of any allegations against the person who was the subject. His telephone contact with a CJC investigator was in the context of obtaining a statement from him for use in criminal proceedings against the subject. Unbeknown to the complainant, a number of his telephone conversations with the CJC investigator were taped.

4.9.2 Analysis and comment

In accordance with its usual practice, the Committee sought a response from the CJC regarding these complaints. In its responses to the Committee, the CJC has emphasised that the taping of such conversations is legal. This is almost certainly the case in Queensland, provided the taping is done by a party to the call, and not by a third party, and is done through the use of a recording device external to the telephone system itself. Otherwise the taping would likely amount to telecommunications interception, which is presently outside the powers of the CJC, as discussed elsewhere in this report.¹¹⁶

¹¹⁶ See paragraph 5.5.2 below.

The Committee stresses that there is no suggestion that the CJC tapes calls in an illegal manner. It is worth noting however that taping in the manner adopted by the CJC (that is, by way of a party to the conversation using an external recording device) is not legal in all Australian jurisdictions.

However, the issue in the eyes of the Committee is not so much one of legality as one of appropriate conduct. The mere fact that a procedure is legal does not of itself necessarily lead to the conclusion that it is proper for adoption by the CJC. There are a number of considerations at play here. It is in the interests of the public - and indeed of the CJC - that members of the public believe that they have been dealt with fairly and courteously by the CJC and its officers.

Viewed in this light, the fact that CJC officers tape telephone conversations without first informing the other participant does cause the Committee concern.

The Committee believes it is quite understandable and reasonable for an individual to react negatively to such an action. There is a danger that such negative reactions might in turn have negative impacts on the CJC, in that:

- individuals might consider they have been treated unfairly or unethically, or even deceived by the CJC, and that their privacy has been invaded;
- they might therefore be less inclined to assist the CJC in the future;
- the CJC's effectiveness might suffer as a result, with a consequential deleterious impact on the fight against corruption and misconduct; and
- the CJC's reputation and public image might suffer, and public confidence in the organisation be diminished.

In its response to the complainant, the CJC stated:

As a matter of current policy, the Commission considers that there is considerable forensic advantage in not proactively disclosing the fact that a tape recording may be made of particular conversations.

In responses to the Committee, the CJC has made a number of other points:

- the CJC demands that contact between its officers and potential witnesses be recorded wherever possible, and that the reasons for this are 'obvious';
- in situations such as [the contact between the investigator and the complainant referred to above], the fact that the conversation is recorded defuses any risk of a later allegation that matters attested to by a witness were influenced by information improperly communicated by the investigator, and it is therefore as much in the interests of the witness as the investigator that the contact is recorded;
- it is a matter for judgment in each particular case whether a CJC officer should advise the other party that the conversation is being recorded. The CJC notes that it is common practice for police officers in many situations to covertly tape conversations with members of the public;
- in situations where it is considered that knowledge that an interview is being taped may discourage disclosure of evidence of a criminal offence, the public interest may favour covert recording. However, the public interest in crime being detected must always be balanced against the individual's entitlement to privacy.

The CJC has advised that it is to review its practice '*in order to ensure that in future an appropriate balance is achieved*'.

None of the considerations above put forward by the CJC serve to explain the action of the CJC's investigator in covertly taping the complainant referred to above in a subsequent telephone conversation, the sole or main content of which was his complaint about being taped without his knowledge.

Further, a number of the points raised by the CJC, whilst possibly supporting the taping of such telephone conversations, do not address the critical point of concern, which is that the fact of such taping is not being *disclosed* to the other party.

In particular, the CJC's assertion that it is in the interests of the other party, as a witness, that the conversation be recorded might in some cases be so. However, this cannot explain why such a conversation should be taped without that other party's knowledge.

The Committee notes that the CJC has advised the Committee that it will review its practice.

The Committee appreciates that the recording of conversations can be of advantage to the CJC, and can safeguard CJC officers against false assertions. The Committee also appreciates that the taping of conversations can in some cases be to the benefit of the other parties involved. However, the issue is not so much whether or not taping should occur, but whether it should be disclosed.

Further, the Committee can appreciate that there might be circumstances in which there would be an advantage to the CJC if the fact of taping was not disclosed to the other participant. However, such advantage needs to be balanced against other aspects of the public interest, and the rights of the individual. Having regard to those considerations, the Committee is of the view that the undisclosed recording of such telephone conversations should not occur, and that the CJC should disclose the fact of recording, as a matter of fairness, courtesy, and respect for the privacy of those involved.

4.9.3 Conclusion

Conclusion 14

The Committee concludes that it is inappropriate and not in the public interest, albeit probably legal, for CJC officers to record telephone conversations with members of the public without first proactively disclosing the fact of recording to the other party to the conversation.

4.9.4 Recommendations

Recommendation 9

The Committee recommends that the CJC revise its practice in relation to the taping of telephone conversations with members of the public.

Recommendation 10

The Committee further recommends that such conversations not be taped by CJC officers without first proactively disclosing the fact of taping to the other party.

4.10 The CJC and the media

4.10.1 Background

As part of its increasing emphasis on a proactive approach, the CJC has in recent times adopted a higher media profile to promote its activities. This has on occasion included the CJC issuing media releases advising as to outcomes of investigations and of subsequent disciplinary or criminal proceedings.

Some concerns have been raised with the Committee regarding media exposure of persons being investigated by the CJC, and whether this can be unfair to persons under investigation.

4.10.2 The issue

The Queensland Law Society had this to say in its submission:

The Society recognises that in recent times the Commission has taken steps to further its links with the legal and wider community, to ensure that the Commission remains open and cognisant of community feedback and expectations. Such an approach is welcomed by the Society.

The Society has however noted some concerns on behalf of its members about the CJC's increased attraction of media attention. Whilst it is conceded that the Commission requires a degree of public profile to ensure that potential complainants are aware of the Commission as a possible avenue of redress, the concern expressed is that this may sometimes be done at the cost of fairness to the person subject to investigation. Examples include the Commission's more recent practice of holding press conferences or issuing media releases following the successful closure of operations. Similarly, the CJC's courting of the media during hearings conducted by the Commission is open to criticism. Reference is made to reports that the Commission, during the recent inquiry into the alleged misuse of the police computer database, acceded to requests from the media that police witnesses not be allowed access to the internal elevators of the Commission (as has always been the case for police visiting the Commission) because media crews could not film those in question entering and leaving the Commission.¹¹⁷

4.10.3 Analysis and comment¹¹⁸

The Committee accepts that it is legitimate for the CJC to promote its activities in the media. Responsible use of media releases or media conferences can be a legitimate and useful tool in a proactive approach to corruption prevention. The Committee appreciates that what is or is not published by media outlets is to a large extent out of the hands of the CJC, although the Committee notes that the CJC publishes its media releases on its web-site. This is a difficult area. The Committee however urges the CJC to always be mindful of the need to ensure persons are treated fairly.

For example, where publicity, especially publicity initiated by the CJC, has previously been given to charges or proceedings against an individual, and those charges subsequently are not proceeded with or are dismissed, in the interests of fairness it might be incumbent upon the CJC to issue a release advising of the fate of the charges.

¹¹⁷ Note 105 at 3.

¹¹⁸ The CJC's media unit is discussed further in chapter 12 below.

4.11 Special needs clients

4.11.1 The concerns

A number of submissions raised concerns that the CJC needs to make special provision to cater for clients (typically complainants) with special needs. Such clients might include youth, the disabled, Aboriginal and Torres Strait Islanders, or persons with language or other communication difficulties.

At its public hearing, the Committee heard from Ms Noelene Straker, on behalf of the Youth Advocacy Centre:

I suppose another problem we experience, too, is that the systems in place for young people to make their complaints are not particularly user friendly for young people. Young people do not have the resources that are taken for granted in the adult world. If they have to wait on hold on the phone, they find this a frustrating experience and often hang up. If they are asked to leave a message so people can call them back, this is often pointless because of their lack of stability. They do not have that return contact point. So the systems that often work for adults do not work for young people.¹¹⁹

Ms Straker suggested there was a need for a youth advocate, a person who was in fact independent of both the police and the CJC, and who would act as a support person for young people.¹²⁰ Some discussion ensued at the hearing as to whether such an advocacy role could be furnished by existing youth agencies, or whether a separate office ought to be established. There are clearly funding issues to take into consideration here. Other difficulties would arise due to the need for such a service to ideally be provided or available throughout the State.

4.11.2 The CJC's response

Mr Butler advised the Committee:

.... in respect of Aboriginal and Torres Strait Islanders and their perception of the system [I] would agree very much that the CJC needs to continue to work to develop its response in this area. Clearly, there are certain categories of complainants who are going to have difficulty accessing a body like the CJC.

One category is youth. Our survey results show that there is a very low recognition of the CJC by young people and that, no doubt, has to do with the fact that the CJC brand name obtained much of its notoriety arising out of the Fitzgerald inquiry and the majority of young people are far too young to have been exposed to that. So there needs to be an ability for the CJC to work on its processes to communicate with young people, and in the same way we need to work on our ability to communicate with Aboriginal and Torres Strait Islander people.

I am aware that other agencies, for example the New South Wales Ombudsman's office over the years has done a great deal of work in improving its communication ability with both of those groups, and part of what we are doing through the complaints processes that you heard from Ms Couper in terms of the charter of service and so on is actually looking to how we can be much more responsive in those areas.

The point I should make, though, about the dissatisfaction that is expressed by the Aboriginal Legal Services is that we must ask the question about what the expectation is of their clients and the complainants in respect of those complaints. I have said earlier, and I think it is recognised, that the adversarial system of resolving issues of fact and prosecuting people is one

¹¹⁹ Note 39 at 61.

¹²⁰ Note 39 at 62.

*that, particularly for these excessive force type complaints, finds it very difficult to achieve positive results. You have word on word.*¹²¹

Ms Couper also advised the Committee that the Complaints Section of the CJC was taking a number of steps to enhance service delivery to Aboriginal and Torres Strait Islander complainants:

*..... this has included a recent meeting the staff of the Complaints Section had with members of the Commission's Aboriginal and Torres Strait Islander Consultative Committee. It is also proposed that next year officers of the Complaints Section will travel to various rural and regional centres and Aboriginal and Torres Strait Islander communities outside the south-east corner of the State to talk with members of the communities and regional officers of the Police Service and departments and agencies and to talk with members of the public and take complaints and address other concerns.*¹²²

Another group of complainants with special needs is prison inmates. Ms Couper advised that it was proposed that:

*.... complaints officers will participate in an initial six-week trial to provide free telephone call access to inmates at correctional centres. Calls will be received during specified hours two days per week. There will be a complaints officer dedicated to taking those calls, which will not be monitored, ensuring confidentiality. It is expected that this access will facilitate the making of complaints and the provision of intelligence information by inmates to the commission.*¹²³

4.11.3 Analysis and comment

The Committee acknowledges that the CJC is keenly aware of the special needs of many of its clients, and the Committee appreciates that the CJC has taken, and intends to take, steps to make itself more accessible to as broad a range of society as possible.

4.12 Effect of resignation of an officer on disciplinary action

4.12.1 Introduction

A public sector employee under investigation by the CJC may resign or retire. A total of 483 such employees did just that between the CJC's commencement of operations in 1990 and 1 January 2000.¹²⁴ In resigning or retiring, the officer can effectively avoid disciplinary action, as both the Misconduct Tribunals and the public service cease to have jurisdiction over the officer.

There are competing views as to whether or not this position is satisfactory, and whether or not some other scheme would be preferable. Because the Committee believes matters of considerable public interest and importance are involved, as part of its review it invited submissions on this issue from a number of entities.

4.12.2 Background

If a public servant under investigation by the CJC resigns or retires:

¹²¹ Note 39 at 115.

¹²² Note 39 at 117.

¹²³ Note 39 at 117.

¹²⁴ CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane, at 6.

- although, argues the CJC, the CJC's jurisdiction to investigate such a matter is not lost and the CJC may decide to continue with the investigation, the CJC cannot then prefer a charge of official misconduct (to a misconduct tribunal);
- the only action which the CJC can take at the conclusion of such an investigation is to make a report about the results of the investigation:
 - to the principal officer of the former public servant's unit of public administration (for example with a view to ensuring that systems are established in that unit to prevent similar misconduct from occurring in the future); or
 - through a public report to Parliament; and
- the CJC cannot include in such a report, any findings about any specific allegations of misconduct against the former public servant. As a consequence, there will often be no official record of a person's misconduct to act as a warning to future employers.

As an example of some topical interest, if a teacher employed by Education Queensland resigns before he or she would otherwise have been dismissed, Education Queensland will not always be obliged to notify the Queensland Board of Teacher Registration about the circumstances surrounding the teacher's resignation. Similarly, where a teacher retires before he or she can be dismissed, Education Queensland is not obliged to notify the board about the circumstances surrounding the teacher's retirement.¹²⁵

As mentioned above, of significance is the result that a public servant under investigation who resigns or retires from the public service can in doing so effectively avoid the disciplinary jurisdiction of both the Misconduct Tribunals and the public service.

There is no difficulty if the suspected or alleged conduct amounts to a criminal offence – the matter can still be referred to an appropriate authority such as the QPS or the Director of Public Prosecutions. The issue which arises in relation to misconduct which falls short of criminal conduct is whether the disciplinary jurisdiction of the Misconduct Tribunals and the public service itself should continue, the resignation of the officer notwithstanding.

This issue is further highlighted by the fact that the highest disciplinary sanction that is able to be imposed is dismissal, which is of course unavailable, and in a sense unnecessary, where an officer has resigned.

4.12.3 Statistics

As mentioned above, the CJC advised the Committee that, between the CJC's commencement of operations in 1990 and 1 January 2000, 483 public sector employees resigned or retired whilst under investigation by the CJC.

Police Commissioner Atkinson advised the Committee as follows in relation to the experience with police officers:

The number of members subject to a misconduct complaint—which includes those who may or may not have been charged with disciplinary offences prior to resignation or retirement—who resign or retire is decreasing, with an average over the last five years of about 28 per year. This represents an average of 3.1% of misconduct complaints having a nexus to resignation or

¹²⁵ See the report *Safeguarding Students: minimising the risk of sexual misconduct by Education Queensland teachers*, CJC, Brisbane, December 2000, chapter 8, regarding resignation of teachers under investigation.

*retirement over the last five years. Approximately 1.65% of officers facing disciplinary charges resign. In these cases, approximately 80% are under investigation for misconduct. This equates to approximately three officers charged with misconduct resigning every two years. It should be noted that where officers resign or retire, none of the allegations are ever tested, that a proportion of officers who resign or retire already have significant behavioural problems, and that the behaviour is generally such that dismissal may not have been warranted. Also, there is often no correlation between resignation and the facts surrounding a complaint.*¹²⁶

The Police Commissioner also noted:

*The Service experience indicates that the actual number of instances where officers resign before facing disciplinary charges which would have resulted in dismissal or demotion are, indeed, rare. Of all complaints made, only 1.1% result in a formal disciplinary sanction other than a caution or reprimand. Dismissal or demotion occurs significantly less often.*¹²⁷

4.12.4 What is in the public interest?

There are numerous and conflicting public interest considerations involved here.

There is clear public interest in the efficient, early, and cost-effective finalisation of disciplinary investigations. If an officer has resigned, then for an investigation to continue might needlessly incur additional public expense and involve extra time and resources. It should be remembered that the continuation of proceedings has costs to the subject officer as well – considerations of expense, time, and health might be involved here.

If one objective of disciplinary proceedings is to ensure that, where appropriate, an officer does not continue in public sector employment, then arguably this aim is achieved, relatively expeditiously, by that officer's resignation.

It might be argued on the other hand that for an officer to be able to avoid disciplinary proceedings can be perceived by the public as escaping the proper consequences of misconduct. The public might see misconduct as having gone unpunished, and the officer not being held accountable, notwithstanding that resignation can often result in very serious financial disadvantage and other consequences for the officer.

Another argument against the present position is that there might be no official record of a person's misconduct, and therefore no warning to any prospective future employer (in either the public or private sectors) of the subject officer. This result can perhaps be highlighted by consideration of the position regarding a teacher who resigns from Education Queensland whilst under investigation for alleged misconduct, perhaps involving sexual contact with a student.

It must be noted that it cannot necessarily be assumed that every officer who resigns whilst facing investigation is guilty of misconduct, or that every such officer has resigned either solely or predominantly for the deliberate purpose of avoiding investigation. The fact that investigations cease upon resignation of course means that there is no way of determining, for example, how many of the 483 referred to above were guilty or would have been found guilty of misconduct.

One can also readily conceive of circumstances where the fact that an investigation cannot proceed might in fact take away the right of an innocent officer to have his or her name cleared, but that officer wishes to resign or retire for valid (and sometimes urgent) reasons not associated with the

¹²⁶ Note 39 at 85.

¹²⁷ Note 39 at 85.

misconduct investigation. In such circumstances the present position might work to the detriment of the officer involved.

In some cases, it might be desirable that an investigation proceed to finalisation, notwithstanding a resignation, in the interests of identifying systemic deficiencies, with a view to recommending or taking action to correct those deficiencies. As Commissioner Atkinson pointed out:

*In serious cases of misconduct which would result in dismissal, it may be in the public interest for the investigations to continue, not necessarily to pursue the individual but to determine what in fact had happened, who was involved—including other persons—and the culpability or performance of supervisors and the agency in terms of systems and the ability to deal with misconduct, and the potential risk of the behaviour being repeated. Achievement of those matters would not rely on the ability of the investigation to bring charges against the person who may have resigned.*¹²⁸

4.12.5 The CJC's position

In its written submission, the CJC summarised some of the background to this issue:

If, as a result of a CJC investigation, it is determined that there is sufficient evidence to show a prima facie case to support a disciplinary case of official misconduct against a public servant, the CJC must charge the person with the relevant official misconduct by way of a disciplinary charge. The charge can be dealt with only by a Misconduct Tribunal. If the public servant resigns or retires before a matter is referred to a Misconduct Tribunal, the CJC may decide to continue with the investigation but cannot then refer a charge of official misconduct to a Misconduct Tribunal (because a former public servant cannot be a 'prescribed person' for the purposes of a charge before the Misconduct Tribunal).

If the CJC is of the view that there is sufficient evidence to indicate that the conduct of a former public servant constitutes or could constitute a criminal offence, the CJC would normally refer the matter to the Director of Public Prosecutions, the Queensland Police Service or some other appropriate prosecuting authority. The CJC can also investigate allegations of official misconduct by former public servants where no criminal charge is open on the evidence; however, the only action which the CJC can presently take at the conclusion of such an investigation is to make a report about the results of the investigation:

- *to the principal officer of the former public servant's unit of public administration (for example, with a view to ensuring that systems are established in that unit to prevent similar misconduct from occurring in the future — see section 33(2A) (g) of the Criminal Justice Act); or*
- *through a section 26 public report, which would be presented to the Chair of the PCJC, the Speaker of the Legislative Assembly and to the Minister.*

While such reports can canvass generally the results of the investigation and any systemic problems uncovered, they cannot include findings about any specific allegations of misconduct against former public servants.

Although quite serious personal and financial consequences may result from a former public servant retiring or resigning his or her position and from a CJC investigation into the person's conduct, the fact that no disciplinary action can be taken by either the Misconduct Tribunal or the public service could be perceived by the public as allowing certain misconduct to go unpunished. It also means that there is no official finding made about whether or not misconduct has occurred. The present system also allows a person to deliberately avoid disciplinary proceedings by resigning or retiring from the public service.

¹²⁸ Note 39 at 85.

Once a person's contract of employment within the Queensland public service is terminated (for example, through resignation or retirement), the person is not subject to public service disciplinary action. A public service agency can initiate disciplinary action only against a current employee.

One result of this limitation is that there will often be no official record of a person's misconduct to act as a warning to future employers.¹²⁹

The CJC in its submission, sets out:

- its support for a legislative amendment (similar to section 81 of the New South Wales *Public Sector Management Act 1988*);
- that would enable units of public administration, in their discretion, to regard an officer who has been charged with breach of discipline, but has subsequently resigned or retired, as continuing to be a holder of an appointment within that unit of public administration, for the purpose of disciplinary proceedings only;
- its recommendation that consideration be given to enlarging the jurisdiction of the Misconduct Tribunals, so that:
 - (a) a Misconduct Tribunal would have jurisdiction to hear disciplinary charges against an officer, regardless of the officer's resignation or retirement from a unit of public administration;
 - (b) if such a charge is found proved, the Tribunal could make a declaration that, had the person not resigned or retired, the person ought to have been dismissed or reduced in rank or salary level.

The CJC did not favour a Misconduct Tribunal having power to impose a monetary penalty in such circumstances, arguing that this could be seen as a criminal penalty, rather than a disciplinary penalty.¹³⁰

4.12.6 Options for reform - possible alternative approaches

4.12.6.1 Resignation deemed not to have occurred for certain purposes

In New South Wales, disciplinary action can be pursued against a public servant, even after retirement. Section 81 of that state's *Public Sector Management Act 1988* provides in part:

1) If an officer who has been charged with a breach of discipline, or who has been informed that such a charge is about to be laid, retires or resigns from the Public Service, disciplinary inquiry may be commenced or continued even though the officer has retired or resigned, and:

(a) the person shall, for the purposes only of the inquiry, be taken to be an officer suspended from duty without pay, and

(b) a decision may be made as to the punishment (if any) that would have been imposed under this Part if the officer had not retired or resigned.

2) Any such decision (other than a fine) does not affect the former officer's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.

3) A fine imposed under any such decision may be recovered from the former officer as a debt

¹²⁹ Note 124 at 7.

¹³⁰ Note 124 at 9.

due to the Crown in any court of competent jurisdiction, or out of any money payable to or in respect of the former officer by the Crown, or both.

Thus, in New South Wales, a disciplinary inquiry can be commenced or continued against an officer who has resigned, and the resignation of the officer can effectively be ignored for the purposes only of that inquiry. A decision can be made regarding the penalty (if any) that would have been imposed had the officer not resigned.

The CJC states that it would support Queensland legislation, along the lines of the New South Wales provision, which would allow a unit of administration to in effect ignore a resignation for the purposes of disciplinary proceedings only.¹³¹

4.12.6.2 Restricting the right to resign or retire

Another option would be to fetter the right of a subject officer to resign, so that such an officer could not retire or resign until after the finalisation of any disciplinary proceedings. This would allow an investigation to be finalised. On the other hand, it would place considerable restrictions on the officer involved, who has not been found guilty of any wrongdoing, and might well of course be innocent, and who might have genuine reasons, unrelated to the investigation, for wishing to retire or resign.

This option would also not assist in situations where an officer has already resigned before any suspicion of misconduct is even raised.

4.12.6.3 Queensland Police Service proposal

The Queensland Police Service proposed an administrative approach. This approach involves careful vetting of the employment history of any job applicant. In its submission, the QPS referred to its Integrity Committee, which assesses applications for employment as a police officer:

The Service's approach to this issue has been to establish an Integrity Committee chaired by the Assistant Commissioner, Ethical Standards Command. This Committee assesses applications for employment, and re-employment, as a police officer. The Committee has access to Service employment records, and the vetting reports of other law enforcement agencies. The Service can also refer matters to the Criminal Justice Commission for advice. The Committee takes a cautious approach to matters of integrity – the essential criterion for all police positions. Anyone aggrieved by such decisions has recourse to the normal administrative processes, including judicial review.

This model is one that other agencies could adopt as a means of overcoming the risk of re-employing someone with a poor integrity record. Where any doubt exists, the agency could always refer to the Criminal Justice Commission for advice. A clearance from the person's former Chief Executive Officer could be sought before the officer was re-employed within the public service. This clearance could indicate that the employee was under investigation prior to resignation. There will, of course, be no record of a person's misconduct as a warning to future employers. However, there will be a record that the person was under investigation for alleged misconduct. This in itself is a warning, although one that should be acted on with due care as the person may not have had the opportunity to defend the allegations. However, this could be overcome if natural justice principles were applied. This administrative process could provide a useful control if adopted across the public sector.¹³²

¹³¹ Note 124 at 9.

¹³² Queensland Police Service, *Second Submission to the Parliamentary Criminal Justice Committee Three Yearly Review of the Criminal Justice Commission*, January 2001, Brisbane, at 9.

4.12.6.4 The use of notifications and mandatory reporting

One of the issues sought to be addressed in this area is the need to ensure that a person who by his or her conduct has proved unsuitable for appointment in a certain area is not in fact appointed to a similar area in the future. A topical example might be a teacher employed with Education Queensland, who has allegedly engaged in inappropriate, though non-criminal, conduct with a student. That teacher resigns, and no final determination of the allegations is made. The teacher subsequently applies for another position, which could be any of the following:

- As a teacher with Education Queensland;
- As a teacher in the private system in Queensland;
- As a teacher interstate;
- Not as a teacher, but in a position still involving contact with children, in either the public sector or the private sector.

Can there be an appropriate reporting system that can deal with all these possibilities, particularly in the absence of any finding against the teacher? The CJC sets out how the reporting system would work in such an example:

For example, if a teacher employed by Education Queensland is dismissed as a result of disciplinary action, Education Queensland will usually be obliged to notify the Queensland Board of Teacher Registration about the circumstances surrounding the dismissal. The significance of this notification is that if the person applies for another teaching position in Queensland or interstate, the potential employing schools or departments can approach the Board for information about the person's background (including the circumstances surrounding the person's dismissal from Education Queensland). However, where a teacher employed by Education Queensland resigns before he or she can be dismissed, Education Queensland will not always be obliged to notify the Board about the circumstances surrounding the teacher's resignation. Similarly, where a teacher employed by Education Queensland retires before he or she can be dismissed, Education Queensland is not obliged to notify the Board about the circumstances surrounding the teacher's retirement.¹³³

Mr Butler elaborated on this situation in evidence to the Committee:

I have an example in front of me where it was alleged that a high school teacher had engaged in a sexual relationship with a 16 year old high school student. There was fairly compelling evidence of the existence of the relationship from friends and so on. Because the girl was 16 years of age and had reached the age of consent, there is no criminal offence involved whatsoever. However, the circumstances of the behaviour were such that one would be concerned that it involved a breach of trust with that person's position as a teacher if it were proven. Upon investigations commencing, the person resigned.

Under our present system, the effect of that is that there is no determination of the issue. In relation to any potential for disciplinary proceedings to terminate, there is no probability of the matter being placed before an official misconduct tribunal. The danger is that the person might, at a future time, either seek re-employment in the department or perhaps a different department in an education role—and there are many—or in the private sector in a school. It seemed to us that the public of Queensland and parents might be concerned that allegations of that sort of conduct are not resolved one way or the other. That is not to say that the disciplinary process that followed would prove the allegations; it might disprove them, in which case the person's name would be cleared and there would be no impediment to re-

¹³³ Note 124 at 7-8. This issue of notifications and reporting is canvassed in some detail in the CJC's report *Safeguarding Students: minimising the risk of sexual misconduct by Education Queensland teachers*, note 125 at 51-52.

employment or whatever.

*If it were possible to continue the disciplinary process, there would be a finding one way or the other. That means that if there were an adverse finding, that could then be on Education Department records. If the person sought to reapply it could be disseminated perhaps to the Board of Teacher Registration and could be available to other employers seeking reference checks. It would provide a degree of protection, one might think, for other students and comfort to parents in the future.*¹³⁴

Mr Terry O’Gorman, President of the Australian Council for Civil Liberties and Vice-President of the Queensland Council for Civil Liberties, voiced concerns about increasing the use of mandatory reporting of the fact that an officer has been subject to investigation:

*I really have a problem with this widening net of mandatory reporting. We have accepted it, although some of us with greater reluctance than others, in the area of child sexual abuse, but if a policeman resigns when he is facing official misconduct charges, that is a level of conduct that is clearly not sufficiently serious to charge that officer even with, say, a simple offence. Why, therefore, should that officer have to be the subject of mandatory reporting?*¹³⁵

A possible concern with reporting is that, where there has been no final determination of allegations (because of an officer’s resignation or retirement), difficulties arise in determining what can be legitimately and fairly reported to a prospective employer or to a regulatory body, such as a professional registration board. As Senior Member of the Misconduct Tribunals, Mr Gary Long, put it:

*there needs to be some process allowed for a determination of those allegations before such a record is made in a fair—and preferably independent—way.*¹³⁶

There are clearly unsatisfactory aspects of a reporting system where allegations are not finalised. What, in fairness to the officer, can be legitimately reported in such a case? On one view, and regardless of the extent and content of reporting requirements, such reporting can never be entirely satisfactory if it can not be based on an actual finding in respect of allegations against the officer involved.

4.12.7 *A possible discretion on the part of the CJC*

The CJC, whilst seeking the power to be able to proceed with disciplinary action following an officer’s retirement, stated that the power ought to be available ‘*at the CJC’s discretion, and would not be pursued in every case*’.¹³⁷ CJC Chairperson, Mr Butler SC, elaborated on this position in evidence to the Committee:

We are very much of the view that it would not be appropriate in the majority of cases to pursue investigations or disciplinary action beyond resignation or retirement. Ordinarily, matters that are subject to disciplinary action are of a nature that, if the person removes themselves from the employment, the concern in terms of their public employment is removed. It would really be a waste of resources to pursue it any further, particularly in the circumstance that the most significant penalty that could be imposed is the person’s dismissal. If they are gone, they cannot be dismissed.

It remains that there will be a few cases where there is a strong public interest in having the

¹³⁴ Note 39 at 40.

¹³⁵ Note 39 at 44.

¹³⁶ Note 39 at 55.

¹³⁷ Note 124 at 8.

*allegation resolved. That is particularly the case where a person resigns, but there might be a possibility that the behaviour that is alleged indicates a certain propensity on the part of the person or a likelihood that they might engage in that behaviour in the future. There is also a likelihood that they might seek re-employment at some stage in the public sector or indeed in the private sector in a similar position. That is particularly notable in the case of those employees who work in areas dealing with children.*¹³⁸

Mr Long also noted that:

*... there may only be some cases where there is sufficient public interest to warrant disciplinary action following the tendering of a retirement or resignation.*¹³⁹

This raises the question of whether it is appropriate, and if so to what extent and in what manner, that the proposed discretion be regulated in some formal or prescribed manner. The Committee Chairman asked Mr Butler:

The CHAIRMAN: *You indicated before that in most cases it would not be appropriate to proceed. How do you arrive at a mechanism that is fair both to the public interest and to the individual? Do you statutorily define when you ought be able to take proceedings, notwithstanding retirement or resignation? Do we trust you to do it the right way? How do you actually come to a mechanism that takes into account the very significant competing interests?*

Mr Butler: *This sort of discretion is exercised by prosecuting authorities and investigating authorities all the time. I mean, police constantly determine whether they are going to continue to investigate people or not. Prosecutors determine whether for various reasons prosecutions should proceed. It is often the case that the CJC would consider that a criminal prosecution is not justified on discretionary grounds and that the matter should be dealt with on a disciplinary basis, having regard to a whole range of factors including things such as strength of the evidence, reasonable prospect of success, the health of the person involved and so on.*

*I suppose one of the relevant factors here would be whether there was the potential for some adverse result at the end of the day if the allegations were not taken to resolution. In many instances, given the sorts of allegations that have been dealt with in disciplinary matters, it would not matter and it would be a waste of time and effort and an imposition to be taking the thing forward. But in instances like the one I gave, where perhaps the safety of children might be involved, there might be quite compelling public interest in a resolution of the allegation.*¹⁴⁰

There are other factors that might suggest that any power to continue to pursue disciplinary proceedings after a resignation ought be sparingly used. Police Commissioner Atkinson advised the Committee:

*In real terms, the penalties imposed for both official misconduct and misconduct are often far less severe than dismissal or demotion.*¹⁴¹

He also noted the time and costs involved in the investigation process, and compared these to any reduction in what is paid to the subject officer:

The current time-consuming process used to investigate complaints—which Project Resolve, of course, aims to improve—also means that many investigations have been under way for a considerable period before the officer decides to resign or retire. The time taken to investigate

¹³⁸ Note 39 at 39.

¹³⁹ Gary Long, Senior Member, Misconduct Tribunal, submission, 3 *Yearly Review of the Criminal Justice Commission*, dated 13 December 2000, Brisbane, at 1.

¹⁴⁰ Note 39 at 40.

¹⁴¹ Note 39 at 84.

and the costs associated with preferring charges is generally far greater than any reduction in benefits accumulated to the individual. As well, any findings of guilt may not necessarily preclude the officer from future employment in the public sector, and this may be particularly so given the principles of rehabilitation.

In serious cases of misconduct which would result in dismissal, it may be in the public interest for the investigations to continue, not necessarily to pursue the individual but to determine what in fact had happened, who was involved—including other persons—and the culpability or performance of supervisors and the agency in terms of systems and the ability to deal with misconduct, and the potential risk of the behaviour being repeated. Achievement of those matters would not rely on the ability of the investigation to bring charges against the person who may have resigned. The Ethical Standards Command overviews all disciplinary matters within the service and, where necessary, continues to investigate after a member has resigned or retired towards the issues that I have just mentioned. Matters of substance could be dealt with or can be dealt with using criminal or, if necessary, civil processes. As such, the cost effectiveness of any change to the current system would need to be closely examined.¹⁴²

The QPS did give support to there being the ability to pursue official misconduct charges following resignation. The Service was however concerned that this power not be overused. Commissioner Atkinson advised the Committee:

Amendment of sections 32(1)(d) and (e) of the Criminal Justice Act may be useful so that official misconduct charges can be preferred after resignation or retirement. The normal public interest and sufficiency of evidence tests as to whether official misconduct charges are preferred could then be applied. Overzealous use, though, of this type of provision could be counterproductive, with officers deciding not to resign and being found guilty with punishment less than dismissal, or being found not guilty. This could leave agencies—particularly, from my point of view, the Police Service—with someone we would rather not have but are stuck with and, indeed, who would perhaps be very unproductive.

It is a difficult public interest test; we appreciate that. The service is of the view, though, that the opportunity should exist for official misconduct charges to be preferred based on the presumption that this provision would be rarely used in practice, as the public interest test—particularly in terms of cost effectiveness—would not be met. We don't regard it as a practical or effective use of taxpayers' money to apply these provisions to misconduct or breaches of discipline because of the costs associated with investigation, the increased likelihood that officers will decide not to resign, the continued cost to provide a duty of care to officers under investigation and the potential for administrative processes to remedy problems related to re-employment.¹⁴³

4.12.8 Other submissions

The Committee received submissions from representatives of a number of unions covering employees employed in the police and public sectors.

4.12.8.1 Queensland Teachers' Union

The Queensland Teachers' Union did not support any change that would allow further action to be pursued against an individual following resignation. The union was of the view that current reporting mechanisms in place are adequate protection against an officer obtaining inappropriate future employment.¹⁴⁴

¹⁴² Note 39 at 85.

¹⁴³ Note 39 at 86.

¹⁴⁴ Queensland Teachers Union, *submission to PCJC three yearly review of the CJC*, Brisbane at 1.

The Union's Assistant Secretary, Mr Jeff Backen informed the Committee:

In terms of our members who are teachers and people in school-based promotional positions, we believe the Department of Education has a mechanism in place to adequately at this stage deal with people who do resign or retire during an investigation which may lead to some disciplinary action. That system, which has been in place for a few years, is an employee who would resign or retire in such circumstances has his or her file marked with what is called a D notice. That notice is placed on the personnel file with a reference that that person is not to be re-employed by the department and any application for re-employment is to be referred to the director of human resources.

As I said, the system has only been working, I believe, for a few years and certainly to date it does not appear—certainly in the last two or three years—that that system is flawed to the extent that the department certainly has been re-employing people who may have resigned or retired during the conduct of an investigation that may have led to disciplinary action.¹⁴⁵

Section 44A of the *Education (Teacher Registration) Act 1988* provides that where a teacher has resigned or retired during an investigation (by an employing authority) into alleged misconduct involving allegations of a sexual nature, the matter is to be reported to the Board of Teacher Registration. However, the CJC suggested that there are gaps in the protection offered by the above process:

The section 44A provision does not cover a situation where the matter has been investigated by the CJC rather than Education Queensland. One of the difficulties for the CJC is that we have significant constraints on our ability to disseminate information to others. For example, where a teacher has resigned in the course of a CJC investigation, it would seem that there is no power for the CJC to provide information about the investigation to the Board of Teacher Registration. So there are significant limitations. I would certainly welcome the suggestion made by the Queensland Teachers Union that there ought to be increased information sharing amongst the agencies. In fact, that is one of the recommendations in the Safeguarding Students report.

The other point I need to make in this area is that in our recommendations there is a distinction between the ability of the CJC to continue disciplinary action through the misconduct tribunal and the ability of the department to continue disciplinary action. Both those aspects need to be addressed. Our recommendations address both. So it is not just about the CJC. Even if the CJC did not have the ability to take the matter to the misconduct tribunal, the ability of the department to choose to continue to resolve the disciplinary action is something that needs to be given some consideration. We have always said that it would only be in a very small number of cases that this sort of ability would be exercised.

In terms of the Police Service, there are different considerations applying there ... Some of the different considerations are that the commissioner does have the ability to prevent a person resigning for up to three months. So that provides a window of opportunity for the Police Service to elect to complete an investigation and perhaps reach a resolution on the matter. As well as that, because of the way in which re-employment occurs in the Police Service, officers cannot be re-employed at the same level after a period of time. They have to come in at the bottom and work their way up again. So there is a considerable disincentive for people to reapply in any event.

Of course, that still does not address this issue of re-employment of the person in other parts of the public sector.¹⁴⁶

¹⁴⁵ Note 39 at 103.

¹⁴⁶ Note 39 at 111.

The Union opposed the introduction of any scheme that would prevent employees from resigning if an investigation was pending. The Union was of the view that present mechanisms were adequate protection, that preventing officers resigning would lead to them being a drain on public resources (as most are suspended on full pay), and there would be a greater chance of employees lodging reinstatement applications, *'thereby further extending the process and engaging limited departmental resources for a further considerable period of time'*.¹⁴⁷

4.12.8.2 Queensland Public Sector Union

In evidence before the Committee, Mr Jon Lunn, Manager of Industrial Services for the Queensland Public Sector Union, argued against imposing any restriction on the ability of an officer to resign when disciplinary action is pending against the officer:

What we have seen now for a decade or so is that departments and other employing agencies will commence an investigation and more than often will refer it to the CJC under section 32 of the Criminal Justice Act in terms of their obligation. There we see many cases where the transgression, if I can call it that, is rather minor and at the end of the day will not result in a criminal offence or dismissal.

On the other hand, we see members where allegations have been brought against them that are not ultimately found to be correct. Those persons, in the meantime, are subject to an incredible amount of personal stress and duress—really lose heart with the Public Service, their career; they have been a loyal employee for X number of years and "Why are they doing this to me?" and they prefer to throw in the towel and resign.

*It would seem to us it would really be a travesty if they were prevented in any way under the Public Service Act from doing that.*¹⁴⁸

4.12.8.3 Queensland Police Union of Employees

The Queensland Police Union of Employees also opposed any changes to the present system. Union President, Mr Merv Bainbridge, referring to the suggested change, stated:

Of course, we are against it, and I cannot follow the reasons why anyone would wish to. I will explain it this way: if a person has done something wrong and they have done something wrong criminally, whether they resign from the Police Service or the Public Service, they will still be arrested and they will be put before the Magistrates Court, the District Court or the Supreme Court. They will still go there. So whether they resign or not is not the issue. But now we come down to police officers or public servants who resign whilst they are under investigation for matters of misconduct. In a police officer's case, the Commissioner has the power and the right—and exercises it at times—to hold a person for three months. From the moment they put in their resignation, he can hold them for three months. So my argument is that if it is a misconduct matter, the Police Service has three months to put that person through the system, to investigate it and put them through, and probably that is not a bad thing, because actually that may make them smarten up.

But in the majority of cases, the matters over which they resign, whilst they might be matters of integrity, are not criminal matters. The person/police officer/public servant who resigns, I believe, is disadvantaged in two ways. Firstly, he loses reasonably well-paid, permanent employment by premature resignation. Secondly, police and public servants are part of a very reasonable superannuation scheme. So if he resigns or retires early, then obviously he does not get the full benefits of the maturity of his superannuation by retiring. So I believe there are two penalties involved. One is early resignation with respect to superannuation and the other is

¹⁴⁷ Note 144 at 3.

¹⁴⁸ Note 39 at 105.

*loss of employment.*¹⁴⁹

4.12.8.4 Queensland Council for Civil Liberties

In evidence before the Committee, Mr O’Gorman set forth his objection to any change to the existing scheme:

Can I move to the issue of the ability of the CJC to pursue a public servant who resigns? I listened to Mr Butler's explanation for the need for such a power. I am sure it will not come as any surprise to Mr Butler that I personally did not find it a particularly convincing explanation. Let us look at what happens to people when they are under investigation and they choose to resign. Some could choose to resign, clearly, because they do not wish to have the glare of investigation brought on to aberrant activity. Others may choose to resign simply because they are close to retiring age or they just do not want the hassle of having to go through a CJC investigation.

This harks back to the issue of cost that I raised before. It is extremely expensive—even if a person who is under investigation by the CJC can find a cheap solicitor—to defend yourself, because it is so extremely labour intensive. The amount of work that a competent solicitor has to put into a matter to prepare it and to defend a misconduct tribunal hearing is very considerable.

I just cannot see why there is any necessity to pursue a person for official misconduct once they have resigned. If the aim of pursuing them, assuming the allegations are made out, is to get them out of the Public Service, then they are out of the Public Service by resigning.

As to Mr Butler's example of the teacher having the affair with the 16 year old, that is a very colourful example, and it is an example that relates to child abuse or something akin to it and is therefore the sort of example that, if you stand up and speak out against, people look slyly at you and say, "Are you into the same activity?" The fact is that in that particular example, there is, I would have thought, a structural protection already in place. If that teacher resigned from the State school system—let us assume he had had an inappropriate but non-criminal affair with a 16 year old student—and if that teacher then goes to the private sector and seeks employment, his CV would show that he was last employed in the public sector in education. Any employer in the private sector who did not ring up Education Queensland and ask, "What can you tell us about this bloke and do you know why he left?" has to be significantly negligent. No-one in Education Queensland could credibly say, "We couldn't really dare to let that information out for fear of being sued." The defamation excuse is often used as an excuse by bureaucrats for inaction where there is no other excuse.

But in that situation, the teacher can go and seek private employment, say, in a Catholic school. One would expect the employment officer to ring not only Education Queensland but also the immediate principal for whom that teacher worked. It would be quite proper for that principal to say, "Well, yes, he was under CJC investigation", and I would have thought it would be quite proper for that principal to at least say to the prospective employee, "Give us a waiver, give us signed authority so that we can approach the CJC and get that information." So the example that Mr Butler gave, I think, is perfectly manageable from that perspective. Yet the downside to individuals is considerable. They may simply have had enough of it. Some complaints to the CJC, particularly from the bureaucracy, in my view are motivated by internecine struggles or weakness on the part of a particular D-G, while acknowledging that some are genuine. If a person wants to get out, why should they then have to incur considerable expense, in effect, to defend their reputation, not a keep a job? If they have not committed a criminal offence, what public interest is there, other than this phrase that I did not think generally drove CJC policy, namely, "the perception of the public"?..... The fact is that I would

¹⁴⁹ Note 39 at 100.

*not have thought that the public would be concerned that a teacher who has had an affair has chosen to leave and cannot teach elsewhere if the prospective employers that he goes to do their job and check the reference background.*¹⁵⁰

4.12.8.5 Queensland Police Service

Reference already has been made to a submission received from the Queensland Police Service.¹⁵¹ In its submission, the QPS also noted that one distinguishing feature of the system involving police officers, which can be contrasted with other public sector employees, is that, by virtue of section 5.1 of the *Police Service Administration Regulation*, a police officer must give three months notice of intention to resign. This provision potentially allows the QPS three months in which to finalise disciplinary proceedings against police officers. The submission also noted that, under section 33 of the *Public Officers Superannuation Benefits Recovery Act 1998*, any officer who has been suspended in circumstances involving ‘official corruption which is a prescribed indictable offence’ is in fact unable to resign.

4.12.9 Analysis and comment

This is an area where there are very strong competing arguments on both sides, and where many arguments have been put before the Committee. The Committee has approached this issue by looking at the broader public interests involved, rather than simply the narrow approach of meeting any need to ensure an individual is punished. The public interest must be protected, and in the most efficient and cost-effective manner.

All the submissions to the Committee made on behalf of organisations representing public sector and police service employees opposed any change to the existing situation.

The CJC in its submission states that if a public servant resigns or retires, the CJC may decide to continue with the investigation.¹⁵² For its part, the Committee believes that there is at least some doubt, given the terms of section 32(1)(d) and (e) of the *Criminal Justice Act*, whether the CJC does in fact have jurisdiction to investigate a former public servant, unless the alleged conduct in question constitutes, or could constitute, a criminal offence. It is at least arguable that the CJC is in fact precluded from continuing an investigation simply for the purpose of providing an agency with some advice on the prevention of future allegations of official misconduct pursuant to section 29(3) (e) of the *Criminal Justice Act*.

The CJC has argued in favour of having the power to continue an investigation after a subject has resigned. The CJC has argued that the power ought be ‘available at the CJC’s discretion, and would not be pursued in every case’, as to do so might be seen as a waste of public funds, given that the most serious penalty for disciplinary breaches is dismissal from the public service, a penalty not available in respect of former officers.¹⁵³

It is likely that many persons would have difficulty with the CJC being given a discretion in this area, being concerned that it gives the CJC yet more power, with the ability to exercise it in a discriminatory fashion. On the other hand, the Committee is of the firm view that it would not be appropriate to provide that misconduct proceedings should continue in every case where a subject officer has resigned.

¹⁵⁰ Note 39 at 41-42.

¹⁵¹ Note 132.

¹⁵² Note 124 at 7.

¹⁵³ Note 124 at 8.

The Committee has considered the competing arguments carefully. The Committee is mindful that public monies not be wasted on unnecessary pursuit of individuals who have already left the QPS or the public service. For this reason, the Committee believes that any power to continue disciplinary proceedings in such circumstances ought be sparingly used, only in circumstances where there is a clear public benefit in the continuation of proceedings.

The Committee does not believe it is appropriate to legislate to prevent an officer who is under or facing investigation from resigning or retiring until disciplinary proceedings are completed. Such an approach would unreasonably restrict the freedom of such an officer, who might have legitimate reasons to resign, quite apart from any misconduct investigation. Further, such an officer, like anyone else, is of course entitled to the presumption of innocence. Moreover, the Committee believes that any defects in the present situation can be better remedied by means other than preventing resignation.

In this respect, the Committee takes careful note of the CJC's position as put forward by Mr Butler in oral evidence before the Committee:

*We are very much of the view that it would not be appropriate in the majority of cases to pursue investigations or disciplinary action beyond resignation or retirement. Ordinarily, matters that are subject to disciplinary action are of a nature that, if the person removes themselves from the employment, the concern in terms of their public employment is removed. It would really be a waste of resources to pursue it any further, particularly in the circumstance that the most significant penalty that could be imposed is the person's dismissal. If they are gone, they cannot be dismissed.*¹⁵⁴

The CJC has thus stated publicly that it will use any discretionary power given to it sparingly, largely to ensure that public resources are not wasted. As always, the Committee is concerned with the accountability of the CJC, and the Committee would wish to ensure that in the event that the CJC were given this discretionary power, there was adequate oversight of the CJC's use of that power and exercise of its discretion. Whilst the Committee takes comfort from the statement of Mr Butler, the Committee must approach its consideration of possible legislative change in this area on the basis that any such change would almost definitely outlast the term of the present CJC Chairperson.

The Committee has approached this matter on the basis of the continued existence of the position of the Parliamentary Criminal Justice Commissioner, to provide the necessary degree of oversight.

On that basis, and on balance, the Committee has concluded that it is appropriate to endorse legislative amendment along the lines put forward by the CJC, that:

*...legislation which, along the lines of section 81 of the Public Sector Management Act 1988 (NSW), enabled units of public administration to regard an officer who has been charged with breach of discipline, but has subsequently resigned or retired, as continuing to be a holder of an appointment within that unit of public administration, for the purpose of disciplinary proceedings only.*¹⁵⁵

The Committee also supports an extension of the jurisdiction of the Misconduct Tribunals, along the lines proposed by the CJC,¹⁵⁶ so that:

¹⁵⁴ Note 39 at 39-40.

¹⁵⁵ Note 124 at 9.

¹⁵⁶ Note 124 at 8.

- A Misconduct Tribunal has jurisdiction to hear disciplinary charges against an officer, regardless of the officer's resignation or retirement from a unit of public administration;
- If such a charge is found proved, the Tribunal could make a declaration that, had the person not resigned or retired, the person ought to have been dismissed or reduced in rank or salary level;
- A tribunal would not however have the power to impose a monetary penalty in such circumstances.

On this last point, the Committee agrees with the reasoning of the CJC¹⁵⁷ that, as a fine could not be deducted from future salary payments, and it might be too late to make deduction from the officer's termination entitlements, a fine would be more akin to a criminal sanction than a disciplinary one.

The Committee also believes it is appropriate that section 32 of the *Criminal Justice Act 1989* be amended to put it beyond doubt that the CJC can continue an investigation, notwithstanding the retirement or resignation of a subject officer.

In the event that the office of Parliamentary Criminal Justice Commissioner is not continued, then the Committee recommends that there not be any changes to the present position.

4.12.10 Recommendations

Recommendation 11

The Committee, subject to the continued existence of the office of Parliamentary Criminal Justice Commissioner, recommends that:

- **There be legislative amendment that would enable units of public administration, in their discretion, to regard an officer who has been charged with breach of discipline, or who had been informed that such a charge was about to be laid, but has subsequently resigned or retired, as continuing to be a holder of an appointment within that unit of public administration, for the purpose of disciplinary proceedings only.**
 - **The jurisdiction of the Misconduct Tribunals be changed, so that:**
 - (a) **A Misconduct Tribunal has jurisdiction to hear disciplinary charges against an officer, regardless of the officer's resignation or retirement from a unit of public administration;**
 - (b) **If such a charge is found proved, the Tribunal could make a declaration that, had the person not resigned or retired, the person ought to have been dismissed or reduced in rank or salary level; and**
 - (c) **There would be no power for a Misconduct Tribunal to impose a monetary penalty in such circumstances.**
 - **Section 32 of the *Criminal Justice Act 1989* be amended to put it beyond doubt that the CJC can continue an investigation, notwithstanding the retirement or resignation of a subject officer.**
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¹⁵⁷ Note 124 at 8.

5. THE CJC'S COERCIVE POWERS

5.1 Introduction

This chapter examines the nature of and need for the coercive powers presently available to the CJC, and controls on the use of such powers. The chapter also considers whether or not further powers should be granted to the CJC, and if so, what oversight and regulatory measures would be needed.

5.2 The present powers of the CJC

5.2.1 *The nature of the present powers*

The CJC has a range of coercive powers available to assist it in carrying out its functions. Under the *Criminal Justice Act 1989* (the Act), the CJC has the power to:

- issue a notice to produce information, records or things (section 69);
- enter and search premises (section 70);
- enter, search, and seize (sections 71 and 73);
- summons persons to appear and give evidence or produce records (section 74);
- seek the apprehension of a witness (section 79);
- use a listening device (section 82); and
- seize travel documents, title deeds, and financial records (section 84).

The CJC also has the power to conduct investigative hearings (section 25). Such a hearing is to be closed, unless the Commission orders a hearing to be open to the public, which it can do in certain circumstances, in particular if the Commission considers a closed hearing would be unfair to a person or contrary to the public interest (section 90).

5.2.2 *Need for the present powers*

There is little doubt that an anti-corruption agency such as the CJC needs coercive powers to operate effectively. Certainly this was recognised by the Fitzgerald Inquiry, which concluded that the CJC would be likely to require the power to:

- 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; and
- photograph, fingerprint, palmprint, footprint or voice print or take samples of handwriting from any person detained or arrested.¹⁵⁸

5.2.3 Analysis and comment

Corruption is an activity which flourishes in secrecy, and is most often not easily detected. The CJC has had its coercive powers for many years. No submissions to this Committee's review argued for the removal of any of these powers. The Committee is satisfied there is broad public acceptance of the need for the CJC to have its present powers if it is to be able to do its job effectively.

5.2.4 Conclusion

Conclusion 15

The Committee believes that there is public support for the CJC's retention of its present coercive powers. The Committee is satisfied that there is a need for the CJC to have its present powers to be properly equipped to combat corruption and misconduct.

5.3 The CJC's power to hold hearings

5.3.1 Introduction

Under section 25 of the Act, the CJC has the power to hold investigative hearings. The way in which the CJC exercises this power has been criticised in submissions made on past occasions, and again to the present review.

5.3.2 Submissions to this review

The Queensland Law Society (QLS) asserted in its submission to this review:

The Society recognises that in recent times the Commission has taken steps to further its links with the legal and wider community, to ensure that the Commission remains open and cognisant of community feedback and expectations. Such an approach is welcomed by the Society.

The Society has however noted some concerns on behalf of its members about the CJC's increased attraction of media attention. Whilst it is conceded that the Commission requires a degree of public profile to ensure that potential complainants are aware of the Commission as a possible avenue of redress, the concern expressed is that this may sometimes be done at the cost of fairness to the person subject to investigation. Examples include the Commission's more recent practice of holding press conferences or issuing media releases following the successful closure of operations. Similarly, the CJC's courting of the media during hearings conducted by the Commission is open to criticism. Reference is made to reports that the Commission, during the recent inquiry into the alleged misuse of the police computer database, acceded to requests from the media that police witnesses not be allowed access to the internal elevators of the Commission (as has always been the case for police visiting the Commission) because media

¹⁵⁸ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC), 1989, Brisbane, at 313.

*crews could not film those in question entering and leaving the Commission.*¹⁵⁹

In its submission to this review, the QPS stated:

While the QPS acknowledges and supports the CJC's role in terms of identification of matters of serious public interest, the methods it uses to address these issues needs to be overtly cost-effective.

The CJC's power to hold public investigative hearings is a costly exercise, not only for the CJC, but all parties involved. As such, it is the QPS submission that this type of power should only be used where the CJC can show that other more cost-effective methods cannot deal with an issue. Before commencing public hearings, it needs to be demonstrated that the normal investigative method would be ineffective. The use of public hearings should be reserved for the gravest of issues that evidence shows are systemic problems or where it is clearly in the public interest to conduct them.

*The CJC runs the risk of losing public confidence and the process being seen as a significant waste of public funds. Public hearings may provide a high profile, but unless they can be shown to be clearly cost-effective, the entire process is left open to public ridicule.*¹⁶⁰

The CJC has defended its use of the power, arguing it has been sparingly used. The CJC responded to the QPS submission in the following terms:

*The CJC has made relatively little use of the public inquiry power, and only in matters where the full Commission considered that such a course was in the public interest. The only specific example suggested of an inappropriate use of the public hearing power is the Carruthers Inquiry, which is said to have cost millions of dollars "so one man could be charged with destroying a phone bill". As the QPS would be aware, the Carruthers Inquiry was set up to examine serious issues relating to alleged misconduct, electoral issues and other issues concerning proposed structural and staff changes at the QPS which could have substantially prejudiced the continued operation of the QPS. All other public inquiries undertaken by the CJC have involved similarly serious issues of public interest such as the misuse by police officers of information stored on QPS databases and the recent inquiry into electoral fraud.*¹⁶¹

In 1999-2000, ten hearings were held, two of which were public.¹⁶² The two public hearings comprised an inquiry into the strip-search practices of the QPS, and an inquiry into allegations of misuse by police officers of confidential police information. The CJC has also held a recent public inquiry into electoral roting allegations.

5.3.3 Analysis and comment

The concerns set out above and raised by the QLS regarding media coverage are canvassed elsewhere in this report.¹⁶³ They are included here as an example of the concerns that can arise when a body such as the CJC pursues a higher media profile, especially in relation to the conduct of public hearings. The Committee is of the view that where the CJC aims to be more proactive in its media dealings and seeks a higher media presence, there is an increasing onus on the CJC to ensure that in doing so it is acting responsibly and that it is having due regard to the rights of those being investigated.

¹⁵⁹ Queensland Law Society, submission, *Three Yearly Review of the Criminal Justice Commission*, dated 9 October 2000, Brisbane, at 3.

¹⁶⁰ Queensland Police Service, *Submission to the PCJC Review of the CJC*, dated July 2000, Brisbane, at 12.

¹⁶¹ CJC, *Comments on the Queensland Police Service Submission to the PCJC Three Year Review*, Brisbane, at 3.

¹⁶² CJC, *Annual Report 1999-2000*, 2000, Brisbane, at 33.

¹⁶³ See Chapter 12 (Corporate Infrastructure and Governance).

The Committee accepts that the investigative hearings do constitute only a small fraction of the investigations undertaken by the CJC.

Whilst it is sometimes difficult to assess whether or not a different approach would have proved more suitable in any particular instance, the Committee is not satisfied that the hearing power has been overused or abused by the CJC.

5.3.4 Conclusion

Conclusion 16

The Committee is not satisfied that the hearing power has been overused or abused by the CJC.

5.4 Controls on the present powers

5.4.1 Introduction

There are a number of accountability mechanisms and controls in place, both internal and external, which govern the exercise of the CJC's coercive powers.

The question of oversight of the CJC, in particular its accountability to the Parliamentary Criminal Justice Committee and to the Parliamentary Criminal Justice Commissioner, is considered in some detail elsewhere in this report.¹⁶⁴

5.4.2 The Public Interest Monitor

5.4.2.1 Introduction

The Public Interest Monitor also has a role in the oversight of the CJC. The office of the Public Interest Monitor is still relatively new, having been established as part of the major legislative review that occurred at the end of 1997. This new position was established to monitor, in the public interest, the use of listening devices, surveillance devices and covert search warrants. The first Monitor, Mr Richard Perry, took up his appointment in April 1998.

The Monitor is appointed pursuant to section 84A of the *Criminal Justice Act 1997*, as well as section 79 of the *Police Powers and Responsibilities Act 1997* and section 69 of the *Crime Commission Act 1997*.

5.4.2.2 Functions

The Monitor has virtually identical functions under each of these three Acts:

- under the *Criminal Justice Act 1989* in relation to applications for approval of listening devices brought by the Criminal Justice Commission (section 84B);
- under the *Crime Commission Act 1997* (CCA) in relation to applications for approval of surveillance warrants and covert search warrants brought by the Queensland Crime Commission (section 70); and
- under the *Police Powers and Responsibilities Act 1997* (PPRA) in relation to applications for approval of surveillance warrants and covert search warrants brought by the QPS (section 80).

¹⁶⁴ See Chapters 13 and 14 respectively.

The Monitor has the following express functions under section 84B(2) of the *Criminal Justice Act* (the Act):

- (a) *to monitor compliance by the commission with this Act in relation to matters concerning applications for approval for the use of listening devices; and*
- (b) *to appear at any hearing of an application to a Supreme Court judge for approval to use a listening device to test the validity of the application, and for that purpose at the hearing—*
 - (i) *present questions for the applicant to answer and examine or cross-examine any witness;*
 - (ii) *make submissions on the appropriateness of granting the application; and*
- (c) *to gather statistical information about the use and effectiveness of approvals for the use of listening devices; and*
- (d) *whenever the monitor considers it appropriate—to give to the parliamentary committee a report on non-compliance by the commission with this Act.*

Thus the Monitor both:

- appears at the hearing of Supreme Court applications by the CJC for approval to use listening devices (essentially to argue the public interest); and
- monitors the CJC's compliance with the Act in its use of such devices.

5.4.2.3 Analysis and comment

The Committee supports the role of the Public Interest Monitor in relation to the CJC as a valuable addition to the oversight regime.

The Committee notes the recent decision in the Court of Appeal in *Heery v. CJC*.¹⁶⁵ In this case, the Court considered the CJC's use of listening devices and the CJC's compliance with legislative requirements which had the effect of putting controls on the use of the power.

The CJC was investigating Matthew Heery in the context of the former Carruthers Inquiry. As part of the investigation, the CJC applied, pursuant to section 82 of the *Criminal Justice Act*, for a warrant or approval for a listening device in respect of premises occupied by Heery and another in Townsville.

On 3 July 1996, the CJC obtained from a Supreme Court judge an approval in the following terms:

Pursuant to section 82 of the Criminal Justice Act 1989 authority is granted to such persons as are authorised in writing by the Chairperson of the Criminal Justice Commission to:

- (a) *Enter and re-enter, using such reasonable force, as is necessary the premises specified in the affidavit of the applicant and the affidavit of Warren Geoffrey Strange, and to install, maintain, service and remove listening devices in and from these premises; and*
- (b) *Intercept, overhear, monitor and record private conversations by means of the said listening devices for a period of twenty-eight days from the date hereof in compliance with any order so granted.*

¹⁶⁵ [2000] QCA 511.

The document then went on to set out the conditions upon which the approval was given as to the dates between which the activity could take place and the provision of a report to the judge at the conclusion of the operation.

At the time the application was made, and so far as is relevant, section 82 was in the following terms:

82.(1) The Invasion of Privacy Act 1971, section 43(1) does not apply in relation to use of a listening device within the meaning of that Act by a person authorised in writing to do so by the chairperson in accordance with an approval of a judge of the Supreme Court given in relation to a particular matter specified in the approval.

(2) If the chairperson is satisfied by evidence on oath or affirmation, or by statutory declaration, that there are reasonable grounds for suspecting that use of a listening device may disclose information relevant to the subject matter of an investigation by the commission, the chairperson may apply to a judge of the Supreme Court for an order approving such use.

The exercise of the power was controlled at the time by legislative requirements for the procedure to be followed in obtaining an approval. Further control of the exercise of the power was found in section 123 of the Act, which provided:

Application pursuant to s 82

123.(1) An application made pursuant to section 82 shall be heard ex parte.

(2) No notice or report relating to the application shall be published and no record of the application or of any order made in the proceeding shall be available for search by any person, except by direction of a judge of the Supreme Court.

(3) Upon the application, the judge shall have regard to—

(a) the gravity of the subject matter of the investigation by the commission;

(b) the extent to which the privacy of any person is likely to be affected by use of a listening device in the particular case;

(c) the extent to which the commission's investigation is likely to be assisted by disclosure of information expected to be disclosed by use of a listening device.

(4) The applicant shall make full disclosure of all factors, of which the applicant is aware, both favourable and adverse to the making of the order sought by the applicant so that the judge may properly determine whether the order should be made.

(5) An order made on such application may confer on all officers of the commission, or any of them, such powers and authority as the judge considers appropriate in the public interest and specifies in the order in relation to the approved use of a listening device, including authority to enter upon any premises by such means, and using such reasonable force, as are necessary.

The importance of these restrictions and controls on the exercise of power by the CJC was discussed by the Supreme Court, and on appeal, in the Court of Appeal.

In the Supreme Court, Her Honour White J, made the following comment:

A citizen is entitled to the protection by injunction of the secrets of his or her private life...

In the Court of Appeal, His Honour, Thomas JA, made the following statements:

The grant of approval for the use of invasive devices of these kinds is a power that needs to be exercised with considerable caution. Judges, as designated persons with the authority to approve the performance of acts which would otherwise be unlawful, exercise considerable care in ensuring that appropriate limitations are attached to such approval.

Both the Supreme Court and the Court of Appeal found that the CJC had not complied with section 82 of the Act in obtaining approval for listening devices in this instance.¹⁶⁶

The Committee sees this case as highlighting the importance of controls on the use of coercive powers.

As noted by Justice White, the introduction of sections 84A-84D into the *Criminal Justice Act* in 1997, creating the Office of the Public Interest Monitor has been, '*of great assistance in balancing the competing interests of criminal investigation and the right to privacy.*'

5.4.2.4 Conclusion

Conclusion 17

The Committee supports the continuation of the present role of the Public Interest Monitor in oversight of the CJC.

5.4.3 Judicial controls on coercive powers

As can be seen, there are some judicial controls on the use by the CJC of some of its coercive powers.

In a written submission to the review, the QLS argued for an increase of judicial monitoring of those judicial powers. The Society submitted:

*The Society has long held the position that the coercive powers available to be exercised by crime fighting bodies such as the CJC should be subject to judicial monitoring. This was certainly the expectation of Mr Fitzgerald QC in his initial blueprint for the Commission (see his report at page 314). As the Criminal Justice Act currently stands, the Commission does not require any judicial approval or consent before exercising coercive powers such as issuing Notices to Produce and summonses to witnesses for investigative hearings. The CJC should have to apply to the Supreme Court for approval to exercise these powers, with such applications able to be examined and challenged as seen fit by the Public Interest Monitor. The Commission is no doubt confident of the integrity of its applications and should have no reservations regarding this proposal.*¹⁶⁷

In response to the QLS proposals that:

- an application to a Supreme Court judge be required before the CJC could use its coercive powers; and
- the Public Interest Monitor be able to scrutinise and oppose such an application,

the CJC stated:

This proposal has the potential to cause substantial prejudice to the operations of the CJC. The CJC issues over 470 Notices to Produce each year, and 215 summonses to witnesses. The

¹⁶⁶ The CJC has briefed the Committee on changes it had made to its procedures regarding such court applications, which the CJC claim address the deficiencies identified by the court in the Heery matter.

¹⁶⁷ Note 159 at 2.

*additional time involved in preparing a Supreme Court application in each matter would be substantial, and the cost of the PIM appearing on every such application would be prohibitive. The CJC's use of Notices and Summons is presently recorded in a register which is subject to audit and review by the PCJC, through the Parliamentary Commissioner, and the Commission would submit that this provides an appropriate and adequate level of external review.*¹⁶⁸

5.4.4 Analysis and comment

It is critical that there be an appropriate level of oversight of the CJC's use of its coercive powers. In respect of the use of some of those powers (for example, the use of a listening device), there is already the requirement that prior judicial approval be obtained. However, oversight mechanisms must not be unduly cumbersome.

The Committee is satisfied that there is no need for the procedure urged by the QLS. In particular, as noted by the CJC, its use of its powers in respect of Notices to Produce and Summons to Appear must be recorded in a register which is subject to audit and review by the Parliamentary Criminal Justice Commissioner and, through the Parliamentary Commissioner, this Committee.

These powers are less intrusive than, say, the power to use a listening device, which power is able to be exercised only with judicial approval, and is also subject to scrutiny by the Public Interest Monitor.

In those circumstances, there is no justification for the procedure suggested by the QLS, which would no doubt involve both the CJC and the Public Interest Monitor (and indeed the Supreme Court) in considerable extra effort and cost with, on balance, no real added benefit.

5.5 Possible extension of coercive powers

5.5.1 Introduction

The CJC has on a number of occasions in recent years argued that further coercive powers be granted to it. In particular, it has sought:

- the power of telecommunications interception; and
- the power to use visual surveillance devices.

5.5.2 Telecommunications Interception

5.5.2.1 Background

In its 1995 report *Telecommunications Interception and Criminal Investigation in Queensland: a Report*, the CJC recommended that it (and the QPS) be given the power of telecommunications interception (phone tapping).¹⁶⁹ The CJC repeated this recommendation in its submission to the Connolly / Ryan Inquiry¹⁷⁰ and in its submission to the third PCJC's three yearly review.¹⁷¹ More recently, the CJC has reiterated its call to be given this power in a submission to the present Committee's hearings on telecommunications interception in late 1999, and in its submission to the

¹⁶⁸ CJC, *Comments on the Queensland Law Society's Submission to the PCJC Three Year Review*, Brisbane, at 1.

¹⁶⁹ CJC, *Telecommunications Interception and Criminal Investigation in Queensland: A Report*, 1995, Brisbane, at 39.

¹⁷⁰ CJC, *Criminal Justice Commission Submission to the Commission of Inquiry into the Effectiveness of the Criminal Justice Commission*, 1997, Brisbane, at 63.

¹⁷¹ CJC, *CJC Submission to the Three Yearly PCJC Review of the Criminal Justice Commission*, 1998, Brisbane, at 7.

present review.¹⁷² The second PCJC conducted a review of the CJC's report, and then issued its report based on that review, in May 1995.¹⁷³ The second PCJC was satisfied that:

- the capacity of the QPS and CJC to combat crime, especially major and organised crime, will be enhanced by providing these agencies with the power to intercept telecommunications;
- telephone tapping is equally as intrusive although more cost effective than other electronic surveillance procedures already permitted under Queensland law;
- the *Telecommunications (Interception) Act 1979* (Cth) contains inadequate mechanisms for protecting privacy and for ensuring that the power to intercept telecommunications is not abused;
- it would be inappropriate and impractical for the QPS and the CJC to have to rely solely on co-operation with Commonwealth law enforcement agencies to access the powers of the *Telecommunications (Interception) Act 1979*; and
- with further safeguards, the power should be granted to the QPS and the CJC.¹⁷⁴

5.5.2.2 Previous consideration by the present Committee

The present Committee examined this issue extensively in late 1999. It recommended that the CJC be given the power of telecommunications interception, with safeguards.¹⁷⁵ The Committee was satisfied that the ability of the CJC and other Queensland law enforcement agencies (that is, the QPS and the QCC) to combat crime, especially major and organised crime, would be enhanced by giving such agencies the power.

In its submission to the present review, the CJC sought the Committee's continued support for its request to be granted the power, and for it to be able to '*establish a suitably secure and independent telephone interception facility, rather than a shared facility with the QPS and/or the QCC.*'¹⁷⁶

In its Report No. 50, this Committee recommended that the CJC should be able to operate its own separate interception facility, but should, wherever appropriate, co-operate with other agencies to the fullest extent possible, with a view to the maximisation of efficiencies and the minimisation of costs.¹⁷⁷

The Committee notes that Queensland is now the only Australian state which has not enacted appropriate legislation that would allow law enforcement agencies to intercept telecommunications.

The Committee maintains the views and recommendations contained in its Report No. 50.

5.5.2.3 Conclusion

Conclusion 18

The Committee is satisfied that the CJC's ability to carry out its functions would be enhanced by giving it the power of telecommunications interception. The Committee is further satisfied that appropriate safeguards and controls on the use of such power are available.

¹⁷² CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane, at 48.

¹⁷³ PCJC, *A Review of the Criminal Justice Commission's Report on Telecommunications Interception and Criminal Investigation in Queensland*, Report No. 29, Legislative Assembly of Queensland, 1995, Brisbane.

¹⁷⁴ Note 173 at 32.

¹⁷⁵ PCJC, *A Report on the Introduction of the Telecommunications Interception Power in Queensland – balancing investigative powers with safeguards*, Report No. 50, Legislative Assembly of Queensland, 1999, Brisbane, at 20.

¹⁷⁶ Note 172 at 48.

¹⁷⁷ Note 175 at 40

5.5.2.4 Recommendations

Recommendation 12

The Committee recommends that the CJC be given the power of telecommunications interception, with safeguards, as set out in the Committee's Report No. 50.

Recommendation 13

The Committee recommends that the CJC be able to operate its own interception facility, and receive appropriate funding to allow it to do so.

Recommendation 14

The Committee recommends that the CJC should, in relation to any telecommunications interception activities, wherever appropriate co-operate with other agencies to the fullest extent possible, with a view to the maximisation of efficiencies and the minimisation of costs.

5.5.3 Visual surveillance devices

5.5.3.1 Background

In its submission to the Connolly / Ryan Inquiry, the CJC recommended that it be given the power to use visual surveillance and tracking devices.¹⁷⁸ Both the QPS and the QCC now have the power to use visual surveillance devices. The CJC has repeated its call for this power in its submissions both to the previous three yearly review¹⁷⁹ and to the present review.¹⁸⁰ In its submission to this review, the CJC notes that:

This would bring the provisions governing the CJC's use of surveillance devices in line with the provisions governing the use of such devices by the Queensland Police Service and the Queensland Crime Commission under their respective legislation.¹⁸¹

5.5.3.2 Analysis and comment

It is true that to give this power to the CJC would bring it into line with Queensland's other two law enforcement agencies. However, the Committee notes that this of itself is not sufficient reason for the CJC to be given the power. Consideration must still be given to the issue of whether or not it is appropriate for the CJC to be given the power. This involves a consideration of whether the public would benefit from the CJC having the power, and balancing that benefit against any interference with the privacy of the individual and any risk of the power being abused.

At the hearings held as part of this review, the then Public Interest Monitor, Mr Richard Perry, supported the grant of this power to the CJC, in these terms:

I have said repeatedly that the Criminal Justice Commission should have access to the same covert surveillance powers that the other agencies do. At the moment, they do not in this respect: they have no covert search powers under their own Act and they have no video surveillance powers under their own Act. If they wish to utilise those powers, they have to use the Police Powers Act. It seems to me to be a curious notion that an agency which is set up

¹⁷⁸ Note 170 at 65.

¹⁷⁹ Note 171 at 7.

¹⁸⁰ Note 172 at 46.

¹⁸¹ Note 172 at 46.

*under its own legislative scheme should have to access other provisions which have other preconditions for the grant of such powers in order to utilise them. So there should be, it seems to me, really no resistance at all to the notion that the Criminal Justice Commission should have the same sorts of powers that the other agencies have.*¹⁸²

At the hearings the CJC Chairperson, Mr Brendan Butler, SC stated:

The position really arises like this: the CJC legislation of course is longstanding legislation that provides the CJC with jurisdiction to obtain listening device warrants from Supreme Court judges in respect of its investigations; that is, investigations within our jurisdiction—that is, the misconduct jurisdiction. At the time when the CJC got that power which was drafted following the Fitzgerald inquiry, it was the only law enforcement body in Queensland that had it.

Since that time, powers have been extended to the Police Service and to the Crime Commission to obtain listening device and surveillance warrants. In that legislation the focus has been upon the jurisdiction of those bodies which relates to major and organised crime, and the relevant definition which limits that jurisdiction is within that Police Powers and Responsibilities Act, which was drafted, of course, under the responsibility of the Police Service and had a focus upon the needs of the police and their jurisdiction.

*That definition is just not adequate for the CJC. Indeed, if there were consistency in that regard, the CJC in effect would lose its ability to conduct this sort of covert activity within its misconduct jurisdiction. It is as simple as that. That was not clearly acknowledged by Mr Perry, but it is the fact. The CJC would contend that the jurisdiction that it has in relation to this is one that has been used selectively but effectively over time*¹⁸³

The Committee is satisfied that the CJC's ability to perform its functions would be enhanced were it to have the power to use visual surveillance devices. Importantly, the Committee is also satisfied that adequate oversight mechanisms are available to safeguard against any possible abuse of the power. Such mechanisms ought to include:

- the need to apply to a Supreme Court judge for approval to use a visual surveillance device (similar to the requirement in section 82(1) of the *Criminal Justice Act* in relation to listening devices);
- a requirement for the CJC chairperson to first be satisfied that there are reasonable grounds for suspecting that use of such a device may disclose information relevant to a CJC investigation (similar to the requirement in section 82(2) of the Act in relation to listening devices);
- statutory restrictions on the use which can be made of any material obtained by use of the device (similar to the restrictions in section 83 of the Act in relation to listening devices);
- the role of the Public Interest Monitor both in appearing at such applications and in monitoring compliance by the CJC with the relevant provisions of the Act (similar to the role performed in respect of listening devices pursuant to section 84B of the Act, and referred to elsewhere in this report¹⁸⁴); and
- the general oversight of the CJC's activities by the Parliamentary Criminal Justice Committee and the Parliamentary Criminal Justice Commissioner.

In its submission to the review, the CJC suggested that section 82 of the Act, which presently deals only with listening devices, be amended, so that it refers to surveillance devices, with there to be a

¹⁸² PCJC, Transcript of Public Hearing - Three Yearly Review of the CJC, 14-15 December 2000, Brisbane, at 74.

¹⁸³ Note 182 at 115.

¹⁸⁴ See paragraph 5.4.2

definition of 'surveillance device' inserted.¹⁸⁵ It was suggested that the definition could be similar to that contained in the *Crime Commission Act 1997*:

"surveillance device" includes—

- (a) a listening device; and*
- (b) a visual surveillance device; and*
- (c) a tracking device; and*
- (d) a device containing any combination of the devices mentioned in paragraphs (a), (b) and (c).*

The Committee agrees that this approach would be an appropriate manner in which to give the power to the CJC. It would also be necessary to have consequential amendments to section 83 of the Act (regarding the use of information disclosed) and sections 84A, 84B, and 84C (dealing with the role and powers of the Public Interest Monitor).¹⁸⁶

5.5.3.3 Conclusion

Conclusion 19

The Committee believes that it is appropriate that the CJC have the power to use visual surveillance devices, under a similar regime to that which presently operates in respect of listening devices.

5.5.3.4 Recommendations

Recommendation 15

The Committee recommends that the *Criminal Justice Act* be amended so as to allow the Chairperson of the CJC to apply to the Supreme Court for approval to use visual surveillance devices.

Recommendation 16

The Committee further recommends that the same oversight mechanisms and controls that presently operate in respect of the CJC's power to use listening devices, in particular the role of the Public Interest Monitor, also apply to any power of the CJC to use a visual surveillance device.

¹⁸⁵ Note 172 at 46.

¹⁸⁶ See further discussion at 15.14

6. THE INTELLIGENCE FUNCTION

6.1 Introduction

This chapter examines the role and function of the Intelligence and Information Division of the CJC. The chapter concentrates on the intelligence function, with matters of information technology and management considered in chapter 12 (Corporate Infrastructure and Governance). This chapter considers the structure of the Division, including recent changes, before examining its intelligence operations. Attention is then turned to a number of issues regarding the intelligence function of the CJC, including:

- whether it is appropriate that the CJC continue to have an intelligence function independent of other agencies and continue to have its own intelligence database, not accessible to other agencies;
- whether the recent changes to the structure and approach of the intelligence unit have been beneficial;
- whether there has been appropriate sharing of intelligence between the CJC and other agencies; and
- whether there has been undue duplication of intelligence holdings by the CJC and other agencies.

6.2 Background

In his report, Fitzgerald QC made the following comments regarding the need for an intelligence function:

Comprehensive accurate information is essential to combating crime, especially organised crime. Yet our national system of sharing and acting on intelligence about crime is hopelessly inadequate.

A fragmented, inefficient or incomplete intelligence gathering network is an enormous reassurance for organised criminals. It means that essential connections will be missed, and only an incomplete and distorted picture will be gained of their activities.

As it stands, Australian law enforcement agencies and Government instrumentalities are fragmented and hampered by jealousies, rivalries and lack of co-operation. Information exchange, when it happens at all, is on an ad hoc basis.

Our law enforcement agencies are failing to keep up with organised crime. As a result, criminal organisations are flushed with increasing profits, more adept staff and the latest equipment.

*This is happening at the same time as law enforcement agencies are becoming increasingly under-staffed, under-equipped and poorly financed.*¹⁸⁷

He recommended that the CJC have an intelligence unit of its own, to:

...provide an effective criminal intelligence service as the hub of an integrated approach to

¹⁸⁷ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC), 1989, Brisbane, at 168.

*major crime, especially organised crime, and criminal activity transcending the normal boundaries associated with local policing. Its own intelligence data base and information gained from other sources, particularly the Official Misconduct Division, will be of the highest sensitivity, and must be carefully secured, to ensure only those individuals with a need to access the material are able to do so. It must have unqualified access to the whole gamut of intelligence sources of all sorts, including those of the Queensland Police and from Inter-state and Commonwealth sources.*¹⁸⁸

6.3 The Criminal Justice Act 1989

This recommendation was incorporated into the *Criminal Justice Act 1989* (the Act).

As a result of the transfer of the jurisdiction in respect of organised crime to the Queensland Crime Commission (from May 1998), the CJC's responsibility in respect of intelligence changed. Section 23(d) of the Act now provides that the CJC's responsibilities include:

Undertaking intelligence activities to support its responsibilities in relation to official misconduct or alleged or suspected misconduct by members of the police service.

Section 58 of the Act sets out the role and functions of the Intelligence Division. That section was also amended upon the creation of the Queensland Crime Commission (QCC), to take into account the fact that the CJC no longer had jurisdiction over organised crime.

Section 58(2) of the Act now provides:

It is the function of the intelligence division –

(a) to build up a database of intelligence information concerning official misconduct and persons concerned in official misconduct or alleged or suspected misconduct by members of the police service, using for the purpose information acquired by it from-

- (i) its own operations;*
- (ii) the official misconduct division of the commission;*
- (iii) the police service;*
- (iv) sources of the Commonwealth or any State or Territory, which supplies such information to it;*
- (v) any other source available to it;*

and to disseminate such information to such persons, authorities and agencies, and in such manner, as the commission considers appropriate to the discharge of its functions and responsibilities;

(b) to retain possession and control of all data and records of the commission of inquiry continued in being by the Commission of Inquiry Continuation Act 1989 that relate, wholly or partly, to official misconduct;

(c) to secure such database and records in its possession and control so that only persons who satisfy the director of the intelligence division or the chairperson that they have a legitimate need of access to the same are able to have access to them.

¹⁸⁸ Note 187 at 317.

6.4 Changes in the CJC's intelligence role

As mentioned, since the last review the CJC has lost jurisdiction in relation to major and organised crime, responsibility for which now rests with the QCC. As expected, this has resulted in a considerable reduction in the necessary intelligence holdings of the CJC. The Consultancy Bureau review estimated that some 40% of the holdings were no longer needed.¹⁸⁹

A further estimated 20% of the holdings was assessed as needing both to remain on the CJC's database and to be transferred to the Queensland Crime Commission's holdings.

Since the creation of the QCC, the focus of the CJC's intelligence work has shifted from broad criminal intelligence to intelligence more specifically connected to the CJC's jurisdiction in respect of official misconduct.¹⁹⁰

The CJC's recently acquired jurisdiction over correctional centres has meant a corresponding increase in the CJC's intelligence role.

On a more philosophical or policy level, the CJC has increased its focus on strategic intelligence, that is, intelligence aimed at identification of long-term trends or patterns, with a view to aiding in the development of long-term strategy and policy. This accords with the CJC's recent increase in emphasis on a more proactive and integrated approach to its responsibilities, including investigations.

6.5 Structure and resources of the Division

There have been extensive structural changes to the then Intelligence Division since the last review. The genesis of these changes lies both in the recommendations of the organisational review in 1998¹⁹¹ and in the shift to a more integrated proactive approach noted above.

The principal structural change was the creation of a single organisational unit styled the Intelligence and Information Division.

Other structural changes which reflect the philosophical shift in emphasis include:

- the recent decision to permanently locate a number of intelligence officers in the multi-disciplinary teams in the Official Misconduct Division;
- the establishment of the new Proactive Assessment Unit, a multidisciplinary team within the Intelligence and Information Division;
- the removal of the information management and technology functions from the Corporate Services Division and the creation of a merged Intelligence and Information Division; and
- placing the CJC's security functions in this new division.

Director of the Intelligence and Information Division, Mr Paul Roger, outlined the new structure and functions to the Committee at the hearings held as part of this review:

.... the Proactive Assessment Unit is a relatively new initiative designed to develop and implement methods for proactive investigation of corruption and other official misconduct. The

¹⁸⁹ Consultancy Bureau, *Report on an Organisational Review of the Criminal Justice Commission*, (unpublished), 1998, Brisbane, at 49.

¹⁹⁰ PCJC, Transcript of Public Hearing - Three Yearly Review of the CJC, 14-15 December 2000, Brisbane, at 24.

¹⁹¹ Note 189.

PAU incorporates a proactive assessment capability, a strategic intelligence capability and a target development capability.

The Information Retrieval Section provides centralised expertise in accessing a wide range of internal and external data from sources available to the CJC. The unit is located centrally and is the central liaison point between the CJC and the various agencies who we have contact with and we conduct inquiries with in relation to their information holdings.

Access to a number of data sources is governed obviously by legislative requirements in relevant jurisdictions. In this respect, the Information Retrieval Section provides a fully documented procedure for all requests for information and all responses received. This in turn facilitates our internal audit processes to ensure that access to information is in accordance with legislative requirements and only for the purpose of the CJC's investigations. The Parliamentary Commissioner obviously pays attention to that area of our work when conducting annual audits. Unfortunately, information today is rarely free. A number of agencies have user-pays provisions. In this respect the IRS maintains the CJC's centralised budget for all information retrieval searches.

The Intelligence Support Section consists of two officers and is responsible for the maintenance and administration of the CJC's database of intelligence information. As the Committee is aware, the CJC upgraded its database earlier this year to enable it to continue to keep pace with developments in technology. The Committee was recently given a full demonstration of this database and its capabilities. I am pleased to advise you today that early next year the database will be further upgraded to incorporate a number of additional analytical functions which are not available in the current version.

Finally, the Security Section consists of the CJC's security manager and security supervisor, who have responsibilities for all aspects of the CJC's protective security. This includes the security of the CJC's physical premises, its assets and its information and the integrity of its staff. Pre-employment vetting, security awareness and training and the monitoring of compliance with the CJC's security policies falls within this area's duties. The move to the CJC's new premises enabled a significant upgrade of the CJC's security environment. I am pleased to advise the Committee that relatively few minor security infringements have been detected during the past year.¹⁹²

The Consultancy Bureau noted that changes in recent years which have impacted on the CJC's intelligence function include:

- loss of responsibility for organised and major crime;
- loss of the function of overseeing the intelligence functions of the QPS (this function now resting with the Parliamentary Commissioner); and
- the CJC's new responsibilities in relation to correctional centres.¹⁹³

The Consultancy Bureau Report noted that it was estimated that some 40% of the CJC's intelligence database would no longer be relevant to the CJC as a result of its loss of responsibility in relation to areas of major and organised crime.¹⁹⁴

A further proportion of the CJC's holdings – estimated at 20% of the then database – involved intelligence material that would be needed by both the QCC and the CJC.

¹⁹² Note 190 at 25.

¹⁹³ Note 189 at 49.

¹⁹⁴ Note 189 at 49.

The *Crime Commission Act 1997* (Qld) not only passed responsibility for these areas to the QCC, it specifically provided in section 28(1)(e), for the QCC to ‘*maintain an effective intelligence service about relevant criminal activity and major crime.*’

The Consultancy Bureau Report recommended a reduction in staffing levels for the unit from the then level of 22 to 17. The level had previously been 27 positions, dropping to 21 as at 1 July 1998.¹⁹⁵ The present staffing level has been reduced to 17.

6.6 Need for the CJC’s separate intelligence role

6.6.1 Background

The previous Committee in its three yearly review stated:

The Commission must retain a separate intelligence function to support its investigations and to conduct its own research and analysis of relevant emerging patterns and trends.

*The Committee concludes that given its unique jurisdiction to investigate corrupt activity and official misconduct within the public sector, the police service, and now the Crime Commission, it is essential that the Commission retain its own confidential intelligence database separate from the other law enforcement agencies.*¹⁹⁶

Ms Irene Moss AO, Commissioner of the New South Wales Independent Commission Against Corruption (ICAC), has recently described the need for an anti-corruption body to have access to a skilled intelligence unit, stating:

*We need "top notch" analysis and intelligence capabilities, and we need to be more than a step ahead in every respect if we're going to continue to have an impact. The nature of ICAC's functions and operations only makes the need for more strategic and creative options all the more apparent. We need to be on top of trends and patterns and we need to recognise that as we've become smarter so have the people we're investigating.*¹⁹⁷

6.6.2 Analysis and comment

The CJC similarly needs to be ahead of those it investigates. Notwithstanding the fact that the CJC no longer has jurisdiction in relation to organised crime, the Committee considers that to be in such a position the CJC requires the support of its own intelligence unit.

The Committee has no doubt that effective and secure intelligence support is of vital importance to combating misconduct and criminal activities, including corruption.

The support of its own dedicated intelligence unit particularly enhances the CJC’s recent changed emphasis in approach, with an increased reliance on an integrated multi-disciplinary approach and the use of proactive methods of combating corruption. It is appropriate that the CJC continue to have its own intelligence database, which cannot be accessed by other agencies. This aids the CJC in its unique jurisdiction, and also enhances security.

¹⁹⁵ Note 189 at 50.

¹⁹⁶ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 45, Legislative Assembly of Queensland, 1998, Brisbane, at 124.

¹⁹⁷ Speech by Ms Irene Moss AO, Commissioner, NSW Independent Commission Against Corruption, *The Powers and the Powerful: The Challenges for Anti-Corruption Bodies*, Transparency International Australia Annual General Meeting, 9 November 2000, accessed 1/2/01, http://www.transparency.org.au/documents/irene_moss_speech.html.

Given that the CJC's jurisdiction includes the investigation of allegations of misconduct against officers of the QPS and the QCC, it is clearly inappropriate that such officers have access to the CJC's intelligence database.

6.6.3 Conclusion

Conclusion 20

The Committee is satisfied that the Criminal Justice Commission ought to continue to have its own dedicated intelligence function, with its own discrete intelligence database.

6.6.4 Recommendation

Recommendation 17

The Committee recommends that the Criminal Justice Commission continue to have a dedicated intelligence unit, independent of other agencies, and maintain its own intelligence database.

6.7 Security of material

It is self-evident that security of intelligence material is critical, both from the point of view of not compromising CJC activities, and ensuring that the individual's right to privacy is protected.

The Committee has no evidence of any breaches of security in this respect, and on the available material is satisfied both that the CJC is aware of the critical importance of security of its intelligence information, and that it takes every precaution with the material it gathers.

6.8 Relations with other agencies

6.8.1 Introduction

The Committee supports cooperative actions between the CJC and other agencies in relation to their intelligence functions.

The CJC advises that it continues to co-operate with other agencies on intelligence matters. The CJC advised the Committee:

We continue to share intelligence with other agencies where the information is relevant to other jurisdictions. Examples of such sharing are seen in our frequent self-initiated disseminations to agencies such as the QPS and the QCC and also in our timely responses for requests for information from similar agencies. During the period from January 1998 to June 2000, we disseminated 190 items of intelligence on our own initiative and received 341 requests for information to which 219 positive responses were provided.¹⁹⁸

6.8.2 Oversight of the intelligence function by the Parliamentary Criminal Justice Commissioner

With the creation of the office of the Parliamentary Criminal Justice Commissioner, specific provision has been made regarding the accountability of the CJC (as well as the QPS and the QCC)

¹⁹⁸ CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane, at 31.

in respect of its intelligence function and in particular its relationship with other agencies. Section 61 of the *Crime Commission Act 1997* provides:

- (1) *The parliamentary commissioner must conduct an annual review of intelligence data in the possession of QCC, the police service and the CJC (each an “agency”).*
- (2) *The purposes of the review are—*
 - (a) *to consider whether intelligence data held by each agency is appropriately held by the agency having regard to the agency’s functions; and*
 - (b) *to consider whether there is unnecessary duplication of intelligence data held by the agencies; and*
 - (c) *to consider whether the agencies are working cooperatively as partners to achieve optimal use of—*
 - (i) *available intelligence data; and*
 - (ii) *the resources used to collect, collate or record the data; and*
 - (d) *to consider whether an agency is placing inappropriate restrictions on access to intelligence data by other agencies.*
- (3) *The parliamentary commissioner must—*
 - (a) *prepare written advice on the review containing the commissioner’s findings and recommendations; and*
 - (b) *give the advice to the management committee.*
- (4) *The advice must be prepared in general terms in a way that does not disclose intelligence data or other confidential information.*

Upon conducting such an audit, the Parliamentary Commissioner is not required to report to this Committee. Thus, this Committee has no direct knowledge of the results of such audits.

However, in evidence taken before the Committee at a public hearing, the Committee was advised by the CJC that the results of the two annual audits conducted by the Parliamentary Commissioner to date were that there was no unnecessary duplication of holdings amongst the agencies, no inappropriate restrictions on access by other agencies, and no indication that there was other than the appropriate levels of co-operation between the CJC and the other agencies, namely the QPS and the QCC.¹⁹⁹

Further, the Director of the CJC’s Intelligence and Information Division, Mr Roger, stated:

*We will continue to work with the other agencies, but nobody has ever brought to my attention that there is anything wrong with the way things are happening. I support that every agency needs its own analysts and needs its own intelligence capabilities.*²⁰⁰

¹⁹⁹ Note 190 at 26 and at 27-28.

²⁰⁰ Note 190 at 28.

6.8.3 Analysis and comment

Whilst it is to be expected that there will on occasion be some duplication of data of the various agencies – and appropriately so – it is important that there be no unnecessary duplication. It is also essential that the agencies cooperate to the fullest extent possible, and that an agency does not unduly restrict another agency in access to intelligence material.

There is no evidence before the Committee that the CJC has not acted appropriately in relation to co-operation with other agencies or undue duplication of intelligence data.

As noted above, there is no provision for the results of the annual audits carried out by the Parliamentary Commissioner to be made available to this Committee, notwithstanding this Committee's role of monitoring and reviewing the CJC. The Committee believes that its ability to discharge this role would be increased were it to have access to such results.²⁰¹

6.8.4 Conclusions

Conclusion 21

The Committee is satisfied, on the available information, that there is nothing to suggest that the CJC is acting inappropriately in so far as co-operation and sharing of intelligence information with other agencies, and the avoidance of unnecessary duplication, are concerned.

Conclusion 22

The Committee believes that its ability to properly discharge its function of oversight of the CJC would be enhanced if the results of the annual audit of the Parliamentary Commissioner pursuant to section 61 of the Crime Commission Act 1997 were provided to the Committee.

Conclusion 23

The Committee is satisfied that the present relationship between the CJC and other law enforcement agencies, specifically the Queensland Police Service and the Queensland Crime Commission, is working well, and has no evidence of any lack of co-operation by the CJC with the other agencies, nor of any inefficient duplication of resources or functions

6.8.5 Recommendation

Recommendation 18

The Committee recommends that section 61 of the *Crime Commission Act 1997* be amended to provide that a copy of the written advice required by section 61(3) in respect of the Criminal Justice Commission is to be provided to the Committee.

6.9 Submission suggesting possible inefficiencies in CJC intelligence operations

6.9.1 The submission

The QPS in its submission to this review stated, in reference to the CJC's intelligence work:

The QPS has provided its ESC with an intelligence capacity to provide similar functions. This

²⁰¹ This issue is explored in more detail in paragraph 16.4 below.

unit is staffed by the equivalent of 2.6 full time positions at an approximate cost of \$150,000 per annum.

The QCC employs 12 staff to fulfil its functions, which include, pursuant to the Crime Commission Act 1997 at section 28(1)(e) and (f):

to maintain an effective intelligence service about relevant criminal activity and major crime, and to monitor the intelligence data collected with a view to forecasting trends in relevant criminal activity and major crime; and

to liaise with, provide information to, and receive information from, other law enforcement agencies, including agencies outside the State or Australia, about relevant criminal activity and major crime.

Indications are that the CJC has some 19 staff employed in an intelligence role. The salary costs associated with the employment of 19 staff in this role would be over \$1 million per annum.

Intelligence is an integral part of any program to prevent official misconduct and corruption. However, the area of official misconduct and corruption is no more complex than major or organised crime, criminal paedophilia, serious white collar crime and a range of other social problems that law enforcement agencies are faced with.

This is an area where the PCJC may wish to recommend that an independent review be undertaken or that the use of resources in this area be examined in detail.²⁰²

6.9.2 The CJC's response

The CJC has rejected this criticism. At the Committee's hearings, the CJC asserted²⁰³ that the QPS submission did not provide a fully accurate description of the relative intelligence staffing levels of the two agencies, on the basis that the QPS submission, in making reference only to intelligence personnel attached to the Ethical Standards Command, ignored intelligence personnel in other areas of the QPS, including the Bureau of Criminal Intelligence. It was inappropriate, said the CJC, to compare the staffing numbers set out in the QPS submission (which do not equate to the total QPS staff engaged in intelligence) with those of the CJC's intelligence division.

6.9.3 Analysis and comment

Having considered the submission of the QPS, and the CJC's response, the Committee is not satisfied that there is any need to examine in detail the use of CJC resources with respect to its intelligence function as sought by the QPS in its submission.

6.10 Effects of recent structural changes

6.10.1 The Committee's view

Too little time has passed since the structural changes impacting on the CJC's intelligence function were put in place to properly allow for an assessment of their effectiveness. There is reason to believe that the changes will enhance the CJC's performance of its functions in an integrated and proactive manner. As with other aspects of the recent restructure of the CJC, the Committee

²⁰² Queensland Police Service, *Submission to the PCJC Review of the CJC*, dated July 2000, Brisbane, at 17.

²⁰³ Note 190 at 26.

believes it is appropriate that its successor carefully monitor the effects of the changes on the efficient discharge of the intelligence function of the CJC.

6.10.2 Recommendation

Recommendation 19

The Committee recommends that the next Parliamentary Criminal Justice Committee take steps to carefully monitor the effects of the recent structural changes on the efficient and effective discharge of the intelligence function of the Criminal Justice Commission.

7. THE RESEARCH FUNCTION

7.1 Introduction

The Fitzgerald Report recommended that the proposed Research and Coordination Division should take a system-wide role in independently reviewing, researching, and reporting to Parliament and relevant agencies on the operation and performance of the police service and the broader criminal justice system.

The Research and Coordination Division was renamed the Research Division by virtue of the *Criminal Justice Legislation Amendment Act 1997*, which made several amendments to the Division's functions.

In 1998, following the recommendations of a consultant's review of the CJC's organisational structure and corporate strategy, the existing Corruption Prevention Division was amalgamated with the Research Division to form the Research and Prevention Division.²⁰⁴

In broad terms, the Research and Prevention Division researches matters affecting the administration of criminal justice and the enforcement of criminal law in Queensland, reviews and monitors the work of the Queensland Police Service (QPS), works with police and managers of public sector agencies to prevent corruption in the workplace, and recommends reforms of criminal law and criminal justice administration.

Although there is clear overlap between the CJC's corruption prevention role and its research function, the corruption prevention functions are discussed separately in more detail at Chapter 8 of this report. The remainder of this chapter will focus on the CJC's research functions.

7.2 Background

7.2.1 The Fitzgerald Report

In its model of the Criminal Justice Commission, the Fitzgerald Report identified the need for a research function to be attached to the CJC. The Fitzgerald Inquiry identified problems that may arise in the absence of independent research generally. The Report stated:

*Public servants used to dealing with a particular Government tend to give advice which supports predetermined policies. The process of giving advice becomes incestuous. It is more about confirming opinions than challenging them. Research or new information, if it manages to penetrate at all, is rejected if it does not fit with the rigid but unwritten agenda.*²⁰⁵

In relation to the need for research and review in criminal law and justice, the Fitzgerald Report made the following comments:

The administration of criminal justice involves dealing with deep and peculiar problems which are not addressed by ad hoc responses to issues by individual agencies.

There is a need for continual review of the suitability of criminal law, the exercise of

²⁰⁴ Consultancy Bureau, *Report on an Organisational Review of the Criminal Justice Commission*, (unpublished), 1998, Brisbane.

²⁰⁵ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC 1989), Brisbane, at 130.

*investigative powers, the effective use of resources. Research is required in the changing nature and incidence of crime, the roles and methods of various agencies and how their efforts are best coordinated.*²⁰⁶

The Fitzgerald Report identified a need for an independent agency to continually address matters relevant to the criminal law and proposed that a Research and Coordination Division, comprising a multi-disciplined group of professionals, be established. The functions of this Division were to:

- *define emerging trends in criminal activity including organised crime, identify competing needs and establish priorities for the allocation of law enforcement resources;*
- *develop compatible systems for and foster co-operation between law enforcement, prosecution, judicial, and corrective services agencies to promote optimum overall use of available resources;*
- *coordinate and develop procedures and systems for coordinating the activities of the Commission;*
- *provide information to the Parliament, judiciary, law enforcement and prosecution agencies in relation to criminal justice matters;*
- *co-ordinate with other Government departments with respect to criminal justice related issues;*
- *research and recommend law reform pertinent to criminal justice and reform of administrative processes to enforce criminal law;*
- *review the effectiveness of Police Department programs and methods on a continuing basis, especially compliance with Commission recommendations or policy instructions, relating to community policing and prevention of crime, and those related to selection, recruitment, training and career progression of police officers and supporting staff;*
- *review Police Department use or treatment of criminal intelligence including oversight as required by the Intelligence Division; and*
- *report to the Commission on all the above to aid its determinations and alert it as necessary.*

Fitzgerald went on to set out further features of the model:

Amongst its other activities the Division will prepare draft reports and directions for the Commission to the Commissioner of Police detailing the trends, opportunities or problems observed, and preferred courses of response or remedial action.

An important part of this process will be the prompt and accurate identification of the extent and nature of resources required within the Police Department to carry out policing programs considered essential in the community interest.

The Division will also provide progress reports to the CJC regarding the implementation of changes and the impact of CJC directives within the Police Department...

The Division's role will be flexible, may be expanded and may embrace liaison with similar research and co-ordination specialist bodies...

*Its role will be to supplement and complement research and the activities of other efficient, productive agencies elsewhere and relate that to State needs, rather than to duplicate or replicate their functions in Queensland.*²⁰⁷

²⁰⁶ Note 205 at 316.

²⁰⁷ Note 205 at 317-318.

Although the structure of the Division has been altered from the Fitzgerald Report's model, these basic functions continue to apply.

7.2.2 *The Criminal Justice Act 1989*

The Fitzgerald Report's proposals for the Division were largely incorporated into sections 56 and 57 of the *Criminal Justice Act*. These provisions were amended by the *Criminal Justice Legislation Amendment Act 1997* in some significant respects.

The current role and functions of the Research and Prevention Division are set out in section 56 of the Act which reads as follows:

Division 6 - Research Division

Role and Functions

56.(1) *The research division is the unit within the commission that, in accordance with any directions of the commission, will —*

(a) conduct research into the problems that from time to time beset, or could beset, the administration of criminal justice in the State;

(c) make known its findings on matters relating to the system of criminal justice in the State to the commission and, with the commission's approval, all other agencies in the State concerned with the administration of criminal justice in the State.

(3) *It is the function of the division, in accordance with any directions by the commission—*

(b) to research trends in criminal activity, in particular any trend to organised crime, to identify competing needs, and to establish priorities for allocation of resources for enforcement of the criminal law;

(c) to research available resources with the objective of fostering cooperation between, agencies for—

(i) law enforcement; and

(ii) prosecution of offenders; and

(iii) judicial administration; and

(iv) corrective services;

with a view to securing optimum use of available resources;

(d) to research and make recommendations on —

(i) law reform pertinent to criminal justice; and

(ii) reform of processes of enforcement of the criminal law;

(e) to inform the parliamentary committee, the judiciary, and agencies for enforcement of the criminal law or prosecution of offenders in relation to matters affecting criminal justice;

(f) to review on a continuing basis the effectiveness of programs and methods of the police department, in particular in relation to —

(i) compliance by the department with the commission's recommendations or policy instructions;

(ii) community policing;

(iii) prevention of crime;

(iv) matters affecting the selection, recruitment, training and career progression of members of the police service and their supporting staff;

(h) to prepare for the commission reports, and suggested directions to the commissioner of the police service, relating to its findings in the course of discharging its functions and to its recommendations as to remedial action or appropriate response;

(i) to report to the commission on the discharge of the division's functions with a view to alerting the commission and aiding the commission's determinations.

7.2.3 *The report of the CJC's Strategic Implementation Group (SIG)*

In 1999, the CJC established an internal working party, the Strategic Implementation Group (SIG), to undertake a review of the organisational structure of the CJC. The SIG reported in December 1999. The report included an examination of the Research and Prevention Division, particularly the development of the CJC's research program.²⁰⁸

The SIG noted that in the earlier years of the CJC, the research program focused on initiatives arising from the Fitzgerald Inquiry. As these reforms were addressed, research focused mainly on the Queensland Police Service. The remainder of research resources had been used to research criminal justice trends and law reform with the emphasis being on monitoring and reporting on key developments and undertaking research into significant systematic problems or issues which are not being adequately addressed by other agencies.²⁰⁹

One of the recommendations of the SIG was that it was necessary for the Research and Prevention Division to formalise an annual research planning process to ensure:

- *an appropriate level of external and internal stakeholder consultation to provide information regarding the research program, accept suggestions for the research program where appropriate, and consider options for collaborative research;*
- *all areas of the CJC are involved in, and decide upon, the research agenda; and*
- *selection of research projects for the annual plan is by a formal set of criteria.*²¹⁰

The SIG noted that the establishment of the new Committee for Operations and Projects (COP), recommended by the SIG itself, would mean that major research projects would be selected and overseen by COP which comprises representatives from other operational areas of the CJC. This mechanism would ensure a level of internal consultation for all major research projects. The SIG envisaged that the annual research plan proposal would also be considered by COP.²¹¹

²⁰⁸ Criminal Justice Commission, *Continuing the Reform Process: The Report of the Strategic Information Group*, 1999, Brisbane.

²⁰⁹ Note 208 at 40.

²¹⁰ Note 208 at 41.

²¹¹ Note 208 at 41.

At the time of the SIG Report, the Research and Prevention Division had already identified the need to consult with certain external stakeholders. Working relationships with some external stakeholders, such as the QPS, were well developed, while others required further development.²¹²

The other issue addressed by the SIG in relation to the Research and Prevention Division was the development of criteria for comparing competing research proposals.²¹³ While the Research and Prevention Division had established criteria for selecting new research projects in its Policy and Procedures Manual, they had not a developed quantitative process of comparing research proposals in order to decide which projects to undertake. The selection criteria included consideration of the following issues:

1. *The proposed project must fall within the CJC's, and more particularly the Division's, statutory terms of reference, as set down in sections 23 and 56 of the Criminal Justice Act 1989.*
2. *The proposed project should relate to one or more of the basic goals set down in the CJC's Mission Statement.*
3. *The proposed project should be one which the CJC is clearly better placed to undertake than some other agency or research body. Examples of projects which might satisfy this criterion include:*
 - *Projects relating to the activities and operations of the Queensland Police Service (QPS). The CJC's statutory responsibilities in relation to the QPS mean that it is likely to have better access to – and understanding of – the organisation than other bodies.*
 - *Projects relating to the activities of the CJC itself, especially those of a confidential nature. For instance, due to confidentiality requirements, no other body would be able to carry out research on the CJC's complaints files.*
 - *Projects focussing on issues or problems which cut across the boundaries and interests of particular criminal justice agencies. Unlike other agencies, the CJC is not bound to any one part of the system and so can apply a broader perspective to many issues. Moreover, under the Act, it has an obligation to work in areas where coordination of the activities of other agencies is required.*
 - *Projects which require resources and/or expertise not available to other criminal justice agencies or research bodies in Queensland.*
4. *The proposed project should not substantially overlap with any other research projects which have been, or are being, undertaken in Queensland or other Australian jurisdictions. Where there is prima facie evidence of overlap, there must be a strong case showing that the CJC should conduct further research in the area, for example by showing that: there are significant methodological flaws in the other studies; there is a need to replicate earlier studies; or there are sound theoretical reasons for expecting that the proposed study will produce findings significantly different from those previously reported.*
5. *The project must be technically feasible and able to be completed within a reasonable time frame. It must not require the investment of resources disproportionate to the likely benefits to be derived from the research.*

²¹² Note 208 at 41.

²¹³ Note 208 at 42.

6. *The project should directly assist in the development, implementation and/or evaluation of policy and practices in the area of criminal justice. It is not the Division's function to undertake 'pure' or basic research for its own sake.*
7. *Provided the above criteria can be satisfied, preference should be given to projects which can be undertaken in conjunction with other criminal justice agencies.*

(Source: Research and Coordination, Policy and Procedures Manual, Volume 6)²¹⁴

The SIG recommended that a systematic process of weighting research proposals be developed based on the criteria in the Policy and Procedures Manual.²¹⁵ This weighting could be used to assist the COP in determining the annual research agenda. In its response to the SIG report, the CJC outlines how this recommendation has been implemented.

7.3 Current resources, structure and operations

7.3.1 Resources

The Research and Prevention Division has a staffing establishment of 28 persons, with 26.6 staff on hand as at 1 February 2001. The number of dedicated Corruption Prevention staff is discussed in Chapter 8 of this report. The staffing structure of the Research Section of the Division is as follows:

- Director, Directorate
- 1 Executive Assistant, Directorate
- 1 Projects Administration Officer, Directorate
- 2 Principal Research Officers
- 2 Senior Research Officers
- 8 Research Officers
- 1 Support Officer

The Division also retains from time to time the services of consultants to assist with specific projects, and other persons employed on a short term casual basis to provide assistance including data collection.

The Research and Prevention Division's budget for the 1999-2000 financial year was \$2,685,805.

7.3.2 Determinants of the work program of the Research and Prevention Division

In its submission to this review, the CJC outlines the current priorities for the CJC's research program as including:

1. Focusing on projects that address areas of particular concern to the CJC and that have the greatest potential to stimulate organisational change.

An important current initiative in this regard is the evaluation of Project Resolve ... Other projects include a review of QPS tactical communications training (to be conducted under the auspices of the PEAC) and a planned joint project to trial the application of problem-oriented policing strategies in a CIB unit.

²¹⁴ Note 208 at 43

²¹⁵ Note 208 at 44.

2. *Conducting research on significant criminal justice issues that are unlikely to be effectively addressed by other criminal justice agencies.*

Our recently completed report Prisoner Numbers in Queensland is a good example of this kind of work. A follow-up project that we hope to commence in this coming year will focus specifically on the issue of recidivism, which our consultations with criminal justice agencies identified as a major issue. We will also complete our update report on the funding of legal aid and prosecutions functions, pursuant to our statutory obligations under section 23(c) of the Criminal Justice Act.

3. *Maintaining our monitoring role in relation to the criminal justice system and the QPS.*

This year we will be resuming publication of the Criminal Justice System Monitor and will publish for the first time a Police Service Monitor. We consider that the Monitors are a cost-effective way of communicating important information to policy makers in a digestible form and of discharging our monitoring responsibilities Act. We will also continue to monitor and report on aspects of the operation of the new police powers legislation.

4. *Developing research strategies for monitoring 'integrity levels' in public sector agencies.*

As noted above, we have already completed extensive work in this area in relation to the QPS and are now addressing similar issues in the corrective services area through the Corruption in Corrections Project. Our next challenge is to build up a similar battery of measures for the public service and local government areas.

5. *Ensuring there is appropriate follow-up to CJC reports.*

Research staff will continue to be involved in monitoring the implementation of the recommendations of Police and Drugs, Police for the Future, Basil Stafford Centre Report, Police Strip Searches in Queensland, and our forthcoming report on police misuse of information (Project Piper).

6. *Where resources permit, providing research assistance to other criminal justice agencies.*

As the major criminal justice research body in the State, we try to help other agencies where we can. In the last year, for example, we undertook research for the QCC on child sexual offences, prepared a paper for the Women's Taskforce on the Criminal Code on the reporting and prosecution of sexual offences generally, and provided substantial assistance to the Crime Prevention Taskforce. We will continue to provide such assistance in the future, subject to the availability of resources and our own research requirements.

7. *Providing research support to other areas of the CJC, in particular the Major Projects section of OMD, monitoring responsibilities under Complaints Section and the Proactive Assessment Unit.*

The level of support now being provided to these areas represents the equivalent of two full-time research officers and is a practical manifestation of the greater emphasis that the CJC is placing on cross-divisional integration.²¹⁶

The CJC's Policy and Procedures Manual sets out an extensive checklist of factors to be considered in evaluating project proposals.²¹⁷

²¹⁶ CJC, *CJC submission to PCJC Three Yearly Review of the CJC*, August 2000, Brisbane, at 39-40.

²¹⁷ CJC, *Policy and Procedures Manual*, Volume 6, Research and Coordination Division, at 3-2 – 3-3.

7.4 The CJC's police research, reform and monitoring function

7.4.1 Background

The *Criminal Justice Act* gives the CJC a significant role in researching, monitoring and overseeing the QPS. This role is primarily performed by the Research and Prevention Division under sections 23(g), (h), (i), (j) and (k) of the Act (relating to the Division's general responsibilities) and sections 56(3)(f) and (h) (relating to the Division's specific responsibilities).

In the period under review, the CJC has researched and published the following research reports and papers relevant to the police research, reform and monitoring function:

- *Defendants' Perceptions of Police Treatment: Findings from the 1999 Queensland Defendants Survey*, March 2000.
- *Police Powers in Queensland: Notices to Appear*, May 1999.
- *Reported use of force by Queensland police: Findings from the 1999 Queensland Defendants Survey*, April 2000.
- *Analysis of Interview Tapes: Police powers review*, June 1999.
- *Crime Prevention Partnerships: An Evaluation of a Pilot Program*, April 1999.
- *Ethics Surveys of First Year Constables 1995-1998: Summary of Findings*, November 1999.
- *Monitoring the QPS Promotion and Transfer System*, October 1998.
- *The Out of the Blues Program: Process Evaluation Report*, April 1999.
- *Police and Drugs: A follow up report*, June 2000.
- *Police Cautioning of Adults: Drug and other offences*, April 1999.
- *Police Powers in Queensland: Findings from the 1999 Defendants Survey*, June 2000.
- *Police Strip Searches in Queensland*, August 2000.
- *Policing and the Community in Brisbane*, July 1998.
- *Public Attitudes to the QPS*, June 2000.
- *Queensland Police Officers' Perceptions of the Promotion and Transfer System: Results of the 1998 Baseline Survey*, November 1998.
- *Trial of Capsicum Spray in Queensland: Evaluation Report*, Joint report with QPS, June 1999.

7.4.2 Prior PCJC recommendations

The previous Committee accepted that there would inevitably be some duplication between the role of the then Research Division and that of the QPS, which has its own dedicated research area within the Ethical Standards Command. However, the Committee concluded that there was a critical need for ongoing and independent research in relation to crime prevention and policing methods²¹⁸ noting in particular that, unlike the QPS, most research reports and evaluations prepared by the CJC are public documents.²¹⁹

²¹⁸ PCJC, *A report of a review of the activities of the CJC pursuant to s.118 (1)(f) of the Criminal Justice Act 1989*, Report No. 45, 1998, Brisbane, at 93.

²¹⁹ Note 218 at 91.

Accordingly, the third PCJC endorsed the recommendation of its predecessor committee in recommending that the CJC should retain the police research, reform and monitoring function carried out by the then Research Division.²²⁰

7.4.3 Analysis and comment

The Committee received only two submissions commenting on the CJC's research function - from Dr Tim Prenzler and from the QPS.

7.4.3.1 Submission from Dr Prenzler, Griffith University

Dr Tim Prenzler, Lecturer, School of Criminology and Criminal Justice at the Griffith University, acknowledged the CJC's 'excellent work' on such issues as beat policing and burglary prevention. However, he has submitted that the research role of the CJC is in conflict with its law enforcement role, because of the 'potential conflict in which law enforcement is subordinated to the facilitation [research] role':

*It is a basic principle of accountability that an agency tasked with a facilitation role should not have a parallel law enforcement role. This is because of the potential for a conflict of interest in which the law enforcement role is subordinated to the facilitation role ... In the case of the CJC, policy advice and research assistance given to the police in their law enforcement and crime prevention roles entails creation of a cooperative environment. This may possibly encourage appeasement in the CJC's role in enforcing ethical standards in the police. The role of the CJC should be limited to the investigation and prevention of corruption and misconduct in the public sector.*²²¹

Dr Prenzler's argument was further explored by the Committee at its hearings held as part of this review. Dr Prenzler told the Committee:

*...the policy role should be separated from law enforcement roles or corruption prevention roles. I think we really need some other body to do that kind of research and coordination function that the CJC has and that the CJC should be simply a one-stop integrity commission or anti-corruption commission with no other functions.*²²²

...

*I think it can be a distraction from the anti-corruption function. Structurally, I think it creates a potential for the anti-corruption body to take an appeasement approach to the agencies that it is supposed to be enforcing anti-corruption laws against. It is necessary to develop close working relationships with those organisations. It is basically police, courts, corrections, juvenile justice and family services.*²²³

The Committee does not, with respect, accept Dr Prenzler's arguments in relation to this issue. The Committee perceives advantages in the CJC retaining dual roles of investigation and prevention activities based on sound research. Recommendations for reform based upon pure research are impractical as they do not have the benefit of experience. The CJC is in a unique position of being aware, through its investigations and complaints data, of matters relating to the police service which require reform. Its Divisions complement each other in identifying areas that require attention and in being able to produce sound research, grounded in practical experience. The CJC has shown it can produce sound, well-researched reports, based upon statistical and other practical data.

²²⁰ Note 218 at 93.

²²¹ Dr Tim Prenzler, Griffith University, *Submission to PCJC Three Yearly Review of the CJC*, 2000, Brisbane, at 2.

²²² Note 221 at 77.

²²³ Note 221 at 78.

The Committee does not agree with Dr Prenzler that the CJC's research into policing issues and its investigations of complaints against police ought to be mutually exclusive. There is no reason why the CJC, through cooperative and collaborative working relationships, cannot independently conduct both investigations and research, without compromising either function. The Committee does not agree that the two functions cohabiting in the CJC creates the potential for the CJC to take an 'appeasement' approach.

Investigation of complaints against police and research into issues of policing are carried out by different divisions of the CJC. The Committee sees no reason why these two functions cannot co-exist in the CJC. The CJC responded to Dr Prenzler's submission noting that Dr Prenzler '*cites no evidence that this alleged subordination has ever occurred*'²²⁴:

*The internal processes used by the CJC to determine which matters are to be investigated, and the management of these investigations, render it highly improbable that the research priorities of the CJC would ever displace its investigative priorities.*²²⁵

7.4.3.2 Submission from the QPS

The QPS acknowledged that the Research and Prevention Division '*has played a valuable and important role in the criminal justice system and broader public sector.*'²²⁶ The QPS submitted that:

*...research is an area where the CJC can continue to provide value but that the CJC should increase its efforts on research of the broader criminal justice and public sector environment as opposed to focusing too narrowly on the QPS itself.*²²⁷

In support of this statement, the QPS submission argued that:

- the QPS and the QCC now also had research capabilities in areas of interest common to that of the CJC;
- criminological research in Queensland had '*vastly strengthened over the past decade*', with staff from various universities providing research support on a consultancy basis; and
- '*the pool of good research staff is not unlimited, and it may be timely to consider the quality and focus of the research effort.*'²²⁸

While acknowledging the '*productive working relationship*' between the CJC and the QPS, particularly in relation to numerous joint initiatives, the QPS was critical of the CJC in several respects. The Committee would have liked to further explore these comments with the QPS and, in particular, to be given examples. Due to the shortened timeframe for the preparation of this report this has not been possible.

The QPS submitted that the CJC had a tendency to '*micro-manage the QPS*':

*The danger with the CJC's recent focus is that there has been a tendency to try to micro-manage the QPS without being accountable for the Service's budget management or the difficult day-to-day operational decisions that the senior executive has to make.*²²⁹

²²⁴ CJC, *CJC comments on Dr Prenzler's submission to the PCJC 3 year review*, provided under cover of a letter to the PCJC dated 12 December 2000, at 2.

²²⁵ Note 224.

²²⁶ Queensland Police Service, *submission to PCJC Three Yearly Review of the CJC*, 2000, Brisbane, at 14.

²²⁷ Note 226 at 13.

²²⁸ Note 226 at 13.

²²⁹ Note 226 at 13.

The CJC has responded to the criticisms made by the QPS in its submission:

The QPS does not provide any concrete examples of where the CJC has attempted to "micro-manage" (apart from a brief reference later in the document to disagreements between the CJC and QPS concerning "reasons for access" screens and audit trails of e-mails). The lack of specificity makes it very difficult to respond to this criticism.

It is fundamental to the concept of external oversight that, from time to time, the oversight body will make recommendations, and reach conclusions, with which the body being oversighted may disagree. However, the CJC has been very careful to avoid recommending changes to QPS practices and procedures that might be impractical or too costly to implement, and has been careful to ensure that there is adequate consultation with the QPS about the likely impact and workability of proposed changes. If the QPS considers that a recommendation is unworkable or cannot be implemented because of funding constraints, it can reject or defer the recommendation, as it has done on a number of occasions. In fact, a reason why the CJC has avoided exercising its power to issue directives (for example, in relation to the use of hand held tape recorders) has been to avoid situations where it might be accused of trying to manage the QPS from outside.²³⁰

The QPS was also critical of the CJC in suggesting that some research conducted by the CJC was inadequate, or more specifically, was 'limited by the level of data gathering':

...the CJC needs to be mindful of the problems associated with highlighting issues or making recommendations based on limited data. The QPS is of the view that the CJC has sometimes conducted research that is limited by its level of data gathering.

The QPS submits that, in such instances, the CJC needs to stress, particularly in appropriate media, the limitations of the research it has conducted. Not to do this can lead to sensationalist reporting within the media about a particular issue. This reaction is often counter-productive as it draws resources away from service delivery or creates misunderstanding so that what starts out as a productive insight into a particular issue becomes in the public's limited knowledge of the facts, an issue of contention. (Underlining added.)²³¹

The CJC has responded to the criticisms made by the QPS in its submission, stating in part:

The QPS does not provide any examples to support this claim, which again makes it very difficult to respond to this criticism. However, it should be evident to anyone who reads CJC research reports that great care is taken to outline the limitations of any data which have been used. The author of the QPS submission seems to be unaware of the extensive external and internal review processes which are already in place for the CJC to monitor the quality of work which it produces. In the case of our research, we already use peer review by fellow researchers as a means of maintaining quality control. The reports of these reviewers are regularly supplied to the PCJC.²³²

The Committee appreciates the argument of the QPS that some recommendations resulting from CJC research have serious resource implications for the QPS. However, the Committee does not accept that the making of recommendations necessarily represents an attempt to micro-manage the QPS. The Committee notes that the QPS has not provided any examples to support its claim. The Committee further notes, by contrast, that elsewhere in its submission, the QPS has supported its submissions by recent examples. Accordingly, the Committee has no basis to accept the criticism made by the QPS in this respect.

²³⁰ CJC, *CJC comments on the Queensland Police Service's submission to the PCJC 3 year review*, provided under cover of a letter to the PCJC dated 12 December 2000, at 1-2.

²³¹ Note 226 at 14.

²³² Note 230 at 2-3.

The QPS is also critical of the CJC in submitting that the CJC should reduce the amount of policing research which it carries out and should increase its focus on the broader criminal justice system:

...the CJC should increase its efforts on research of the broader criminal justice and public sector environment as opposed to focusing too narrowly on the QPS itself...[underlining added]²³³

The CJC has responded to the criticisms made by the QPS in its submission, stating in part:

As the Committee would be aware, the CJC has already reduced the proportion of research resources which it devotes to QPS-specific research. However, the broad area of policing will always be a significant focus of the CJC's research effort, because of the centrality of the QPS in the criminal justice system, and the fact that it accounts for around 70 per cent of the complaints made to the CJC.

It should also be noted that much of the research on policing which the CJC undertakes is in response to requests from the QPS, rather than being imposed on the Service. For example, in the last few months requests have been received from the QPS for the CJC to:

- *participate in a joint project to trial the use of Problem-oriented Policing approaches in a CIB District Squad*
- *assist in the evaluation of a trial project in South East region aimed at improving how police respond to people with psychiatric difficulties*
- *undertake analysis of data collected from the Drug Use Monitoring Survey conducted at Southport watchhouse*
- *assist the QPS in a project examining intimate partner homicide and the QPS response to these incidents.*

*An uncharitable reading of the QPS submission is not that it wants the CJC to do less research on policing-related matters, but rather, that the Service would prefer that less research be done which has the potential to expose the QPS to criticism.*²³⁴

The Committee has given some consideration to whether the CJC should continue to devote a substantial part of its resources to policing review and monitoring projects, given the increased research capacity of the QPS in recent years.

In its submission to the previous three yearly review, the CJC stated that about two thirds of its resources were devoted to policing-related issues.²³⁵ The CJC's SIG reported that the Research Division program directed 60% of its resources to QPS monitoring and reform.

The Committee accepts the CJC's submission that the 'police research, reform, and monitoring' function will always form a significant part of the CJC's work given the '*centrality of the QPS in the criminal justice system, and the fact that it accounts for around 70 per cent of the complaints made to the CJC*'.

The Committee acknowledges that the research capacity of the QPS has improved over the years. The Committee also notes that much of the research conducted by the QPS is not made public. By comparison, the CJC informs the public and the Parliament in a way which 'in-house' research cannot.

²³³ Note 226 at 14.

²³⁴ Note 226 at 2.

²³⁵ CJC, *CJC submission to three-yearly PCJC review of the Criminal Justice Commission*, March 1998, Brisbane, at 185.

The Committee also notes that the QPS has stated that ‘*the QPS and the CJC have worked on numerous joint initiatives and have developed a productive working relationship that uses the limited resources available for research cost effectively*’.²³⁶ The Committee is supportive of such collaboration. The Committee also considers, however, that it is important that the ‘independence’ of certain research not be lost and that only appropriate research areas be selected for collaborative research projects.

In summary, the Committee agrees with the views of the third PCJC in its endorsement of the Fitzgerald Report findings that *independent* monitoring and evaluation outside of the police service is essential. The third PCJC stated:

*The Committee accepts that there is a natural reluctance by an organisation to be critical of its own operations. Further, the Committee acknowledges the practical reality that the potential exists for ministerial pressure to present the results of any research in the best light for the Government of the day. The Committee can envisage a myriad of areas in which there may be a reluctance on the part of the police service to change long established practices and that reluctance to change may be overcome by the results of independent research.*²³⁷

7.4.4 Conclusions

Conclusion 24

The Committee agrees with the previous Committee that there remains a critical need for ongoing and independent research to be undertaken in relation to reform of the Queensland Police Service about appropriate crime prevention and policing methods.

Conclusion 25

The Committee considers that the CJC plays a vital role in providing independent research of issues affecting the Queensland Police Service.

Conclusion 26

The Committee sees value in collaborative research being undertaken by the CJC and the Queensland Police Service for appropriate areas of research in order to maximise the effectiveness of resources devoted to research.

7.4.5 Recommendations

Recommendation 20

The Committee recommends that the ‘police research, reform and monitoring’ function should primarily remain independent of the Queensland Police Service as envisaged by the Fitzgerald Report.

Recommendation 21

The Committee further recommends that the ‘police research, reform and monitoring’ function should remain with the CJC.

²³⁶ Note 226 at 14.

²³⁷ Note 218 at 91.

Recommendation 22

The Committee recommends that in establishing collaborative research projects between the CJC and the Queensland Police Service, consideration only be given to appropriate areas of research.

7.5 Refinements to the CJC's police research, reform and monitoring function

7.5.1 *The Queensland Police Service Review (QPSRC)*

7.5.1.1 Background

The Queensland Police Service Review Committee (the QPSRC) was established in March 1996 by Hon Russell Cooper MLA, the then Minister for Police and Corrective Services and Minister for Racing, to review the QPS. The QPSRC was to identify areas of the police service where, 'efficiency, effectiveness, and accountability can be improved in order to ensure the best service delivery'.²³⁸ The QPSRC aimed to examine all recommendations of previous reviews and inquiries into the police service since the Fitzgerald Report, and implement these recommendations, rather than develop new proposals. A report was presented in July 1996 which made a number of recommendations.

Given the role of the CJC (and the Research Division in particular) in respect of its function of monitoring the QPS, the fact that a further review was undertaken was seen by some as an indictment on the effectiveness of the CJC in the discharge of this function.²³⁹

7.5.1.2 Prior PCJC recommendations

The third PCJC considered the criticisms levelled at the CJC which resulted from the establishment of the QPSRC. The previous PCJC acknowledged, however, that there were several arguments in favour of the CJC. The third PCJC concluded:

The Committee considers that the perceived need to conduct the review of the Queensland Police Service by the Queensland Police Service Review Committee should not in itself be viewed as a statement that the Commission has seriously failed to properly fulfil its police reform and monitoring function.

The Committee nevertheless considers that the Commission can make improvements in a number of areas in fulfilling its police research, reform and monitoring function and endorses the relevant recommendations made by the Queensland Police Service Review Committee which concern the Commission.

*The Committee endorses the substance of Recommendation 197 made by the Queensland Police Service Review Committee that a further independent and wide-ranging review of the Queensland Police Service has significant benefits in the monitoring and reform process.*²⁴⁰

The third PCJC recommended that:

... the Commission continue to give priority, as far as is possible, to implementing the outstanding recommendations made by the Queensland Police Service Review Committee.

²³⁸ Queensland Police Service Review, *Report on the Review of the Queensland Police Service Review*, 1996, Brisbane, at 1.

²³⁹ Note 218 at 94.

²⁴⁰ Note 218 at 96.

*The Committee endorses the views of the Queensland Police Service Review Committee and recommends that a further independent broader review of the Queensland Police Service be conducted in the year 2000. The Committee further recommends that this review focus particularly on the accountability of the Queensland Police Service, the adequacy of the Commission's annual report on the Queensland Police Service, and the efficiency and effectiveness of efforts to co-ordinate reform of the Queensland Police Service and other agencies in the criminal justice system.*²⁴¹

7.5.1.3 Analysis and comment

The Committee notes that many of the recommendations of the QPSRC for which the CJC had some responsibility, have been implemented by the CJC.

The Committee also notes that no independent broad review of the QPS was conducted in 2000, as recommended by the third PCJC.

The Committee sees some value in such a review being undertaken, especially in relation to issues identified by the previous PCJC – namely, the accountability of the QPS, the adequacy of the CJC's annual report on the QPS and the efficiency and effectiveness of efforts to coordinate reform of the QPS and other agencies in the criminal justice system.

The Committee acknowledges the concluding comments made by the QPSRC in the final chapter of its report concerning the external accountability of the QPS and a role for the Committee in this area:

*The [QPSR] Committee is also conscious of the relationship between the CJC and the Parliamentary Criminal Justice Committee (PCJC) which subjects the Commission to a fairly intensive level of scrutiny. Bearing this in mind, the Committee is of the view that the proper exercise of the respective functions of the CJC and PCJC has the potential to produce more sharply focussed assessment of the achievements and shortcomings of the QPS in its maintenance of the reform process and exposing these to appropriate public comment and debate.*²⁴²

The Committee notes, however, that the QPS has recently undergone a change in leadership and it is inevitable that any new administration will need some time to take stock of current policy issues affecting the service. The Committee also acknowledges that such a review would place a significant demand upon the time and resources of the QPS. Accordingly, the Committee accepts that at this time, an independent broad review of the QPS may, in all the circumstances, be premature.

7.5.1.4 Conclusions

Conclusion 27

The Committee considers that the CJC has gone a long way towards implementing outstanding recommendations of the QPSRC report, and that in continuing this level of attention to monitoring the policing issues, the CJC has addressed criticisms levelled at it at the time of the establishment of the QPSRC.

²⁴¹ Note 218 at 96.

²⁴² Note 238 at 282.

Conclusion 28

The Committee sees some value in an independent review of the QPS being undertaken, especially in relation to various issues including the accountability of the QPS, the adequacy of the CJC's annual report on the QPS and efficiency and effectiveness of efforts by the CJC to coordinate necessary reform of the QPS, and the disciplinary regime (including the appeal process)

Conclusion 29

The Committee notes, however, that the QPS has recently undergone a change in leadership and it is inevitable that any new administration will need some time to take stock of current policy issues affecting the service. The Committee also acknowledges that such a review would place a significant demand upon the time and resources of the QPS. Accordingly, the Committee accepts that at this time, an independent broad review of the QPS may, in all the circumstances, be premature.

7.5.1.5 Recommendation

Recommendation 23

The Committee endorses in principle the views of the Queensland Police Service Review Committee and the previous PCJC and recommends that the next Parliamentary Committee give consideration during its term to raising with the Minister for Police, the need for a further independent review of the QPS which might include:-

- **the accountability of the QPS;**
 - **the adequacy of the CJC's annual report on the QPS;**
 - **the efficiency and effectiveness of efforts by the CJC to coordinate necessary reform of the QPS; and**
 - **the disciplinary regime (including the appeal process).**
-

7.5.2 Police Service Monitor

7.5.2.1 Background

For some years the CJC has stated publicly its intention to produce a Police Service Monitor, modelled along the lines of its *Criminal Justice System Monitor*. The CJC's 1996 submission to the Queensland Police Service Review Committee (QPSRC), and its subsequent submission in 1997 to the Connolly / Ryan Inquiry, stated that the production of the Monitor would be a major initiative.

The CJC's submission to the QPSRC stated that the proposed Monitor would:

... provide an independent analysis of the performance and effectiveness of the QPS, report on the extent of progress in key areas (for example, recruitment and training, community policing) and identify issues which may require attention by the QPSD Management and the Government.

Information to be presented in the Monitor will include:

- *trends in funding and staff levels*

- *changes in staff profile (average age of intakes, gender, education levels, civilianisation)*
- *trends in crime and levels of service demand*
- *extent to which provision of policing services is matched to demand levels*
- *proportion of police in direct service delivery and operational roles*
- *trends in police workload measures*
- *types of work done by police*
- *impact of police activity on illicit drug markets*
- *markets for stolen goods*
- *traffic safety measures*
- *community policing and crime prevention initiatives*
- *trends in public confidence in, and attitudes toward, police service user satisfaction*
- *complaints trends*
- *police involvement in high speed pursuits, firearms incidents.*²⁴³

The QPSRC endorsed that proposal²⁴⁴, as did the previous PCJC.²⁴⁵ The previous PCJC noted the explanation of the Director of the Research Division as to why that project had not yet been completed.²⁴⁶ The major reasons given at that time were:

- a first draft of the Monitor had been completed in January 1997, but due to demands caused by the Connolly / Ryan Inquiry and subsequent workloads, no further work was possible; and
- the QPS was undergoing substantial change as a result of the implementation of the QPSR recommendations and it would not have been an appropriate time to conduct another review.

In recognition of the importance placed on the Police Service Monitor, in its Report No. 45, tabled in June 1998, the previous PCJC noted:

*The Committee is concerned by the failure of the Commission to make the necessary resources available to secure its production, and considers it is unacceptable that almost two years after the QPSRC reported, the Commission has still not produced such an annual Police Service Monitor.*²⁴⁷

The third PCJC recommended that the CJC ‘*proceed immediately with the preparation and publication of the proposed Police Service Monitor*’.²⁴⁸

7.5.2.2 Analysis and comment

The Committee notes that in its response to the third PCJC’s three yearly review of the CJC, dated August 1998, the CJC stated:

It is intended to commence work on the first issue of the Police Service Monitor shortly, with a

²⁴³ CJC, *Submission to QPSR Report on the Review of the Queensland Police Service Review*, 1996, Brisbane, at 4 and 32.

²⁴⁴ Note 238 at 4.

²⁴⁵ Note 218 at 98-99.

²⁴⁶ Note 218 at 98.

²⁴⁷ Note 218 at 98.

²⁴⁸ Note 218 at 99.

*publication date planned for later in this year.*²⁴⁹

The Committee notes however, that at the time of writing this report, no such *Police Service Monitor* has yet been produced.

The Committee also notes that in the CJC's *Annual Report 1999-2000* the CJC has stated that one of its projected activities for 2000-2001 will be the publication of the first issue of the Police Service Monitor. At the time of reporting, the CJC expected that the Monitor would be produced in the second half of 2000.²⁵⁰

The Committee further notes that, as at the time of finalising this review, the production of the Police Service Monitor was listed on the CJC's web site as a '*current research and prevention project*.' Information about the QPS Monitor on the web-site states that the first volume of the series will provide a 'report card' on integrity and standards of conduct generally in the Queensland Police Service, and that Volume 2 will consider the strategic management of the QPS, policing methods, selection and training, use of information technology, relations with Indigenous people and resource levels.

The web-site states that the Monitor will assist the CJC in the discharge of its ongoing monitoring responsibilities in relation to the QPS, and to inform policy makers and the public about policing issues.

The Committee also notes that since the last three yearly review, the CJC has produced reports on various matters that would be relevant to the Monitor, in particular its analysis of trends in complaints against police contained in a *Prevention Pointer*, and other work including work on high speed pursuits, notices to appear, police and drugs, police strip searches, policing and the community and trials of the use of capsicum spray.

The Committee is concerned, however, that despite very strong recommendations by both the QPSRC and the previous PCJC, the CJC has made very slow progress on this publication. The Committee is informed by the CJC that the long-awaited Police Service Monitor is finally close to completion.

7.5.2.3 Conclusions

Conclusion 30

The Committee endorses the views of the Queensland Police Service Review Committee and the previous Committee that the production and publication of an annual Police Service Monitor is an important initiative.

Conclusion 31

The Committee endorses the views of the Queensland Police Service Review Committee and the previous Committee that the proposed Police Service Monitor has the potential to play an integral part in the monitoring process of the Queensland Police Service by providing police management and the public with an independent analysis of the performance and effectiveness of the Queensland Police Service which will identify key areas requiring reform.

²⁴⁹ CJC, *Response to the PCJC Three-Year Review of the Activities of the CJC*, August 1998, Brisbane, at 10.

²⁵⁰ CJC, *Annual Report 1999-2000*, Brisbane, at 48.

7.5.2.4 Recommendations

Recommendation 24

The Committee recommends that the CJC, as a matter of the highest priority, expedite the finalisation and publication of the long-awaited first edition of the Police Service Monitor.

Recommendation 25

The Committee further recommends that the CJC publish the Police Service Monitor on an annual basis.

7.5.3 *The CJC's power to direct the Queensland Police Service*

7.5.3.1 Background

The Fitzgerald Report outlined that another function of the then proposed Research and Coordination Division would be preparation of directions by the CJC to the Police Commissioner detailing preferred courses of response or remedial action where trends, problems or opportunities are identified and to report to the CJC on implementation, progress and impact of CJC directives.²⁵¹

This function was prescribed by legislation in section 23(h) of the *Criminal Justice Act* which gives the CJC the power to provide:

(h) ...the commissioner of the police service with policy directives based on the commission's research, investigation and analysis, including with respect to law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources;

However, section 4.6(2) of the *Police Service Administration Act 1990* provides that the Commissioner of Police may also be issued with directions by the Minister for Police.

4.6(2) The Minister, having regard to advice of the commissioner first obtained, may give, in writing, directions to the commissioner concerning —

- (a) the overall administration, management, and superintendence of, or in the Police Service; and*
- (b) policy and priorities to be pursued in performing the functions of the Police Service; and*
- (c) the number and deployment of officers and staff members and the number and location of police establishments and police stations.*

The CJC has never issued a direction to the Commissioner of Police under section 23(h) of the Act, and some criticism has attended this failure.

²⁵¹ Note 205 at 317.

7.5.3.2 Prior PCJC recommendations

The previous PCJC acknowledged the preference for a cooperative approach to police reform, but considered that appropriate opportunities had arisen where the CJC could, and probably should, have used its power to direct.²⁵²

The Committee endorsed various recommendations of the QPSRC, including that:

- both the *Police Service Administration Act* and the *Criminal Justice Act* be amended to provide that the CJC should not exercise its power under section 23(h) of the *Criminal Justice Act* without first consulting with the Minister for Police, and the Minister should not issue directions under section 4.6(2) of the *Police Service Administration Act*, without first consulting with the CJC;²⁵³
- that all directions from both the Minister and the CJC should be reduced to writing and included in the register required by section 4.7 of the *Police Service Administration Act*;²⁵⁴ and
- that the CJC immediately consider issuing a directive to the Commissioner of Police pursuant to section 23(h) of the Act.²⁵⁵

7.5.3.3 Analysis and comment

The Committee notes that these recommendations have not been implemented. Further, the Committee notes that the CJC has not yet issued any directives to the Commissioner of Police pursuant to section 23(h) of the Act.

In its response to the third PCJC's three yearly review of the CJC, the CJC stated:

*The CJC remains firmly of the view that it can achieve more in relation to police reform by working constructively and cooperatively with police, rather than by issuing directives. This is particularly the case in matters such as the use of hand-held tape recorders, the implementation of which has substantial budgetary and technological implications.*²⁵⁶

The Committee concedes that a cooperative approach should be preferred, wherever possible, but believes that on rare occasions, the giving of a directive might be quite appropriate.

Example: Issue of personal tape recorders to police officers in the field

In May 1996, the CJC made a procedural recommendation to the Queensland Police Service (QPS) that the service 'consider issuing an instruction requiring police where practicable to electronically record all contact with suspects'. Essentially, adoption of the CJC's recommendation would require the QPS to issue all police officers serving in the field with a small hand-held personal tape recorder.

The CJC, quite appropriately, argued that the purpose of the recommendation was to minimise later allegations of 'verballing' of suspects by police, to protect officers against false allegations of misconduct, and to ensure the provision of accurate, admissible records of interview which it was argued would ultimately save considerable police time in court proceedings.

This recommendation was later pursued by the QPSRC in 1996, which recommended that:

²⁵² Note 218 at 103.

²⁵³ Note 218 at 103. (Recommendation 22)

²⁵⁴ Note 218 at 104. (Recommendation 23)

²⁵⁵ Note 218 at 104. (Recommendation 24)

²⁵⁶ CJC, *Response to the PCJC Three-Year Review of the Activities of the CJC*, August 1998, Brisbane, at 10.

*...all police officers in regular and substantial contact with the public be issued with a personal tape recorder for the purpose of recording from first contact all interviews with persons who are, or may be, suspected of committing an offence. The equipment should be issued on a personal basis with individuals being responsible for equipment in their possession.*²⁵⁷

The Committee notes that almost five years later, this recommendation, which was endorsed by the previous PCJC, has still not been implemented.

The Committee acknowledges that it has been kept informed by the CJC in relation to the implementation of the various recommendations made by the QPSRC.

The issue of hand held tape recorders for police has been discussed at several of the Committee's meetings with the CJC. In February 1999 the Committee had been advised that:

- the QPS was seeking to defer taking further action until after the "NPRU" project on national standards for hand held tape recording has been completed;
- the QPS estimated that the cost of full implementation would be in the order of \$29 million;
- CJC and QPS representatives were to meet to discuss the possibility of conducting a limited trial of hand-held recorders in one or more police districts as a way of obtaining more accurate information on effectiveness, cost, and implementation issues.

The Committee notes from the minutes of various meetings of the CJC (including the Commission meeting of 9 April 1999, combined meeting of 19 March 1999, and Commission meeting of 5 March 1999), that the issue has been pursued by the CJC. More specifically, these minutes record that the CJC had written to the then Minister for Police expressing concern at the delay in implementing the recommendations and stating that the CJC was then considering whether it should issue a direction to the Police Commissioner under section 23(h) of the Act.

The CJC has also reported to the Committee that the QPS had, at a meeting in June 1999, '*indicated its preparedness to conduct a trial in a police district in South East Queensland*'. The CJC also reported that it was '*awaiting further advice from the QPS*' on a proposed trial of such recorders.

The Committee raised the issue with the CJC again during public hearings held on 18 February 2000, as part of the Committee's review of the CJC's annual report. Dr David Brereton, the Director of the CJC's Research and Prevention Division, stated:

As you are aware, that has been an issue that has run for longer than we might have hoped. The Police Service has had a range of concerns about that recommendation, including concerns about cost and issues about whether or not tapes from hand-held tape-recorders have to be archived and for how long and so on. There has been in-principle agreement reached with the Service about conducting a trial in a police district. I understand that the recording equipment has either been purchased or is in the process of being purchased. There are some fine points about the trial and how it will run and its scope that have to be settled. Progress is being made, albeit rather more slowly than I am sure the Commission would have liked. We are not ready to wave the white flag on it yet.

We rather hope that the trial itself will be in place certainly in the next few months. We would be looking at probably a six-month trial to collect enough data to analyse how it will run. It is a difficult area. The reality is now that a large and increasing number of police officers carry hand-held tape-recorders anyway. But they purchase them themselves and it is not part of the official equipment of the Service. There are not any clear policies or guidelines in place about

²⁵⁷ Note 238. (Recommendation 41)

*when those tape-recorders are used and what is done with the tapes. One of the points of the trial is really to see what happens when you really formalise those procedures, what are the logistic issues, are there legal problems about storage, what is the likely cost, how often do they break down and all of those sorts of issues.*²⁵⁸

The arguments in favour of such a reform are difficult to fault and the benefits are considerable.

On the other hand, the Committee concedes, as did the previous Committee, that such a reform may have significant budgetary implications for the Police Service. These budgetary implications would include not only the primary equipment costs, but data management and storage costs.

Whilst acknowledging the issue of hand held tape recorders to officers in the field does have a budgetary implication, the Committee endorses, the views of the previous Committee that:

*...overstatement of the perceived obstacles to such an important reform should not be permitted to delay implementation of the initiative for years on end.*²⁵⁹

The Committee also endorses the views of the third PCJC (expressed almost three years ago) that:

*... the Commission's "collegial approach" which has involved a great deal of "discussion, consultation, and letters" has failed to produce even a proposed time-table for the introduction of the personal use tape-recorders.*²⁶⁰

Finally, the Committee notes with some frustration that, almost five years later, Recommendation 41 of the QPSRC, which was endorsed by the CJC and by the previous PCJC, and apparently supported by the QPS, has still not been implemented.

The Committee acknowledges that the QPS has a new Commissioner and a new Minister. However, the Committee is of the strong view that this important reform cannot be delayed indefinitely, and at the very least, an immediate trial of the proposal is required.

Even if in June 1998, when the previous Committee reported on the matter, the CJC did not consider it appropriate (and notwithstanding the reasons of the CJC for its position) to issue a relevant directive to the Commissioner of Police pursuant to section 23(h) of the Act, such a direction is now, in March 2001, well overdue.

7.5.3.4 Conclusions

Conclusion 32

The Committee acknowledges, as the previous Committee did in June 1998, the preference, where possible, for a cooperative approach in achieving police reform. However, as the previous Committee concluded in June 1998, appropriate opportunities have arisen where the CJC could and probably should have utilised its directives power pursuant to section 23(h) of the Criminal Justice Act.

Conclusion 33

The Committee endorses the recommendation made by the previous PCJC and recommends that the CJC immediately consult with the Minister for Police as to whether there is any reason why the

²⁵⁸ PCJC, Transcript, Public hearing - CJC's 1998/99 Annual Report, 18 February 2000, at 8.

²⁵⁹ Note 218 at 102.

²⁶⁰ Note 218 at 103.

CJC should not issue a directive to the Commissioner of Police pursuant to section 23(h) of the Act, in the terms of Recommendation 41 made by the Queensland Police Service Review Committee.

7.5.3.5 Recommendations

Recommendation 26

The Committee endorses Recommendation 2 made by the Queensland Police Service Review Committee and the previous PCJC and recommends that both the *Police Service Administration Act* and the *Criminal Justice Act* be amended to provide that the CJC should not exercise its power under section 23(h) of the *Criminal Justice Act* without first consulting with the Minister for Police, and that the Minister should not issue directions under section 4.6(2) of the *Police Service Administration Act*, without first consulting with the CJC.

Recommendation 27

The Committee endorses Recommendation 3 made by the Queensland Police Service Review Committee and the previous PCJC and recommends that all directions from both the Minister and the CJC should be reduced to writing and included in the register required by section 4.7 of the *Police Service Administration Act*.

Recommendation 28

The Committee endorses the recommendation made by the previous PCJC and recommends that the CJC immediately consult with the Minister for Police as to whether there is any reason why the CJC should not issue a directive to the Commissioner of Police pursuant to section 23(h) of the Act, in the terms of Recommendation 41 made by the Queensland Police Service Review Committee.

7.5.4 Sharper focus on the analysis of complaints data

7.5.4.1 Background

Complaints files held by the Official Misconduct Division are a useful source of information about trends and possible problem areas in relation to misconduct and official misconduct. The CJC has used such information in the past to conduct several significant research projects, such as the analysis of assault complaints against police.

7.5.4.2 Prior PCJC recommendations

In the previous review, the PCJC noted that the CJC had identified limitations in its complaints data base and had taken urgent steps to address those limitations by redesigning the data base. The CJC had submitted that the new system would significantly increase the opportunities for, and the ease of, conducting research.

The previous Committee considered that once the new system was operational, the CJC must make far greater use of the complaints database if it is to effectively identify the key causes of complaints and be in a position to provide programs to reduce the incidence of particular types of misconduct.²⁶¹

The QPSRC had also expressed a view that access to complaints data is critical in identifying measures to effectively reduce complaints, recommending that:

²⁶¹ Note 218 at 107.

*... the CJC and the Professional Standards Unit develop a system for identifying from complaints data patterns which are indicative of procedural inadequacies and management deficiencies.*²⁶²

The previous Committee accordingly recommended that the CJC should:

- make greater use of the redesigned complaints database to identify trends in police misconduct;²⁶³ and
- continue to monitor these trends and the effectiveness of its complaints data base, and take whatever steps are necessary to further refine its database.²⁶⁴

7.5.4.3 Analysis and comment

The new database, COMPASS (Complaints Management, Processing and Statistical System), is now operational, having come on line in May 2000. The CJC submission to the current review reported that its development included conversion of the nearly 25,000 complaints registered since 1990.²⁶⁵

The CJC's SIG Report recommended that a full-time research officer be allocated to supporting the Complaints Section through analysis of complaints data and other duties.²⁶⁶ The CJC submission to the current review reported that this recommendation has been implemented.²⁶⁷

The CJC's submission to this review outlined the perceived advantages of the new complaints database:

*COMPASS provides for enhanced recording of information about a complaint or other matter received by the Complaints Section resulting in higher quality data for statistical analysis and research and intelligence purposes. It is also a more useful tool than the previous system in supporting the business processes of the Section through its increased managerial functionality which tracks the processing of a complaint and provides for case management.... The improved quality of data capture will allow for more sophisticated analysis to identify trends that will be relevant to the selection of work for the Complaints Section and OMD as a whole. It will be a vital source of information for the development of proactive responses.*²⁶⁸

More specifically, the Committee understands that the new complaints database will enable the CJC to:

- identify individual officers against whom multiple complaints had been made; and
- monitor trends in different forms of misconduct as to whether such types of misconduct are becoming more or less common.

The CJC has submitted to this review that Stage 2 of the implementation of COMPASS, commenced in August 2000, will involve:

...[adding] functionality to better support the refined business processes introduced as a result of the implementation of the SIG recommendations; in particular, an 'Outcomes Register',

²⁶² Note 218 at recommendation 157.

²⁶³ Note 218 at recommendation 25.

²⁶⁴ Note 218 at recommendation 26.

²⁶⁵ Note 216 at 13.

²⁶⁶ Note 208 at 38.

²⁶⁷ Note 216 at 13.

²⁶⁸ Note 216 at 13-14.

*which is an enhancement of the old Charges Register, is being developed’.*²⁶⁹

7.5.4.4 Conclusions

Conclusion 34

The Committee endorses the views of the previous Committee that the information available from the complaints data base is critical to an effective research and prevention capacity.

Conclusion 35

The Committee applauds the CJC’s redevelopment of its revised complaints database, COMPASS.

Conclusion 36

The Committee is of the view that the CJC should give priority to completion of the second development phase of its revised complaints database, COMPASS.

7.5.4.5 Recommendation

Recommendation 29

The Committee recommends that the CJC give priority to completion of the second development phase of its revised complaints database, COMPASS.

7.6 The CJC’s criminal justice research, monitoring and reform function

7.6.1 Background

The *Criminal Justice Act* requires the CJC to monitor and report in relation to funding for criminal justice agencies²⁷⁰, report regularly on the effectiveness of the administration of criminal justice²⁷¹, and define trends in criminal activities.²⁷²

Section 23(e) of the *Criminal Justice Act* gives the CJC responsibility for ‘researching, generating and reporting on proposals for reform of the criminal law and the law and practice relating to the enforcement of, or administration of, criminal justice...’

7.6.2 Prior PCJC recommendations

The previous Committee, the third PCJC of the 48th Parliament, noted that the balance of opinion in submissions to both it and the former Connolly / Ryan Inquiry was ‘strong support for the existence of a body to conduct independent research and analysis of wider issues concerning the criminal justice system.’

The third PCJC recommended that the CJC should retain the criminal justice research, reform and monitoring function undertaken by the Research Division.²⁷³

²⁶⁹ Note 216 at 14.

²⁷⁰ See s. 23(c) of the *Criminal Justice Act 1989*.

²⁷¹ See s. 23(j) of the *Criminal Justice Act 1989*.

²⁷² See s. 56(3)(b) of the *Criminal Justice Act 1989*.

²⁷³ Note 218 at 112. (Recommendation 27)

7.6.3 CJC publications

In the period under review, the Research Division has researched and published the following research papers and submissions relevant to the criminal justice research, reform and monitoring function:

- Research Paper Series
 - *Snapshot of Crime in Queensland*, February 1999.
- Criminal Justice System Monitor Series
 - *February 1999*.
- Research reports
 - *Crime Prevention Partnerships: An Evaluation of a Pilot Program*, April 1999.
 - *Diversion of Drug Offenders and Drug Dependent Offenders from the Criminal Justice System*, August 1999.
 - *Prisoner Numbers in Queensland: An examination of population trends in Queensland's correctional institutions*, March 2000.
 - *Public Attitudes to the CJC*, January 2000.
 - *Queensland Prison Industries: A Review of Corruption Risks*, August 2000.
 - *Reported Sexual Offences in Queensland*, December 1999.
 - *Safeguarding Students: Minimising the risk of sexual misconduct by Education Queensland Staff*, December 2000.
 - *What the Public Thinks about Employee Behaviour in the Queensland Public Service and Local Councils*, February 2000.

7.6.4 Whether the CJC's research activities should be refocused

7.6.4.1 Prior PCJC recommendations

The previous Committee recommended that the Research Division should refocus its criminal justice research, monitoring and reform function to make research into misconduct prevention a priority.²⁷⁴

The Committee endorsed the strategies suggested by the CJC for placing greater emphasis on misconduct prevention research, and recommended that the CJC, as a priority:

- make greater use of its complaints database as a research resource for identifying problem areas and trends in official misconduct;
- develop alternative strategies for monitoring the incidence of official misconduct in the public sector; and

²⁷⁴ Note 218 at 115.

- identify systemic and procedural reforms that will contribute to a reduction in the level of official misconduct.²⁷⁵

The Committee endorsed the strategies suggested by the CJC to ‘*refocus its priorities*’ in respect of its criminal law reform function, and recommended that the CJC’s future criminal law reform role be restricted to researching and proposing initiatives in relation to issues which are relevant to the discharge of the CJC’s other statutory functions, such as the investigation and prevention of official misconduct and oversight of the Queensland Police Service.²⁷⁶

7.6.4.2 Prevention oriented research

During the previous review, the CJC stated:

*The CJC is committed to doing more research focussing on the monitoring and prevention of official misconduct. This is already a major emphasis within the policing research stream, (as evidenced by the project on reducing complaints against police, and the release of the report Police Integrity in Queensland). However resources have not been available to do equivalent work in other areas of the public sector.*²⁷⁷

The CJC also stated that as part of its ‘shift in approach’, it intended, as a priority, to:

- *make greater use of the CJC’s complaints data base as a research resource for identifying problem areas and trends in official misconduct;*
- *develop alternative strategies for monitoring the incidence of official misconduct in the public sector;*
- *identify systemic and procedural reforms that will contribute to a reduction in the level of official misconduct.*²⁷⁸

The Committee notes that the CJC’s current research agenda does appear to sufficiently reflect the CJC’s increased focus on corruption prevention. The following projects/reports have had a strong prevention focus:

- *Analysis of Interview Tapes: Police powers review*, released in June 1999;
- *Police Strip Searches in Queensland*, released in August 2000;
- *Queensland Prison Industries: A Review of Corruption Risks*, released in August 2000;²⁷⁹
- *Protecting Confidential Information*, released in November 2000;
- *Safeguarding Students: Minimising the risk of sexual misconduct by Education Queensland Staff*, released in December 2000;
- a current review of excessive force complaints against police officers;
- a current review of complaints arising out of the handling of police dogs;²⁸⁰
- a current review of police tactical training;

²⁷⁵ Note 218 at 113-116.

²⁷⁶ Note 218 at 116.

²⁷⁷ CJC, CJC submission to previous PCJC Three Yearly Review of the CJC, 1998, Brisbane, at 38-39.

²⁷⁸ Note 277 at 39.

²⁷⁹ Which contained recommendations for an integrated corruption prevention strategy for the Department of Corrective Services.

²⁸⁰ These complaints are being examined to identify possible deficiencies in the training of dog handlers and their animals.

- a current collaborative research grant with Griffith University to undertake a major project on ‘Corruption in Correctional Institutions’;²⁸¹
- a current project working with the Department of Transport to review its systems for issuing licenses and permits;
- a current project (following on from the CJC’s review of corruption risks in prison industries), working with the Department of Corrective Services to improve anti-corruption controls within the department; and
- a current major review of management systems in a large university, which will serve as the basis for advising other universities on how they can reduce the risk of research grants being misused.

7.6.4.3 Criminal justice research and monitoring function

The CJC in its submission to the current review sought an amendment to section 21(1)(c) of the Act to remove the word “continually”:

*...on the basis that the use of the word ‘continually’ seems to require the Commission to carry out certain functions on an ongoing basis, which could lead to allegations of a failure to perform a statutory function, as occurred in the case of Boe v Criminal Justice Commission.*²⁸²

The CJC argued that in light of its limited resources, it ‘*must be able to prioritise the extent to which any of its functions are actively pursued during any particular period.*’

The Committee is not convinced, on balance, that the word ‘continually’ should be removed from section 21 of the Act.²⁸³

7.6.4.4 Law reform function

In the previous review, the CJC stated that it intended to refocus the work it undertook in respect of its criminal law reform function. The CJC submitted that it intended to restrict its future criminal law reform role to researching and proposing initiatives in relation to the criminal law where this is relevant to the discharge of its other statutory functions, such as the oversight of the QPS and the investigation and prevention of official misconduct.²⁸⁴ Despite this refocus, the CJC still intended to ‘*comment, where appropriate on proposals and reports emanating from other agencies, and on draft legislation relating to the criminal law and the criminal justice system*’. The CJC argued that it was ‘*ideally placed to provide an independent and objective perspective on significant criminal justice issues*’.²⁸⁵

The previous Committee endorsed the refocus of the CJC’s research in respect of its criminal law reform function.²⁸⁶

The Committee notes that the CJC’s submission to this review has not specifically addressed the issue of law reform, only ‘criminal justice system research’.²⁸⁷ Nor does the CJC’s Annual Report

²⁸¹ The purpose of this project is to identify the different forms of corrupt behaviour that occur in correctional institutions and develop a better understanding of the factors that give rise to this behaviour.

²⁸² Note 216 at 45.

²⁸³ This issue is discussed in greater detail below in Part ‘D’ of this report.

²⁸⁴ Note 277 at 39.

²⁸⁵ Note 277 at 39.

²⁸⁶ Note 218 at 116. (Recommendation 30)

²⁸⁷ Note 250 at 41.

appear to list submissions made by the CJC in respect of Bills and policy proposals. However, the Committee notes that the CJC has continued to prepare submissions on Bills.

The Committee has given consideration to whether the CJC should continue to have a law reform function.

The Committee is confident, from examination of the reports and other projects undertaken by the CJC, that the proposals on law reform put forward by the CJC complement the work of other law reform agencies such as the Law Reform Commission. Further, the Committee acknowledges that the CJC may be better placed to research and report in relation to legal and policy issues regarding matters which impact upon its jurisdiction, such as police powers.

The Committee also notes that the recently enacted *Prostitution Act 2000* (Qld) provides the CJC with a legislative role to review the effectiveness of the *Prostitution Act* and that the conduct of the review and the preparation of the report is taken to be a function of the CJC for the *Criminal Justice Act 1989*.

7.6.5 Conclusions

Conclusion 37

The Committee is satisfied that the CJC's current research agenda sufficiently reflects the CJC's increased focus on corruption prevention.

Conclusion 38

The Committee is satisfied that the CJC has an important law reform function in relation to matters which impact upon the CJC's jurisdiction.

7.7 Performance of the Research and Prevention Division

7.7.1 Introduction

In the past, both criticism and praise have been directed to the research undertaken by the Research Division of the CJC, in relation to the selection of research projects and the quality of research undertaken. In this section the Committee examines the performance of the Division in accordance with the CJC's *Strategic Plan 2000-2004* and stated performance indicators. The Committee also examines comments made about the performance of the Division in submissions to this review.

7.7.2 Performance indicators

The CJC's *Annual Report 1999-2000* lists performance indicators that apply to the research section of the Research and Prevention Division as follows:

- number of reports;
- qualitative evaluation using peer review;
- percentage and number of projects delivered by the required time, categorised according to priority; and
- cost per project.²⁸⁸

²⁸⁸ Note 288 at 35.

These indicators are further expanded in the CJC's *Strategic Plan 2000-2004*, which sets out performance measures as:

- number of projects;
- documented case studies of research and prevention work contributing to changes in policies and/or work practices;
- qualitative evaluation using peer review;
- percentage and number of projects completed that are delivered by the required time, categorised according to priority; and
- cost of the sub-output.²⁸⁹

7.7.3 *Analysis and comment*

The Committee notes the Strategic Plan introduces a measure that allows for the practical application or relevance of research projects to be evaluated by documenting case studies where research work contribute to changes in policies or work practices. The Committee is pleased to note this approach to measuring, not only the quantitative factors in the production of research reports, but also the relevancy and, therefore, qualitative factors. The Committee considers that it is vital that qualitative measures of performance are balanced against quantitative measures in order to make performance measures more meaningful. The Committee notes in this regard the use of qualitative evaluation using peer review, discussed in more detail at paragraph 7.7.4.5.

7.7.4 *Comments on the CJC's research projects*

7.7.4.1 Prior PCJC recommendations

The second PCJC examined the performance of the then Research and Co-ordination Division in some detail in its three yearly review of the CJC. At the time the second PCJC was conducting its review, the Research and Co-ordination Division was under some criticism about the quality of its research reports and the program of the Division in conducting research in line with the agenda set down by Fitzgerald QC. The second PCJC was of the view that the criticisms of the quality of the work of the Research Division had been addressed. However, in relation to the Fitzgerald Report research agenda, the second PCJC made the following relevant recommendations:

Recommendation 17

The Committee recommends that the Research Division should, as a matter of priority, research and report on the substance of the outstanding matters on the Fitzgerald Report agenda which have not been satisfactorily addressed by the Police Service.

Recommendation 18

The Committee recommends that the Research and Co-ordination Division, as a matter of priority, address the following outstanding items of the Fitzgerald Report agenda:

- *General review of regulatory laws (Item 1).*
- *Review of law enforcement funding to consider additional or alternative funding strategies (Item 3).*
- *The formulation of a professional education and review unit (Item 5).²⁹⁰*

²⁸⁹ CJC, *Strategic Plan 2000-2004*, July 2000, Brisbane, at 15-16. See Appendix 3.

The third PCJC noted in its three yearly review of the CJC, that the CJC informed the Committee that, in its view, it was neither necessary nor appropriate for any further research resources to be invested in addressing any outstanding items on that program.²⁹¹ The third PCJC did not further pursue this issue.

7.7.4.2 Relevancy of CJC research

The main issues raised in this review in relation to the performance of the CJC's research function were the relevancy and quality of the CJC's research.

Dr Tim Prenzler commented on the relevancy of CJC research in his submission to this review as follows:

*...I am conscious of the excellent work done by the CJC in research on issues such as beat policing, burglary prevention and – in relation to the wider criminal justice system – prisoner numbers or court workloads. However, the fact is that governments have generally ignored the recommendations arising from the CJC's research, and the Queensland criminal justice system remains hidebound by tradition and reliance on many outdated responses to crime.*²⁹²

The CJC responded to these comments of Dr Prenzler in a supplementary submission to this review, stating:

Dr Prenzler's comment that 'governments have generally ignored the recommendations arising from the CJC's research' shows a disappointing lack of familiarity with the outcomes of the CJC's work. Recent Annual Reports of the CJC include a summary of the outcomes of the research projects undertaken by the Division, which show that, overall, there has been a good 'take-up' rate of the findings and recommendations of the Research and Prevention Division. To give some recent examples:

- *The QPS is in the process of implementing all of the recommendations of the Police for the Future report on recruit selection.*
- *The evaluation framework adopted for the evaluation of the State Crime Prevention Strategy closely follows the approach proposed by the CJC.*
- *The QPS has indicated in principle acceptance of virtually all of the recommendations made in the CJC's recent report on police strip searches.*
- *Around 30 police 'beats' have now been established in Queensland based on the 'Toowoomba model' developed by the CJC.*
- *The Beenleigh Break and Enter Reduction project has been the catalyst for the QPS to adopt a Statewide trial of new approaches to the break and enter problem, through the initiation of the At Risk Premises Project (TARP).*
- *Key features of the Police Powers and Responsibilities Act 1997 were modelled closely on proposals advanced by the CJC in its review of police powers.*
- *Extensive use has been made by the Government of the Research on Prisoner Numbers undertaken by the CJC.*²⁹³

²⁹⁰ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, Legislative Assembly of Queensland, 1995, Brisbane, at 125.

²⁹¹ Note 218 at 85.

²⁹² Note 221 at 2.

²⁹³ Note 224 at 2-3.

7.7.4.3 Analysis and comment

The Committee accepts the CJC's submissions on this point. The Committee considers that the CJC has contributed valuable research in its areas of responsibility, which has, in the main, provided various agencies with relevant and practical information and recommendations.

7.7.4.4 Quality of CJC research

As noted above, the CJC, in responding to a submission from the QPS concerning the adequacy of CJC research, the CJC made reference to its use of peer review by fellow researchers as a means of maintaining quality control.

7.7.4.5 Analysis and comment

The use of peer review for qualitative evaluation of such research is an area that the Committee would like to have further explored with the CJC. The Committee considers that peer review can be a valuable method of ensuring quality of the work produced, but would like to have considered the procedures used in this method of quality control to ascertain a fuller picture of its value in assessing CJC research.

7.7.5 Conclusions

Conclusion 39

The Committee considers that the CJC's performance indicators for the research section of the Research and Prevention Division are appropriate.

Conclusion 40

The Committee considers that there is some scope to further explore the CJC's use of peer review for qualitative evaluations of work produced, to understand the procedures involved in the system and ascertain its value as a method of ensuring quality control of research.

7.7.6 Recommendation

Recommendation 30

The Committee recommends that the next Parliamentary Committee seek further information from the CJC as to the processes and procedures of peer review for qualitative evaluation of the CJC's research work and in other areas where peer review is utilised.

8. THE CORRUPTION PREVENTION FUNCTION

8.1 Introduction

An area in which there has been significant change in the past two years has been in the CJC's corruption prevention activities.

In the past, agencies like the CJC have adopted the philosophy that the most effective way of preventing corruption is to provide a credible deterrent. While investigation of official misconduct and police misconduct continues to be a core function of the CJC, there has been an increased focus by the CJC on longer-term preventative measures. This focus has been reflected in various ways, including:

- in the CJC's public statements and reports;
- through increased staff establishment of dedicated corruption prevention officers; and
- in an integrated approach to investigations of official misconduct.

As the CJC Chairperson, Mr Butler SC, recently stated:

*The Commission has moved to making prevention of future corruption a major focus of all its activities. This involves drawing on the lessons to be learned from current investigations, from patterns of complaints and from research results in order to inform the preventative response. We still regard investigation as a very important tool, but we are now more aware of the limitations of the traditional investigative response in resolving complaints. Investigations are time consuming, and expensive, and it is often difficult to obtain the evidence required to support a criminal prosecution or even disciplinary action. Common sense says that it is better to prevent the improper behaviour from occurring in the first place, rather than having to mop up the mess after the event.*²⁹⁴

8.2 Background

8.2.1 The Fitzgerald Report

The Fitzgerald Report stressed the importance of preventative measures to stop misconduct developing and extending in public sector agencies:

Ethical education must also play a role in long term solutions to problems. Such education would help individuals to find the correct balance between competing considerations, and should help groups of employees to establish a supportive atmosphere within which it would be harder for corruption to flourish.

Education and good management would also eradicate relatively minor misbehavior such as misuse of public resources and deliberate time wastage, which helps develop attitudes which lead, in turn, to more serious misconduct.

The quality of internal management and supervision has a significant influence on the behavioural standards of the employees. Equally, in the absence of meaningful work, staff find

²⁹⁴ B. Butler SC, Chairperson, CJC, 'Re-Shaping the CJC: Promoting integrity in the public sector', address to the Brisbane Institute, 24 October 2000.

*other ways to occupy their time.*²⁹⁵

The Fitzgerald Report envisaged that the Official Misconduct Division would not only carry out investigations but would have an education and liaison function for public sector agencies, auditors and private institutions. The Report envisaged that the Division would offer those bodies advice and assistance in how to prevent and detect official misconduct, including how to improve their organisations and systems.²⁹⁶

8.2.2 *The Criminal Justice Act 1989*

The Fitzgerald Report recommendation was reflected in section 29(3)(e) of the *Criminal Justice Act* (the Act), which requires the Official Misconduct Division:

(e) to offer and render advice or assistance, by way of education or liaison, to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerning the detection and prevention of official misconduct.

Under section 23 of the Act, the responsibilities of the CJC include:

(a) the acquisition and maintenance of the resources, skills, training and leadership necessary for the efficient administration of criminal justice.

8.2.3 *Previous PCJC recommendations*

8.2.3.1 The Second PCJC

The second PCJC, in its report on its three yearly review of the CJC, Report No. 26, had recommended that ‘*upon the setting up of the Office of Public Sector Ethics, the Corruption Prevention Division should cease operation to avoid duplication*’.²⁹⁷ The second PCJC further recommended that:

the functions of the Corruption Prevention Division should be carried out by public sector agencies such as the Public Sector Management Commission, the Office of Public Sector Ethics and the Queensland Audit Office. The Committee also recommends that any necessary legislative amendments be made to ensure the confidentiality and jurisdiction of the Public Sector Management Commission and the Office of Public Sector Ethics.

8.2.3.2 The Third PCJC

In the last three yearly review, the previous PCJC, the third PCJC, made the following recommendations:

- that the Commission retain a comprehensive and effective corruption prevention program to support the Commission’s investigative strategy (Recommendation 37);
- that the Corruption Prevention Division cease to have any education and training function as that function was carried out by the Education and Training sub-program (Recommendation 38);

²⁹⁵ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC), 1989, Brisbane, at 133.

²⁹⁶ Note 295 at 314 and Recommendation B.I.10(f)(ii) at 374.

²⁹⁷ PCJC, *A report on a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, Legislative Assembly of Queensland, February 1995, Brisbane, at 178. [Recommendation 24]

- that the Government consider making the education and training function the responsibility of each State Government department (Recommendation 39); and
- that the Corruption Prevention Division should refocus its resources on its Misconduct Risk and Systems Reviews, particularly preventative strategies to identify weaknesses in existing controls and to recommend changes to prevent or discourage corrupt behaviour.²⁹⁸

8.3 Current structure of the CJC's corruption prevention role

8.3.1 Background

A Corruption Prevention Program was established by the Commission in August 1991 and a Corruption Prevention Officer was appointed. The Corruption Prevention Unit was initially established within the Official Misconduct Division. However, in March 1993 this unit became a separate Division, a move permitted by section 19 of the Act.²⁹⁹

During the previous Committee's three yearly review of the CJC, the then Director of the Corruption Prevention Division reported that the Division had four major activities:

- public sector liaison;
- misconduct risk and systems reviews;
- education and training; and
- whistleblower support.

Of these functions, misconduct risk and systems reviews were stated to be the most important corruption prevention initiative.³⁰⁰

8.3.2 Amalgamation with the Research Division

In 1998, the CJC engaged consultants to review the organisation's program and organisational structure, following significant legislative amendments to its functions in late 1997. The consultants, the Consultancy Bureau, recommended that the Corruption Prevention Division, whose Director had recently resigned, be amalgamated with the Research Division to create the Research and Prevention Division.³⁰¹ The advantages of this change were seen to be:

- Giving emphasis to corruption prevention oriented research to enhance the long term effectiveness of the CJC
- Creating a critical mass of resources to focus on prevention using a broader range of approaches.³⁰²

The review also recommended that the CJC take active steps to ensure the corruption prevention initiatives were '*appropriately resourced in balance with other Commission responsibilities*'.³⁰³ The

²⁹⁸ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 45, Legislative Assembly of Queensland, June 1998, Brisbane, at 138. [Recommendation 40]

²⁹⁹ Section 19(1) of the *Criminal Justice Act* allows the Commission to establish additional organisational units (a power available prior to 1997 under former section 19(2)(a)).

³⁰⁰ Note 298 at 130.

³⁰¹ Consultancy Bureau, *Report on an Organisational Review of the Criminal Justice Commission*, (unpublished), June 1998, Brisbane, at 25. [Recommendation 8]

³⁰² Note 301 at 25.

³⁰³ Note 301 at 26. [Recommendation 9]

report noted that the CJC decided to fill existing vacant positions as a first step in that process. The report also noted that the limited resources of the Corruption Prevention Division had mainly focused on the provision of information and presentations to public sector organisations to raise awareness and educate staff.³⁰⁴

8.3.3 *Changes in staffing*

The number of corruption prevention staff has increased markedly during the reporting period. At the time of the last three yearly review in 1998, the Division comprised 6 staff, of whom one was the CJC's Whistleblower Support Officer and another was an Indigenous Liaison Officer. Whistleblower support is now associated with the complaints liaison function in OMD and is discussed separately in Chapter 9 of this report.

The current staff comprises five Corruption Prevention officers, one senior Corruption Prevention Officer, a manager and a support officer (who is a shared resource with the research area of the Division). This represents a significant increase in staffing since the lowest level in 1998, when only three staff (including the Indigenous Liaison Officer) were working in the area.

Corruption Prevention officers currently specialise in the following areas:

- local government;
- police;
- public sector;
- corrective services; and
- education and information.

8.3.4 *Other CJC prevention activities*

It must be emphasised that officers designated as Corruption Prevention Officers are not the only CJC staff performing corruption prevention functions. For some years the Research Division has carried out research projects with a strong preventative focus, particularly in relation to policing. Such projects include:

- reducing assault complaints against police;³⁰⁵
- ethics surveys of police constables;³⁰⁶
- a review of police officer recruitment and selection;³⁰⁷
- provision of advice to the QPS on policy, procedure and training in such matters as drug and alcohol policy; and
- monitoring of the use of police powers.

More recently, the CJC produced a research report on prison industries³⁰⁸ and on allegations against teachers of sexual misconduct against their students.³⁰⁹ Further, a research officer was also employed full-time for some months to assist in the CJC's project on police misuse of computers.³¹⁰

³⁰⁴ Note 301 at 25.

³⁰⁵ CJC, *Reducing Police-Civilian Conflict: An Analysis of Assault Complaints Against Queensland Police*, 1997, Brisbane.

³⁰⁶ For example, CJC, *Ethics Surveys of First Year constables: Summary of Findings*, 1999, Brisbane.

³⁰⁷ Police Education Advisory Council, *Police for the Future: Review of Recruitment and Selection for the QPS*, 1998, Brisbane.

In the CJC's Official Misconduct Division, CJC investigations have also increasingly made recommendations, where relevant, aimed at preventing the recurrence of official misconduct. Those matters are discussed further below at paragraph 8.4.2.

This wider and more integrated approach to corruption prevention is reflected in the CJC's *Strategic Plan 2000-2004*. The first corporate goal is, '*To reduce the incidence of official misconduct in the public sector and official misconduct and misconduct in the Queensland Police Service*'. Strategies to achieve that goal in relation to preventative action are listed as follows:

- *Ensure a greater proportion of investigations result in prevention recommendations and advice.*
- *Increase contact with senior administrators in order to identify causes and possible remedies of official misconduct.*
- *Adopt a strategic and selective approach to systems reviews.*
- *Apply a strategic and selective approach to the provision of training assistance to public sector agencies.*
- *Pursue collaborative opportunities with external agencies to integrate corruption prevention initiatives within other programs.*³¹¹

8.4 The CJC's current corruption prevention activities

8.4.1 Introduction

The CJC, in its most recent Annual Report, states that the CJC's strategic corruption prevention approach is based on the following principles:

- *Proactive prevention is more cost-effective than reactive measures;*
- *Corruption prevention is the responsibility of senior management;*
- *Internal and external reporting mechanisms, effective internal control systems and accountability are essential; and*
- *Strategic awareness and effective training in corruption prevention are an indispensable part of a corruption prevention strategy.*³¹²

Current corruption prevention activities are discussed below under the following headings, although it should be noted that some activities clearly fall under more than one heading:

- Integration with CJC investigations;
- Misconduct systems and risk reviews;
- Education and training;
- Public sector liaison;
- Local government;
- Police; and

³⁰⁸ CJC, *Queensland Prison Industries: A Review of Corruption Risks*, 2000, Brisbane.

³⁰⁹ CJC, *Safeguarding Students: Minimising the risk of sexual misconduct by Education Queensland staff*, 2000, Brisbane.

³¹⁰ CJC, *Protecting Confidential Information*, 2000, Brisbane.

³¹¹ CJC, *Strategic Plan 2000-2004*, July 2000, Brisbane.

³¹² CJC, *Annual Report 1999-2000*, 2000, Brisbane, at 42.

- Corrective services.

8.4.2 Integration with CJC investigations

The CJC's submission to this review noted:

*Increasingly we are also using investigations as a means of identifying and correcting system deficiencies, so that the risk of misconduct occurring in the future is reduced.*³¹³

The Director of the CJC's research and Prevention Division, Dr David Brereton, expanded on this greater integration during his evidence to the Committee as part of this review:

*...one of the things we have been trying to do—and I think with a fair amount of success—is to increase the number of CJC investigations which have a preventive outcome. Because of the management arrangements we now have in place within the commission, including an outposted corruption prevention officer in the complaints area, we are also able to get prevention involvement at an earlier stage in investigations. That really is an important way of maximising the effectiveness of the prevention input.*³¹⁴

The report of the review by the CJC's Strategic Implementation Group (SIG)³¹⁵, recommended various initiatives to ensure a more integrated approach to the management of the CJC's operations and projects. They included the following:

- An Executive Assessment Committee should be established, with core membership being: the Directors from OMD, Research and Prevention, and Intelligence and Information; the Chief Officer, Complaints; and, the Chairperson, with its key functions to include making decisions on complex or sensitive complaints and identifying and/or generating options for preventative or proactive projects.³¹⁶
- Officers from the Research and Prevention Division should be temporarily co-located within operational teams when a project requires substantial prevention input.³¹⁷
- A Corruption Prevention Officer should be permanently located in the Complaints Section.³¹⁸

The recommendations were subsequently adopted by the CJC.

The CJC's most recent Annual Report noted that CJC investigations often reveal areas where systems could be improved:

*Where this happens, investigators call in corruption prevention officers to advise senior management of the agencies concerns. This interaction between investigators and corruption prevention staff is steadily increasing ...*³¹⁹

The Committee notes that, in addition to providing greater preventative input into individual investigations, the CJC is becoming 'more proactive in identifying and responding to emerging patterns and trends in the area of official misconduct'. The CJC, in its submission to this review,

³¹³ CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane, at 15.

³¹⁴ PCJC, Transcript of Public Hearing - Three Yearly Review of the CJC, 14-15 December 2000, Brisbane, at 34.

³¹⁵ This is an internal working party, to prepare a report making recommendations to best achieve the corporate goals set out in the CJC's Strategic Plan.

³¹⁶ CJC, *Continuing the Reform Process: The Report of the Strategic Information Group*, December 1999, Brisbane, at 29. (Recommendation 4.7)

³¹⁷ Note 316 at 37. (Recommendation 5.1)

³¹⁸ Note 316 at 38. (Recommendation 5.2)

³¹⁹ Note 312 at 46.

has stated that it is seeking to use a broader range of strategies to address any problems which may have been identified through this process.³²⁰

The CJC has put in place several mechanisms to ensure that investigations which may benefit from having a corruption prevention input are identified. These mechanisms include:

- the establishment of the Executive Assessment Committee³²¹ within the CJC, which includes the Director of the Research and Prevention Division and which meets daily;
- the establishment of the Committee for Operations and Projects (COP) within the CJC which has facilitated greater co-operation and sharing of resources on a CJC-wide basis across the various divisions of the CJC and thereby assisted in the integration of resources;
- the creation of an information field in the CJC's complaint database in respect of corruption prevention;
- complaint officers being required to identify and report suitable matters which may benefit from a corruption prevention input; and
- an officer in the Research area within the CJC scanning Complaint lists on a daily basis.

The CJC noted that in 1999-2000, several investigative reports included strategies to prevent the recurrence of the initial problem. The Committee notes that as at June 2000, the CJC was reviewing various policies and procedures at a university research centre, and systems associated with drivers' licences and vehicle registrations.

8.4.2.1 Analysis and comment

The placement of a Corruption Prevention Officer in the OMD appears to have two key advantages for the CJC. Firstly, it may enhance the ability of the CJC to identify, at an early stage, matters which may benefit from having an corruption prevention involvement. It should permit the CJC to collect relevant information at an early stage and to provide a timely response rather than to wait until after an investigation is finalised.

Secondly, placing an officer in the OMD may provide the Complaints Section and its officers with an increasing level of awareness of corruption prevention issues and also assist in identifying matters which may benefit from some corruption prevention assistance.

A corruption prevention response may not be possible in respect of each and every investigation. A more cost-effective strategy may be to channel corruption prevention resources into 'hot-spots' or frequently occurring complaints. For example, dog-handling complaints. The CJC had previously reported that it has received a number of complaints arising out of the handling of police dogs. These complaints resulted in the CJC undertaking a project to identify possible deficiencies in the training of dog handlers and their animals.

8.4.2.2 Concerns or deficiencies falling short of official misconduct

Where matters investigated by the CJC fall short of "official misconduct" but reveal non-compliance with established policies and procedures or perhaps a failure to observe best practice or even create a potential future integrity risk, there is some doubt as to whether the CJC has jurisdiction to make recommendations to an agency.

³²⁰ Note 313 at 16.

³²¹ Referred to above - see Note 316.

This doubt arises out of the terms of section 29(3)(e) of the Act, which relevantly provides that it is a function of the OMD:

(e) to offer and render advice or assistance, by way of education or liaison, to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerning the detection and prevention of official misconduct; (Underlining added.)

On one view, unless ‘official misconduct’ is identified, the CJC has no jurisdiction to render any advice or assistance in respect of corruption prevention matters.

Apart from section 29(3)(e), the role of corruption prevention is not otherwise mentioned in the Act.

The CJC has previously submitted that the responsibilities of the CJC as set out in section 23 of the Act should be amended to give explicit recognition to the CJC’s corruption prevention function and that section 29(3)(e) of the Act could then be deleted.³²² An appropriate amendment for insertion could be, ‘*taking measures to assist in the prevention of official misconduct in the public sector and raising the standards of integrity and conduct in units of public administration*’.

The Committee does not accept the CJC’s submission that if an amendment is made to section 23 in the terms suggested above, that section 29(3)(e) of the Act could then be deleted. Section 29(3)(e) provides the CJC with a role in providing advice to ‘*companies and institutions*’. Such advice may extend to the issue of ethical issues including gifts by companies to the public sector.

8.4.2.3 Conclusions

Conclusion 41

The Committee is satisfied that the mechanisms put in place by the CJC will ensure that appropriate investigations which may benefit from a corruption prevention input are identified at the earliest possible stage.

Conclusion 42

The Committee is of the view that the integrated corruption prevention approach adopted by the CJC appears to be working well.

Conclusion 43

The Committee endorses a previous submission made by the CJC that the responsibilities of the CJC as set out in section 23 of the Act should be amended to give explicit recognition to the CJC’s corruption prevention function.

8.4.2.4 Recommendations

Recommendation 31

The Committee recommends that the responsibilities of the CJC as set out in section 23 of the Act should be amended to give explicit recognition to the CJC’s corruption prevention function.

³²² CJC, *CJC Submission to the Three Yearly PCJC Review of the Criminal Justice Commission*, 1998, Brisbane, at 64.

Recommendation 32

The Committee further recommends that an appropriate amendment for insertion into section 23 of the Act could be, *‘taking measures to assist in the prevention of official misconduct in the public sector and raising the standards of integrity and conduct in units of public administration’.*

8.4.3 Misconduct risk and systems reviews

Following its establishment in 1993, the Corruption Prevention Division carried out a range of risk reviews and risk analysis of various activities in specific public sector agencies and local government authorities.

These risk reviews and risk analysis assist in identifying weak-points and loopholes that could be exploited unintentionally or by those with a criminal intent, and analyse what controls are in place to prevent or discourage corrupt behaviour. Examples included: risk analysis of purchasing and asset management and inventory; risk analysis of internal audit procedures; and, risk analysis of the hiring procedures and supervision of contractors by local authorities.³²³

The CJC submits that the reviews have a long term preventative effect because they bring about major organisational changes.

As noted above at paragraph 8.2.3.2, the previous Committee recommended that the Division should refocus its resources on its misconduct risk and systems reviews, particularly preventative strategies to identify weaknesses in existing controls and to recommend changes to prevent or discourage corrupt behaviour.³²⁴

In recent years increased responsibilities have been placed on individual agencies in relation to risk management. In 1997, the Financial Management Standard 1997 was implemented in Queensland under the *Financial Administration and Audit Act 1977*. Part 5 Division 5 of that Standard makes policies and systems for risk management the responsibility of individual statutory bodies and the accountable officers of government departments. As misconduct risk and systems reviews are very resource intensive, it is only appropriate that such risk and systems reviews should primarily remain the responsibility of the individual departments. Nevertheless, the CJC may still play an important role in such misconduct risk and systems reviews, for example, where an agency or department lacks the necessary skills or resolve to undertake such reviews. The Committee understands that the CJC has recently undertaken, at the invitation of several agencies and departments, misconduct risk reviews which have not yet been the subject of a public report. The CJC has also played a role in providing advice to management about reducing the opportunities for corruption.

One of the most significant recent reviews carried out by the CJC concerned Queensland’s prison industries. This is discussed further below at paragraph 8.4.8. The CJC reports that it intends to follow-up this review with a project, in association with the Department of Corrective Services, to improve anti-corruption controls within the department.³²⁵

³²³ CJC, *Criminal Justice Commission overview - Policy and Procedures Manual*, Volume 1, at paragraph 6.4.2.

³²⁴ Note 298 at 138. (Recommendation 40).

³²⁵ Note 313 at 18.

8.4.3.1 Conclusion

Conclusion 44

The Committee is of the view that misconduct risk and systems reviews play an integral part in any corruption prevention strategy.

8.4.4 Education and Training

As part of its education and training function, corruption prevention staff since 1993 have held workshops on ethical decision-making and corruption prevention for government departments, local government authorities, universities, TAFE colleges and schools. Staff have also given general presentations on the CJC's role and functions to such groups.

As noted above at paragraph 8.2.3, the previous Committee, while supporting the CJC's retention of a comprehensive corruption prevention strategy, recommended that the CJC cease to have any education and training function as that function was then carried out, as the Committee considered such training was more appropriately a management responsibility.³²⁶

In 2000, the CJC reported that in keeping with its changed focus which aims to provide a more strategic response, *'we concentrated less on training individuals and more on "training the trainer", as we are convinced that this is a more effective and less costly approach to take'*.³²⁷

At the time of the SIG report in 1999, the Corruption Prevention Division aimed to develop:

- 'train-the-trainer' kits in ethical decision-making;
- role and functions of the CJC resource kits; and
- resource listings in the area of ethics, risk management, corruption prevention and fraud prevention.

The CJC has recently released a resource kit for students, including a CJC corporate video, a Powerpoint presentation, papers and an educator's guide.

The CJC is also developing a kit on an ethical decision-making for use by any council and to provide some 'train the trainer' courses and *'explore opportunities for collaborating with the LGAQ and the department in the delivery of higher level training in this area'*.³²⁸

In 1999-2000, the CJC held the following workshops and presentations:³²⁹

Public sector workshops/presentations	59
QPS workshops/presentations	31
Aboriginal and Torres Strait Islander presentations	21
University/TAFE presentations	10
Conference papers	3

³²⁶ Note 298 at 138. (Recommendation 38)

³²⁷ Note 312 at 43.

³²⁸ Note 313 at 22.

³²⁹ Note 312 at 43.

In addition, staff were involved in a range of other activities such as responding to requests for corruption prevention advice or assistance. The CJC has also developed various new publications in recent years, including:

- a series of *Prevention Pointers*, which are concise publications of one or two pages with suggested practical preventative action, usually designed for a specific target group such as local government; and
- a bi-annual newspaper, *Prevention Pays!*

The Committee notes that the CJC makes those materials, as well as most of its other publications, widely available to the public through the CJC website. In addition, the CJC has had a stand at the Royal Queensland Show in 1999 and 2000, thus helping to increase public exposure to information about the CJC's role and functions.

The CJC has also run joint training programs with agencies, such as that conducted in 1999-2000 with the Department of Families, Youth and Community Care, aimed at staff in the Basil Stafford Centre.

8.4.4.1 Conclusions

Conclusion 45

The Committee accepts that the CJC can perform a key role in corruption prevention through education and training.

Conclusion 46

The Committee endorses the CJC's changed focus in respect of 'education and training' and agrees that the publication of 'train-the-trainer' and other resource kits is a more effective and less costly approach than an emphasis on training individuals.

8.4.5 Public Sector Liaison

The SIG Report noted that the Division intended to undertake further collaborative corruption prevention initiatives through a range of strategies, including regular meetings with the Office of the Public Service Commissioner.³³⁰ The report also noted that the CJC held 'annual briefing meetings' with boards of management of all State Government departments, major statutory authorities and most local authorities in south east Queensland.³³¹

The CJC's most recent annual report reports that the CJC's liaison work has been facilitated through the creation of two networks.³³²

- A *Liaison Officers Network*, the first meeting of which was held in July 1999 specifically for local government representatives. The CJC reports that two meetings have been held since then - one in February 2000, at which a policy development manager from the Department of Communication and Information, Local Government, Planning and Sport spoke on the use of communication and information devices, and a second in September 2000 on managing internal complainants.

³³⁰ Note 316 at 35.

³³¹ Note 316 at 35.

³³² Note 312 at 42.

- A *Corruption Prevention Network*, comprising staff from various public sector agencies, with the aim of providing a forum for those with an interest or responsibility in the prevention of corruption the opportunity to meet, share ideas, establish contacts and to keep abreast of developments in the field.³³³

Dr Brereton emphasised the priority the CJC is giving to enhancing liaison with other agencies during his evidence to the Committee as part of this review:

*We have given priority to enhancing liaison with key personnel in other agencies. A good recent example of that is facilitating the establishment of a corruption prevention network of representatives of the various agencies around the State. The last meeting of that was attended by over 60 people. We have worked on developing a more strategic approach to the delivery of training. Clearly, with a relatively small division we cannot possibly meet all of the requests that we get for assistance in direct training so we are focusing instead on developing kits and other training materials, targeting our training efforts at strategically placed groups and also beginning to employ a 'train the trainer' approach. Another priority in the corruption prevention area is broadly what we call 'capacity building' with agencies and working with agencies on ways in which they themselves can improve their capacity to identify corruption risks and respond to those effectively.*³³⁴

Another corruption prevention initiative was the CJC's work in 1999-2000 in relation to misuse of the Internet and e-mail by public sector employees. The CJC took various steps including:

- the provision of advice to the Department of Communication and Information, Local Government, Planning and Sport on the development of an Information Standard, which is binding on all agencies and which was issued to all agency heads in March 2000;
- the preparation and dissemination to all public sector agencies and councils of a brief *Prevention Pointer* on this topic, with guidelines to employees as to how to avoid becoming the subject of a complaint; and
- the development of an internal policy which was then placed on the CJC website with other 'good practice' examples from other agencies.³³⁵

The CJC plans various strategies to maintain its focus on this issue in the future, including raising awareness amongst staff and encouraging agencies to introduce stronger preventative measures.³³⁶

The Committee notes that the revised Performance Indicators detailed in the CJC's Strategic Plan³³⁷ and referred to below in paragraph 8.5, includes '*qualitative evaluation using peer review*'. The CJC has relied to date upon informal feedback from relevant agencies, but intends to formalise this feedback by conducting surveys, for example, of Agency Liaison officers, to determine their needs for assistance. The Committee notes that the NSW Independent Commission Against Corruption conducted similar surveys in NSW in relation to the network of Protected Disclosure Coordinators.

8.4.5.1 Conclusion

Conclusion 47

The Committee accepts that the CJC can play a integral role in developing corruption prevention initiatives. However, the Committee also acknowledges that the CJC is a comparatively small

³³³ The CJC further reports that over time this network should become self-managed and self-supporting.

³³⁴ Note 314 at 34.

³³⁵ Note 312 at 19.

³³⁶ Note 312.

³³⁷ Note 312 at 35.

agency with a limited budget. The Committee is of the view that the Office of Public Service Merit and Equity is the lead agency with responsibility for corruption prevention activities in relation to ethical behaviour in the public sector, with the CJC providing advice and assistance as the occasion might require.

8.4.6 Police

Because of the CJC's statutory responsibilities to monitor and oversee reform of the Service, the CJC has undertaken significant preventative work with the QPS, particularly through its research projects. These projects are discussed further in Chapter 7 of this report

The former Corruption Prevention Division established its Police Service Liaison and Training program in May 1996, *'to offer advice and assistance to the QPS on preventing and reducing police misconduct'*.³³⁸ Objectives included:

- training police officers in ethics and critical decision-making;
- assisting the QPS Academy to develop appropriate training material on ethics and corruption prevention;
- lecturing recruits on ethics and corruption prevention; and
- giving police officers information about the CJC's role and functions.

In keeping with the CJC's more narrowly defined focus on education and training activities, the CJC has now ceased conducting ethics training for the QPS (as of September 1998), although it has retained an oversight role.³³⁹ Instead, the Ethical Practices Branch of the QPS Ethical Standards Command now conducts ethics training for police recruits and serving officers, as well as liaising with QPS Human Resource Development to ensure that ethical perspectives are considered in all police training.

In 1999-2000, the CJC reported that 31 workshops or presentations had been given to the QPS, compared with 64 the previous year.³⁴⁰

The Director of the Research and Prevention Division, Dr Brereton, in evidence before the Committee, reported on the Ethical Standards Command (ESC) of the QPS moving towards a more preventive focus:

*...part of what Project Resolve is about is trying to get [the QPS] to really think preventively rather than just reactively. That is part of what we are monitoring at the moment and how well the service will do that. Certainly we would look for opportunities to work cooperatively on addressing prevention issues with them.*³⁴¹

By 'working cooperatively' with the ESC, the CJC will avoid, as far as is possible, the potential for overlap between the CJC and the QPS in respect of corruption prevention activities in relation to police.

Finally, the Committee notes that there have been significant changes to police powers in recent years.³⁴² The Committee notes that the CJC is monitoring the use by the QPS of those powers, but

³³⁸ Note 323 at paragraph 6.2.2.

³³⁹ Note 316 at 35.

³⁴⁰ Note 312 at 43.

³⁴¹ Note 314 at 37.

³⁴² Through the introduction of the *Police Powers and Responsibilities Act 1997* and the revised *Police Powers and Responsibilities Act 2000*.

that, as far as it is aware, the CJC has not detailed any plans it may have in relation to corruption prevention initiatives in respect of these new police powers and responsibilities. Examples of such corruption prevention initiatives might include ‘controlled operations’ legislation³⁴³ and the procedures and controls in respect of DNA evidence.

8.4.6.1 Conclusion

Conclusion 48

The Committee is of the view that the CJC, working cooperatively with the QPS, should give consideration to what further corruption prevention initiatives might appropriately be pursued in respect of the new police powers legislation including ‘controlled operations’ and the procedures and controls in respect of DNA evidence.

8.4.7 Local Government

One area in which the CJC has noticeably increased its output is in relation to local government preventative initiatives, particularly since the appointment in December 1998 of a corruption prevention officer specialising in this area.

In 1998-99, the CJC held workshops on ethical decision-making for all senior staff and supervisors for a major City Council. The CJC noted that eighty per cent of participants reported the workshop to be useful and relevant to their work.³⁴⁴ A training kit was also developed for the council’s use, and the CJC noted in its submission to the current review that it intended to develop a kit ‘*for use by any council*’.³⁴⁵

Prior to the last local government elections held in March 2000, the CJC took action to inform candidates of the role and functions of the CJC, including how to make a complaint, in an effort to minimise misuse of the complaints process. Following the election, the CJC released a Councillor Information Kit, comprising ten *Prevention Pointers*, to assist all councillors to understand their role, obligations and responsibilities and to encourage ethical behaviour. The CJC submits that:

*The outcome of this initiative – based on our own assessment and that of the LGAQ was a cleaner campaign and only a minimal number of media reports involving the CJC. Mr Greg Hallam, Executive Director of the LGAQ commented in The Courier Mail that ‘this election had been remarkably cleaner than 1997’ and he credited the CJC’s proactive role with discouraging candidates from making vexatious attacks.*³⁴⁶

Mr O’Gorman, in delivering a paper during a seminar held by the Western Australian Anti-Corruption Commission in Perth in May 2000, agreed that the last local government election in Queensland had been ‘cleaner’ but was not able to explain the precise reasons for it:

That problem [of people making a complaint about a political opponent and then leaking it to the press that that person was being investigated for corruption] has occurred in Queensland with the CJC. On the eve of almost every local government election, these sorts of comments were made by people who were seeking office or seeking to remain in office. Interestingly, in the last local government election just held it was not an issue. Whether it has run out of steam and people who make complaints and then publicise them on the eve of a local government election are seen for what they are, I am not sure, but it seems to have been solved in

³⁴³ See Chapter 5 of the *Police Powers and Responsibilities Act 2000*.

³⁴⁴ Note 312 at 49.

³⁴⁵ Note 313 at 22.

³⁴⁶ Note 313 at 21.

*Queensland.*³⁴⁷

The Committee notes that a public attitudes survey commissioned by the CJC in 1999 showed that only 39 per cent of respondents were aware of the CJC's jurisdiction over local government, compared with 69 per cent who were aware of the jurisdiction over the State public sector and 90 per cent over the QPS. The Committee raised this issue with the CJC during the public hearings held in February 2000 as part of the Committee's review of the CJC's annual report for 1998-99. The CJC noted in its submission to the current review that developing strategies to raise the CJC's profile in this area would be a '*major challenge over the next couple of years*'.³⁴⁸

The CJC also noted that it would '*explore opportunities for collaborating with the [Local Government Association of Queensland] and the department in the delivery of higher-level training in this area*'.³⁴⁹

8.4.7.1 Conclusions

Conclusion 49

The Committee is satisfied that the CJC has taken measures to increase public awareness of the CJC's responsibilities in relation to local government.

Conclusion 50

The Committee applauds the CJC for its proactive strategy prior to the recent local government elections in attempting to reduce the incidence of false, vexatious and frivolous complaints to the CJC.

8.4.8 Corrective Services

With the CJC having gained jurisdiction in late 1997 over State-run corrective services facilities, it is appropriate that the CJC's corruption prevention strategies recognise this important area of work, given the recognised potential for official misconduct and corruption in correctional institutions.

The CJC reported that in 1998-99 it made a preliminary study to determine what corruption prevention initiatives it could most effectively offer.³⁵⁰ In addition to giving presentations to staff and prisoners about the CJC's role and functions, the CJC has '*been involved with a series of liaison activities*' with the Department of Corrective Services.

A major activity in 1999-2000 was a review of prison industries, carried out by the CJC in conjunction with the Department of Corrective Services. The CJC reports that the initial stimulus for this report was provided by two investigations that highlighted significant corruption risks in the area of prison industries. The CJC's report, which contained recommendations for an integrated corruption prevention strategy for the Department, was released in August 2000.³⁵¹

The CJC intends to follow up this report with a further report with a corruption prevention perspective on inappropriate relationships with inmates in the delivery of professional services. The

³⁴⁷ Joint Standing Committee on the Anti-Corruption Commission, Transcript of proceedings, *Public Hearing into the Effectiveness of the Anti-Corruption Commission*, 5 May 2000, Perth, at 69. [Evidence given by Terry O'Gorman, Australian Council for Civil Liberties]

³⁴⁸ Note 313 at 22.

³⁴⁹ Note 313.

³⁵⁰ Note 312 at 49.

³⁵¹ Note 308.

CJC reports that the stimulus for this report also came out of an investigation, conducted by the OMD, of a prison psychologist at a correctional centre who had admitted she had engaged in a sexual relationship with two long-term prisoners and supplied them with contraband.³⁵² The report, in collaboration with the Department of Corrective Services, will ‘*highlight the dangers associated with the delivery of professional services to inmates by professionals without proper safeguards, such as the provision of training and appropriate supervision*’.³⁵³

8.4.8.1 Conclusion

Conclusion 51

The Committee is satisfied that the CJC is undertaking appropriate corruption prevention measures in the area of corrective services.

8.5 Performance of Corruption Prevention in fulfilling its responsibilities

In its most recent Annual Report, the CJC has included several performance indicators for research, prevention and reform, including:

- the number of presentations;
- the percentage and number of clients who rate the CJC’s assistance as useful and credible; and
- the number and significance of instances in which agencies adopt changes.³⁵⁴

These performance indicators appear to have been modified by the CJC’s Strategic Plan for 2000-2004 to include:

- *number of projects*
- *number/proportion of investigations where prevention input provided*
- *qualitative evaluation using surveys of CEOs and liaison officers*
- *documented case studies of research and prevention work contributing to changes in policies and/or practices*
- *qualitative evaluation using peer review*

8.5.1 Analysis and comment

The Committee notes that while the CJC, in its Annual Report, details the number of presentations and provides some very useful case studies, it does not provide much information by way of statistics on the percentage of clients who rate the CJC’s assistance as useful, nor the overall number and significance of instances in which agencies adopted recommended changes.

As referred to above, the Committee also notes that in some cases, the CJC has relied upon informal feedback from relevant agencies, but intends to formalise this feedback by conducting surveys of Agency Liaison officers to determine their needs for assistance.

³⁵² Note 313 at 24.

³⁵³ Note 313 at 24.

³⁵⁴ Note 312 at 35.

8.5.2 Conclusions

Conclusion 52

The Committee supports the retention of a strong corruption prevention focus at the CJC.

Conclusion 53

The Committee strongly supports the CJC's more strategic focus on corruption prevention by reducing emphasis on the provision of direct 'face to face' training and the greater emphasis on 'training the trainer' and developing appropriate resource kits.

Conclusion 54

The Committee accepts that assessing the performance of the corruption prevention division is not a precise science. The Committee is of the view however, that the current performance indicators are appropriate and sufficient measures of the CJC's corruption prevention strategies.

8.6 Whether activities should be carried out by other appropriate bodies

8.6.1 Background

With the enactment of the *Public Sector Ethics Act 1994* (Qld) and the establishment of the Public Sector Management Commission (abolished in 1996), then the Office of the Public Service Commissioner and now the Office of Public Service Merit and Equity, concerns have been raised in the past that some of the CJC's corruption prevention role should be carried out by other organisations.

During the Connolly / Ryan Inquiry in 1997, the then Office of the Public Service Commissioner submitted that the CJC, in practice:

... adopts a broad interpretation of [section 29(3)(e)] to justify its corruption prevention program, and within it, the training which the CJC offers to agencies in, for example, "ethical decision making".

*It is this Office's submission that such a broad interpretation is inconsistent with the [Criminal Justice] Act's properly narrow focus on the administration and improvement of the State's criminal justice system.*³⁵⁵

The submission also argued that it was inappropriate that the body with responsibility for the investigation of complaints should also have responsibility for providing advice or implementing measures to prevent the recurrence of problems. The previous Committee rejected that argument, considering that the CJC was '*ideally suited to provide advice to complement inspectorial and investigative functions*'.³⁵⁶

8.6.2 Analysis and comment

The CJC must always be alert to the potential for overlap between the corruption prevention activities of the CJC and the activities of other relevant agencies such as the OPSME (particularly in relation to ethical decision-making), and the QPS Ethical Standards Command.

³⁵⁵ Office of Public Service Commissioner, *Submission to the CJC Inquiry into the Effectiveness of the CJC*, April 1997, at 5.

³⁵⁶ Note 300 at 137.

In respect of the ESC, the CJC has set up well-established coordination mechanisms employed on a daily basis to minimise the risk of overlap.

In respect of the OPSME, the coordination mechanisms are less well established. The CJC reports that these coordination mechanisms are limited, at present to comparing notes as to areas of interest. Unless the OPSME receives an injection of resources, the potential for overlap is limited.

8.6.3 Conclusions

Conclusion 55

The Committee is satisfied that the CJC is alert to the potential for overlap and duplication and has established mechanisms to minimise the risk of such overlap.

Conclusion 56

As noted above in paragraph 8.4.5 the Committee is of the view that the Office of Public Service Merit and Equity is the lead agency with responsibility for corruption prevention activities in relation to ethical behaviour in the public sector, with the CJC providing advice and assistance as the occasion might require.

9. WHISTLEBLOWER SUPPORT

9.1 Introduction

As part of a comprehensive strategy to eliminate corruption in the public sector, promote integrity in government and ensure proper accountability, it is necessary to encourage people, particularly public officials, to come forward to report official misconduct. In the words of Fitzgerald QC:

*Honest public officials are the major potential source of the information needed to reduce public maladministration and misconduct. They will continue to be unwilling to come forward until they are confident that they will not be prejudiced.*³⁵⁷

The *Whistleblowers Protection Act 1994 (Qld)* was enacted to provide protection from retaliation or victimisation for those who report suspected official misconduct and other serious instances of maladministration.

Much information given to the CJC comes from ‘whistleblowers’ who make public interest disclosures. It is important that such people feel safe in providing information to the CJC and, for this reason, whistleblower support is vital to the CJC in receiving information about official misconduct.

The Committee is, in this chapter, mindful of its jurisdiction. However, during its examination of the CJC’s role in whistleblower support, several issues have arisen that the Committee considers require addressing by the government. The Committee would like to point out two factors here: firstly, it seems many of the issues that have been identified are currently being addressed by the Office of Public Service Merit and Equity (OPSME); and, secondly, the Committee does not undertake to address all issues that arise out of an examination of the scheme for protection of whistleblowers in Queensland.

9.2 Background

The introduction of legislation to protect whistleblowers was first recommended by Fitzgerald QC³⁵⁸ and was endorsed in 1991 by the Electoral and Administrative Review Commission (EARC).³⁵⁹ The EARC also recommended the establishment in the CJC of a Whistleblowers Counselling Unit to provide counselling and assistance to those people who come forward with information or those who are considering doing so. The CJC’s role in relation to providing advice and support to whistleblowers is not specifically recognised by statute, other than by reference to the requirement in the *Whistleblowers Protection Act* that certain complaints should be made to the CJC, because they either disclose official misconduct or involve certain types of complaints such as complaints about judicial officers.

Section 103 of the *Criminal Justice Act 1989 (Qld)* provides that if it appears to the Commission that, because a person has given evidence or information to the Commission, a person’s safety may be prejudiced, or the person is subject to intimidation, or the person is prejudiced in his or her career, the Commission may make arrangements and take such steps as necessary and open to the Commission to avoid prejudice, intimidation or harassment of the person, including seeking an

³⁵⁷ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC), 1989, Brisbane, at 134.

³⁵⁸ Note 357 at 134.

³⁵⁹ Electoral and Administrative Review Commission, *Report on Protection of Whistleblowers*, 1991, Brisbane, at 24.

injunction in the Supreme Court to restrain the behaviour, under section 104. The *Criminal Justice Act* also creates an offence of victimisation under section 131 for any of the actions described in section 103.

9.3 Prior PCJC views

During the last three yearly review of the CJC, suggestions were made that the whistleblower support function should be undertaken by an independent agency separate from the CJC. The CJC argued that it was best placed to provide external support to whistleblowers because of the CJC's capacity to investigate allegations of misconduct, and its independence from the executive government, which would encourage those with sensitive information to come forward.³⁶⁰

The previous PCJC supported the retention of the Whistleblower Support Program in the CJC. However, in recognition of various apparent deficiencies in the Act, the previous Committee also recommended that the next Parliamentary Committee should undertake a '*discrete and independent review*' of the Act, including the roles and functions of a proposed protected disclosures unit within the CJC.³⁶¹ The current Committee has not undertaken such a review but takes this opportunity to consider the operation of the legislation insofar as it impacts on the role and functions of the CJC.

9.4 How the *Whistleblowers Protection Act 1994 (Qld)* works

9.4.1 The legislative framework

Section 3 of the *Whistleblowers Protection Act* states that the object of the Act is to:

...promote the public interest by protecting persons who disclose-

- *unlawful, negligent or improper conduct affecting the public sector*
- *danger to public health or safety*
- *danger to the environment.*

Protection is afforded to those making a 'public interest disclosure' by declaring a person not liable civilly, criminally or under an administrative process for making a disclosure and in prohibiting reprisals being made against that person, under section 11.

The ambit of the *Whistleblowers Protection Act* is far wider than the jurisdiction of the CJC, in that protection extends to a range of matters not falling within the definition of 'official misconduct'. Under Part 3 of the Act, anyone may make a public interest disclosure about:

- a 'substantial and specific danger' to the health or safety of a person with a disability, as defined in the Disability Services Act 1992;
- a 'substantial and specific danger' to the environment, resulting from an offence or the contravention of a condition imposed under specified legislation; or
- a reprisal taken against anyone because of a public interest disclosure.

³⁶⁰ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 45, Legislative Assembly of Queensland, 1998, Brisbane, at 140.

³⁶¹ Note 360 at 140.

In addition, a person who is a public officer may make a public interest disclosure about:

- official misconduct under the *Criminal Justice Act*;
- maladministration that adversely affects anybody's interests in a substantial and specific way;
- negligent or improper management by a public officer, public sector entity or public service contractor, involving or likely to involve a substantial waste of public funds; or
- a substantial and specific danger to public health or safety or to the environment.

Part 4 of the *Whistleblowers Protection Act* provides that disclosures must be made to 'appropriate entities', that is, to the public sector entity whose staff or responsibilities are involved, or the agency to which a matter is appropriately referred.

Under Part 5 Division 6 of the Act, all public sector entities must establish reasonable procedures to protect their officers from reprisals.

Public sector entities are to keep proper records of disclosures under section 29 of the Act and to include relevant statistical information in their annual reports under section 30.

9.4.2 *Responsibility for administration of the Whistleblowers Protection Act*

The Minister currently responsible for the administration of the *Whistleblowers Protection Act* is the Premier, who is required by section 31 of the Act to report to Parliament annually on the administration of the Act. This report may be included in the annual report of the Department of the Premier and Cabinet.

In the course of the current review, the Committee noted that there had been no dedicated reports to Parliament on the administration of the Act as a whole. There has been a very brief mention in the form of one or two sentences in the Annual Reports of the Department of the Premier and Cabinet, mentioning key publications and noting the number of public interest disclosures (if any) that were received or investigations carried out by the Department. Other agencies have made similar statements in their annual reports, as required by section 30(2) of the Act. However, there has been no more detailed reporting across the public sector. It appears that the Office of the Public Service Commissioner contacted all public sector agencies in 1997-98 to seek their responses as to whether they had put suitable policies in place, but no information is publicly available.

It should be noted that in 2000 the Premier announced that the Office of the Public Service Commissioner (OPSC) was to be restructured and replaced by the Office of Public Service Merit and Equity (OPSME). Dr Glyn Davis, Director-General, Department of the Premier and Cabinet, was previously the Acting Public Service Commissioner. The Committee sought information from Dr Davis on various issues relevant to its review and his responses are detailed below. In its new form, the OPSME appears to be refocusing its role in whistleblower protection.

9.4.3 *The role of the CJC*

Previously, the CJC's Whistleblower Support Manager was located in the Corruption Prevention Division. In 1999, the position was moved to the Complaints Section of the Official Misconduct Division (OMD) and renamed the Complaints Liaison and Whistleblower Support Officer (CLWSO). The role of the CLWSO was extended to include more general complaints liaison functions. One full-time officer is employed in this role.

Given that the jurisdiction of the CJC extends only to "official misconduct", it is not the CJC's responsibility to provide whistleblower support and advice across the public sector, although some

members of the public and public sector agencies appear to have a different impression. However, it appears that in practice the CJC has had to assume a general advisory role because of the lack of support for, or knowledge of issues concerning, whistleblowers in other agencies.

The CJC outlined tasks undertaken by the CLWSO in its submission to the Committee as follows:

Since its creation, the position has:

- *Given advice and assistance, by telephone and in person, concerning whistleblower issues, the complaints process and the CJC's jurisdiction*
- *Engaged in ongoing liaison with the QPS regarding a protocol between the Internal Witness Support Unit (IWSU) and the CJC and the progress of investigations conducted by the CJC where there are witnesses in the IWSU program*
- *Assisted legal officers and investigators in debriefing complainants involved in particularly sensitive matters*
- *Assisted complaints teams by acting as a liaison point between the team and sensitive complainants*
- *Assisted at induction training of all new CJC staff*
- *Provided ongoing advice and assistance to government agencies regarding the implementation of whistleblower protection policies and in dealing with the provisions of the Whistleblowers Protection Act generally*
- *Assisted with the preparing and distributing of Complaint Resolution Questionnaires to all complainants in matters finalised by the Complaints Section*
- *Forwarded whistleblower brochures to all CJC liaison officers for distribution in their respective departments.*

*In addition, as the CJC receives many calls for assistance, many of which do not fall within our jurisdiction, the Complaints Liaison and Whistleblower Support Officer is able to provide information or direct callers to an area that may be able to assist them.*³⁶²

The Committee notes the benefits of having a whistleblower support program that is external to the agencies themselves. A study by the New South Wales Independent Commission Against Corruption (ICAC) on the operation of the NSW *Protected Disclosures Act 1994* indicates that whistleblowers would prefer to complain to an organisation external to the agency to which the disclosure relates, mainly because there was a perception of greater impartiality of the external agency.³⁶³ In the same study agencies saw a need for an external body with a whistleblower function for the provision of prompt and reliable information since most agencies had limited or no experience in dealing with whistleblowers. A number of agencies interviewed in this study indicated that:

*...they did not want prescriptive advice about the action they should take, but rather saw value in being able to discuss their planned course of action with people with special expertise, and obtain advice as to the appropriateness of their intended action.*³⁶⁴

The CJC is well placed to provide whistleblower support because of its externality to the public sector, and also to undertake follow up investigations because of its resources and investigative expertise. The CJC itself also gains from having a whistleblower function in that witnesses will be

³⁶² CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane, at 37.

³⁶³ Independent Commission Against Corruption, *Monitoring the Impact of the NSW Protected Disclosures Act 1994: Encouraging NSW Public Sector Employees to Report Corruption*, 1997, Sydney, at 65.

³⁶⁴ Note 363 at 26.

encouraged to come forward, knowing the support is there. The need for the function to be retained by the CJC is evidenced by the number of Public Interest Disclosures made to it. In 1999-2000 135 public officers made complaints of official misconduct to the CJC³⁶⁵, compared with only three being made to the Office of the Public Service Commissioner (OPSC) for the same period.³⁶⁶

While an external agency has an important role to play it is also important that agencies maintain internal reporting mechanisms and internal support for whistleblowers. This is the only way to ensure agencies take responsibility for the activities that are going on in their own organisation and that an organisational culture develops to reflect the principles underlying whistleblower support.

9.5 Use of the *Whistleblowers Protection Act*

The Committee is aware, through complaints made to the PCJC and through submissions made to the Committee, of criticism of the Queensland whistleblower protection scheme. The Committee notes that since the Act commenced in 1994, no actions have been taken under the Act by way of prosecutions or injunctions in respect of reprisals. This might suggest either that no retaliatory action is ever taken against whistleblowers (which is unlikely, given that in 1999-2000, the CJC alone reported that 49 people had complained to it about reprisals),³⁶⁷ or alternatively that the Act is not being utilised effectively.

The CJC's submission to this review stated:

*There is a perception that the Act is relatively ineffective, capable of enabling action on only the most blatant alleged reprisals ... There remains genuine concerns on the part of many public officers about the ramifications of reporting serious wrongdoing, particularly where the circumstances involve perceived risk; for example, where matters pertain to officers who are senior in authority to the whistleblower.*³⁶⁸

There are several problems impacting on the effectiveness of the Act. While it imposes legislative obligations on public sector agencies to effectively deal with complaints made by whistleblowers and to deal with reprisals, a lack of commitment to the fundamental object of the Act within an organisation will render the legislation ineffective.

The legislation cannot of itself effect attitudinal change. In its study of the NSW *Protected Disclosures Act*, the ICAC made recommendations based on its research on what steps organisations must take to make the legislation effective:

Organisations need to take steps to create work environments which are more conducive to employees reporting corruption internally.

Recommendations for achieving this:

- i. *Organisations must demonstrate to employees their intolerance of corrupt activities and demonstrate efforts to stop corruption occurring. Examples of ways of achieving this include:*
 - *senior managers leading by example;*
 - *addressing internal disclosures quickly and effectively;*

³⁶⁵ CJC, *Annual Report 1999-2000*, 2000, Brisbane, at 26.

³⁶⁶ Office of the Public Service Commissioner, *Annual Report 1999-2000*, 2000, Brisbane, at 15.

³⁶⁷ Note 365 at 26.

³⁶⁸ Note 362 at 38.

- *informing staff of changes which have resulted from considering employee reports.*
- ii. *Organisations must establish formal internal reporting channels of which employees at all levels are thoroughly informed.*
- iii. *Organisations must demonstrate that they will act upon reports of corruption and that corruption will be reduced as a result of reports being made.*
- iv. *Organisations must give a clear message that reporting of corruption is encouraged and valued.*
- v. *Anti-corruption strategies should be made part of the corporate plan in order that these strategies be treated as an integral part of work activities.*
- vi. *Organisations must give the message to all employees that everyone has a responsibility to report corruption regardless of whether or not the corruption directly impacts upon them.*
- vii. *All employees (particularly those in smaller organisations) should be informed that it is their responsibility to report corruption regardless of the level of seniority.*
- viii. *Employees in larger organisations should be informed that even though many others may have observed the corrupt conduct, it remains their responsibility to report it. They should not assume that someone else will.*
- ix. *Organisations must demonstrate a real commitment to keeping confidential the identities of people making reports.³⁶⁹*

Without a commitment to the spirit of the legislation its provisions are ineffective. It is for this reason that the Committee considers there is a need for sector-wide oversight of agencies' whistleblower reporting and support mechanisms. Without an oversight body, agencies can pay lip service to the Act without actually committing to or achieving any of its aims.

Since the legislation does not charge any particular body with responsibility for supervising whistleblower support programs in agencies there is a large gap in the legislation's scheme. Such an oversight role is clearly outside of the jurisdiction of the CJC and has not been taken on by the OPSC/OPSME.

Another problem hindering the effectiveness of the Act is that often reprisals are difficult to substantiate. The CJC submitted:

Possible reprisals can fall into debatable areas, for example:

- *Adverse effect from a 'necessary' organisational review*
- *Position declared redundant*
- *Organisation-initiated transfer*
- *Negative performance reviews*
- *Disciplinary action for minor activities.*

Many of these can be difficult to prove as reprisals under the Act.³⁷⁰

³⁶⁹ Note 363 at 44.

³⁷⁰ Note 362 at 38.

The legislation can only go so far in providing protection to whistleblowers. As the CJC states in its submission:

While whistleblower protection legislation is an important advance in protecting genuine whistleblowers, fear of reprisal is most likely to be reduced when it becomes clear to potential whistleblowers that organisations will act diligently on disclosures and ensure that protective mechanisms operate at a workplace level.³⁷¹

Whistleblower support can only be truly effective where systems are in place within organisations to prevent reprisals, rather than relying on legislation to deal with reprisals after they have occurred. Brown writes:

It is increasingly recognised that effective internal witness management lies in early intervention, disciplined risk assessment and good management and reprisal prevention, rather than reliance on remedying reprisals and fixing mistakes ex post facto.³⁷²

9.6 QPS Internal Witness Support

In 1998 the Queensland Police Service (QPS) established an Internal Witness Support Unit (IWSU) within its Ethical Standards Command to be responsible for whistleblower support within the Service. Information provided to members of the QPS makes clear to members the managerial commitment to professional practices and recognises the valuable contribution that employees make when they report official misconduct. The QPS' supplementary submission to this review states that the goals of the unit are:

- *To provide support and positive reinforcement to members of the Service who report misconduct;*
- *To ensure all Service personnel are aware of, and have access to, the services offered;*
- *To ensure all Service personnel are aware of their responsibilities with regard to internal witnesses; and*
- *To contribute to the maintenance of an acceptable ethical environment where all members can confidently report misconduct.³⁷³*

The QPS outlines the means by which support is provided - a 24-hour "advice line", personal meetings with witnesses and QPS email network. The submission states:

Every effort is made to link witnesses into existing support networks such as Human Services Officers, Peer Support Officers, the Service's Equity and Diversity Unit and the Chaplaincy. Potential witnesses make contact with the Unit through direct contact, referrals from Human Services Officers, referrals from Service and CJC investigators in the field, and identification by supervisors.³⁷⁴

An article in the Police *Vedette*, entitled, "Supporting, guiding and assisting our members", informs members of the Service of the support network that is available to them as internal witnesses,

³⁷¹ Note 362 at 38.

³⁷² Brown, A.J., 'Internal witness management – an art or a science?', paper, Criminal Justice Commission seminar on *Managing Internal Complainants*, 13 September 2000, Brisbane, at 2.

³⁷³ Queensland Police Service, *Second Submission to the Parliamentary Criminal Justice Committee Three Yearly Review of the Criminal Justice Commission*, January 2001, Brisbane, at 14.

³⁷⁴ Note 373 at 14.

including support officers, mentors, case officers and line commanders. It is noted that the members of the IWSU do not conduct investigations into the allegations of internal witnesses.³⁷⁵

The QPS Internal Witness Support Program has provided support to 117 members of the Service since it began. The QPS reports that it has widely publicised the program. It informed the Committee:

Since 1998, the Inspector and Senior Sergeant have between them addressed approximately 3000 members of the Service. During 2000, the Unit distributed leaflets to each member of the Service and distributed 500 posters statewide. Marketing is also undertaken through the QPS Bulletin Board, Police Bulletin and the police magazine, the Vedette.³⁷⁶

It is this kind of public statement of the support that is available and will be provided to whistleblowers, that is necessary to make whistleblower support effective.

Further, the Committee is pleased to note:

The QPS has been approached by several agencies and local government authorities, seeking assistance to establish internal witness support units within their agencies. The IWSU liaises closely with similar agencies in other Australian jurisdictions, and is regarded as a leader in this field. Feedback from former witnesses has been generally most positive.³⁷⁷

The experience of this unit may well be of use across the public sector.

9.7 A comparison – the New South Wales scheme

In Australia, whistleblower protection legislation is in place in Queensland, New South Wales, South Australia and the Australian Capital Territory. A Whistleblowers Protection Bill was also introduced in Victoria in August 2000 but has not yet been passed. In 1996 the Australian Law Reform Commission recommended the introduction of Commonwealth legislation as a ‘matter of priority’, but no legislation is yet in place.

In NSW, the *Protected Disclosures Act 1994* provides protection for disclosures only by public officials. The range of disclosures that are protected is broader than in Queensland, as it includes corrupt conduct, maladministration and ‘serious and substantial waste’ in the public sector. Maladministration is defined in section 11 as action or inaction of a serious nature, and includes conduct that is ‘unreasonable, unjust, oppressive or improperly discriminatory’.

Disclosures may only be made to particular investigating authorities, including the Independent Commission Against Corruption (ICAC), the Ombudsman, the Auditor-General and the Police Integrity Commission. As in Queensland, the Premier’s Department is responsible for administration of the Act.

9.7.1 NSW Parliamentary review

Section 32 of the NSW Act provides that the Act is to be reviewed every two years by a parliamentary committee. A review was completed in 1996 by the Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (JCOPIC), and a second review in 2000.

³⁷⁵ Police *Vedette*, ‘Supporting, Guiding and Assisting our Members’, No. 176, 1999, at 14.

³⁷⁶ Note 373 at 14.

³⁷⁷ Note 373 at 14.

Amongst major recommendations of the 1996 review³⁷⁸ were the following:

- the establishment of a Protected Disclosures Unit within the Office of the Ombudsman with functions that include providing advice to whistleblowers and public authorities, monitoring the conduct of investigations, coordinating education and training and acting as a central coordinator for the collation of statistics;
- the inclusion of reference to whistleblower responsibilities in codes of conduct and contracts of senior public sector managers; and
- each public authority to be required to report annually to the JCOPIC on various matters that include internal reporting systems, policies and procedures, staff training, and statistics on whistleblower notifications and investigations in their agency.

The report of the JCOPIC's second review was released in August 2000.³⁷⁹ Amongst its key recommendations were:

- the JCOPIC's continued support for the establishment of a Protected Disclosures Unit within the Office of the Ombudsman, with appropriate funding, to carry out monitoring and advisory functions;
- the continuation of the Implementation Steering Committee which should report annually to Parliament (the Steering Committee was set up to implement the Act, and comprises representatives from key government agencies, including the Ombudsman and the ICAC);
- a legislative amendment to require public sector agencies to inform staff of the existence of internal reporting systems, with those agencies failing to provide information to the Ombudsman on request to be liable to appear before the JCOPIC; and
- consideration of the merits of a 'false claims' statutory scheme incorporating features of relevant USA legislation.

9.7.2 *Coordination across the NSW public sector*

Following the NSW Act's introduction, the ICAC surveyed public authorities and local authorities to determine how many had internal reporting systems and what problems had been encountered with the Act. The ICAC research found a need for ongoing practical guidance and information on relevant issues. As a result, an inter-agency committee was established to implement suitable strategies. The committee comprises senior representatives from key agencies, including the Premier's Department, the Cabinet Office, the Public Sector Management Office, the Department of Local Government, the Audit Office, the NSW Ombudsman and the ICAC.

The committee has instituted or supported a range of initiatives, including:

- participation of committee members in corruption prevention forums;
- creation of a database of Protected Disclosures Coordinators to disseminate information (maintained by ICAC);
- workshops for Coordinators on better management of disclosures;
- ongoing review of internal reporting systems in NSW government authorities and provision of advice to agencies and councils;

³⁷⁸ Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission, *Review of the Protected Disclosures Act 1994*, 1996, Parliament of New South Wales, Sydney, at 142-147.

³⁷⁹ Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission, *Second Review of the Protected Disclosures Act 1994*, Parliament of New South Wales, 2000, Sydney at 87-89.

- the production in 1997 by ICAC of Internal Investigation Guidelines and handbook;
- workshops on internal investigations;
- joint Ombudsman/Audit Office workshops on complaint handling;
- workshops for local government conducted by the Institute of Municipal Management; and
- research by the ICAC on the impact of the Act, including surveys of Protected Disclosure Coordinators.

The committee reports annually to the Premier.

9.8 Analysis and comment

Legislation itself cannot create an effective whistleblower protection scheme. Issues in respect of the CJC's role in relation to whistleblowers include:

- coordination across the public sector;
- whether enough is being done across the public sector by way of education and information for public officials;
- whether enough is being done across the public sector by way of coordinated development of policies, procedures and training of responsible officers and research and reporting on whistleblowing;
- whether the CJC should be the responsible agency in all or any of those matters; and
- the proper extent of the CJC's role in relation to whistleblowers.

9.8.1 Coordination across the public sector

The NSW system is more fragmented than that in Queensland, with a system of reporting to various agencies (for example, the Ombudsman and the Police Integrity Commission) depending on the type of disclosure being made. In NSW, the obvious desirability of a coordinated approach appears to have been met in part by the establishment of the inter-agency steering committee, discussed above, to oversee such matters as training.

The Committee was interested to explore whether a similar inter-agency committee would be desirable in Queensland. In his response to the Committee's inquiries dated November 2000, Dr Glyn Davis, Director-General of the Department of Premier and Cabinet and the then Acting Public Service Commissioner, noted:

Public sector ethics are generally supported by the Queensland Public Sector Ethics Network (QPSEN). This network includes a representative of each department (the ethics contact officer) and Queensland academics who work in this area. The network provides the opportunity to share information and workshop best practice guidelines for public sector ethics issues.

The response also noted that training about Codes of Conduct would be held at the next meeting in November 2000, and that while the training '*might cover some aspects of whistleblowing*', a future meeting dedicated to that topic might be better.

The Committee notes that since July 1999 the CJC has established regular bi-annual meetings of CJC agency liaison officers, and that the theme of the half-day meeting held in September 2000 was "Managing Internal Complainants".

The CJC, in its submission to the Committee's review, noted:

*There appears to be scope for the OPSC or an equivalent agency, to adopt more of a coordinating role to bring together officers within public sector units with the responsibility for whistleblower protection. Where such responsibility has not been allocated, a coordinating body may become a catalyst for agencies to address this issue more vigorously. There is scope for much more training, policy and procedure development in this area.*³⁸⁰

The Committee also notes the increased role of the Queensland Public Sector Ethics Network (QPSEN). At the Committee's hearings held as part of this review, Mark Lauchs, Acting Team Leader for the Ethics and Integrity Area in the OPSME, told the Committee that the QPSEN had been established as a conference forum for people to talk about ethics but it has now been set up as an interdepartmental committee which meets to discuss aspects of public sector ethics.³⁸¹ The Committee notes that whistleblowing forms part of the group's agenda but is not the primary focus. Its February meeting was to have whistleblowing as its focus.

The Committee considers an inter-agency Committee is valuable in implementing effective whistleblower support mechanisms across the public sector.

9.8.2 Education for public officials

For whistleblowing schemes to be effective, potential whistleblowers have to know of their existence.

In its extensive research, ICAC identified a severe lack of knowledge about the NSW *Protected Disclosures Act* amongst public officials - including its existence, functions, objects, or the way it had been implemented in their agency.

The research also demonstrated that lack of knowledge was correlative with a negative attitude about reporting.³⁸² One reason for the lack of education of public officials identified by the ICAC was that the Act did not require agencies to educate employees about the existence of whistleblower protection mechanisms.

The *Public Sector Ethics Act 1994 (Qld)* requires CEOs of public sector entities to ensure that public officials are given appropriate education and training about public sector ethics. However, this Act does not make specific reference to whistleblowing. It would be the usual case that ethics awareness is thrust on an employee in the initial stages of employment with an agency when they are required to absorb a large amount of information. Any brief introduction to whistleblowing issues given then is likely to be lost. Ongoing education is required to establish an appropriate level of awareness.

At the Committee's hearings, Geoff Lunn, Manager of Industrial Services for the Queensland Public Sector Union of Employees, told the Committee that there is a very low level of awareness of the Act and the kind of protection it provides. He said:

There are persons who should really be seeking protection under the Whistleblowers Act who do not and, conversely, those who think they can use it and are not able to or should not because it is not appropriate. My general comment is that there is a high level of ignorance

³⁸⁰ Note 362 at 37.

³⁸¹ PCJC, Transcript of Public Hearing - Three Yearly Review of the CJC, 14-15 December 2000, Brisbane, at 58.

³⁸² Note 363 at 29.

*about it.*³⁸³

In Queensland, some publications have been produced to assist those who make disclosures under the Act. The key publication is the CJC's 1996 guide for whistleblowers, *Exposing Corruption: A CJC Guide to Whistleblowing in Queensland* (updated October 1999). The CJC also provides brochures to public sector agencies and provides information about whistleblowing on its website. The Committee notes that the OPSME website is in the process of redevelopment. The Committee is hopeful that, on its redevelopment, appropriate information on whistleblowing will be available.

9.8.3 Education, training and support for managers

Strong management and managerial commitment to the principles underlying whistleblower support is vital for effective whistleblower support systems. Therefore, appropriate training and support for managers is vital to the effective operation of whistleblower support within agencies.

The NSW Interagency Committee supports a range of training initiatives, including workshops on complaint handling and management of protected disclosures, corruption prevention forums and workshops specifically for local government.

The CJC's publication *Exposing Corruption: A CJC Guide to Whistleblowing in Queensland* is aimed primarily at those who have made or are considering making disclosures. However, it includes three pages of information for managers who receive a public interest disclosure. The guide also refers to various bodies that may be able to provide further information or support, including CJC liaison officers where they have been appointed by an agency. Individual agencies such as the Department of the Premier and Cabinet have developed their own guidelines (*Guidelines for the Protection of Whistleblowers and Investigation of Public Interest Disclosures*).

In its submission to this review, the CJC noted:

*The degree of knowledge and potential application for the Whistleblowers Protection Act 1994 seems to vary greatly between public sector agencies. After six years, most public sector agencies appear to have complied with the Public Sector Ethics Act in that they have developed a code of conduct based on the values as outlined in the Act. There does not appear to be wide compliance with the Act's requirement to provide training to staff in this area.*³⁸⁴

The CJC also noted that it had offered, 'few training and awareness sessions in this area, as this is seen to be the prime responsibility of the former Office of the Public Service Commissioner', but that it welcomed opportunities, 'to work in conjunction with that agency where mutually beneficial'.

The Committee notes that on 13 September 2000, the CJC held a half-day forum for agency CJC liaison officers on "Managing Internal Complainants". Two of the themes emerging during discussions were the need for better coordination amongst agencies and the need for appropriate training of senior management in order to promote attitudinal changes.

In response to the Committee's inquiries about the Office of the Public Service Commissioner's training activities in this area, Dr Glyn Davis, the then Acting Public Service Commissioner, noted:

Whistleblowing will rarely be the subject of specific training and is more likely to be presented as part of the broader ethics agenda.

The OPSME provides train-the-trainer sessions for agencies, but internal training is the

³⁸³ Note 381 at 107.

³⁸⁴ Note 362 at 37.

responsibility of each agency.

Dr Davis also noted that a short survey had recently been sent to each agency about its ethics education activities (specifically relating to agencies' Codes of Conduct), and that the Office '*will not be investigating agencies to determine whether they are providing sufficient training, but the QPSEN will be the mechanism for benchmarking best practice*'.

The Committee notes from the OPSME submission to the Committee that no specific training for managers has been developed by the OPSME.

The Committee considers that appropriate training of managers in whistleblower issues is vital to the success of any whistleblower support mechanisms.

9.8.4 Research and reporting to Parliament

In 1995-96 the ICAC completed a four-phase study of the NSW scheme, resulting in its 1997 report *Monitoring the Impact of the NSW Protected Disclosures Act 1994*. The study included: surveys of local councils and government agencies to determine how many had implemented internal reporting systems; interviews with relevant staff from a sample of organisations; a survey of 1255 employees about workplace corruption and reporting corruption; and interviews with 30 whistleblowers about their experiences.

It does not appear that the CJC has done similar research, although the Committee notes that surveys have been carried out on related issues, including ethical conduct amongst police recruits and public attitudes about employee behaviour in the public sector and local councils. The CJC's submission to the Committee's review refers to future strategies as including '*undertaking research to identify and assess alternative models for providing whistleblower protection*'.³⁸⁵ No details are provided as to what is proposed.

The Committee is also aware of two surveys conducted by the University of Queensland Graduate School of Management on public sector ethics. These surveys were conducted in 1992 and 1996 and provided valuable data on public sector ethics. The 1996 survey included questions that asked participants about their direct and indirect experience of whistleblowing. The Committee understands that, as yet, the information collected about whistleblowing has not been the subject of further study and analysis.

In response to the Committee's inquiries about the Office of the Public Service Commissioner's training activities in this area, Dr Glyn Davis noted:

The Queensland Government has not conducted an investigation similar to the ICAC investigation mentioned. There has been no consideration of such an investigation nor has the need for such action been identified.

With respect, the Committee submits that such an investigation would be of immense value in assessing the effectiveness of the legislation.

In its submission to the Committee, the OPSME pointed out two complementary projects that are underway. The first is a report on the administration of the *Whistleblowers Protection Act 1994*. A report to Parliament is required annually but no such report has ever been completed. The OPSME estimated that the report would be ready for tabling at the end of February 2001.³⁸⁶ The second

³⁸⁵ Note 362 at 38.

³⁸⁶ At the time of publication of this report no such report had been tabled. This may of course be due to there being no opportunity to table because of the dissolution of Parliament.

project is a review of whistleblowing in Queensland with a view to making recommendations about best practice administration.³⁸⁷

Also, the Committee is pleased to note from the submission of the OPSME that there have been recent meetings between the CJC and the OPSME and that these bodies have agreed to build ties and share information on whistleblower protection, especially in complementary research.

9.8.5 Further commitments by the CJC

The Committee notes the CJC's commitment to address some of the inadequacies of existing legal and organisational support for internal witnesses, as stated in its submission to the Committee. The CJC will be:

- *Undertaking research to identify and assess alternative models for providing whistleblower protection*
- *Seeking out opportunities to investigate complaints of reprisals against internal witnesses, where we have assessed the matter as one which can be productively investigated.*³⁸⁸

Subject to the Committee's recommendation below, the Committee is supportive of the CJC's efforts in this area.

9.9 Conclusions

Conclusion 57

The Committee concludes that a whistleblower protection function is appropriately placed with the CJC. However, the CJC is limited in its jurisdiction.

Conclusion 58

The Committee considers that there is a gap in oversight and coordination of whistleblower support across the public sector in Queensland but notes that many issues requiring attention are being recognised and addressed by the OPSME. The Committee is hopeful that these efforts will continue.

Conclusion 59

The Committee is cognisant of the restrictions on its own jurisdiction in relation to this issue but concludes that a full review of the Whistleblowers Protection Act and related legislation is required. In the interim, the Committee considers that the CJC should continue to liaise with the OPSME with a view to assisting the OPSME in the development of public sector wide coordination, monitoring, training, research and reporting of whistleblower issues. Some consideration of legislating for a formal liaison process, in order to fully utilise the expertise of each of these agencies, should be made.

³⁸⁷ Office of Public Service Merit and Equity, *Responses to Issues Raised by PCJC*, dated 13 December 2000, Brisbane, at 3.

³⁸⁸ Note 362 at 38.

9.10 Recommendations

Recommendation 33

The Committee recommends that the Government give consideration to a full review of whistleblower protection in Queensland and the *Whistleblowers Protection Act* including review of, but not limited to, the following issues:

- the formal role of the CJC;
- the formal role of the Office of Public Service Merit and Equity or equivalent agency;
- the need for an oversight body to supervise the implementation and operation of the legislation within agencies;
- the need for an inter-agency committee, to include agencies such as the Department of the Premier and Cabinet, the Office of the Public Service Commissioner and Public Service Merit and Equity, the CJC, the Ombudsman, the Queensland Audit Office and the Queensland Police Service;
- the need for training and support for public sector managers and who should be responsible for coordinating and monitoring the provision of such training across the public sector;
- the need for legislative requirements for training and education of public sector employees and who should be responsible for coordinating and monitoring the provision of such training across the public sector;
- whether there should be formal liaison between the CJC and the Office of the Public Service Merit and Equity;
- whether it is sufficient that currently no agency appears to be monitoring on any regular basis what individual agencies are doing, identifying deficiencies, such as in training for managers, or formally reminding agencies of their obligations under the *Whistleblowers Protection Act*;
- what type of research needs to be done in this area - whether there is a need in Queensland for research similar to that carried out by the ICAC in NSW and who should carry out such research;
- whether statistics about numbers of whistleblowers and substantiation rates across the public sector and in individual agencies would be useful for identifying areas that are particularly susceptible to corruption problems;
- the need for an annual report to parliament and the type of information that should be included in such a report; and
- whether there should be a legislative requirement that a parliamentary committee review the operation of the Act, as in NSW.

Recommendation 34

The Committee recommends that, in the interim, the CJC continue to liaise with the Office of Public Service Merit and Equity with a view to assisting the OPSME in the development of public sector wide coordination, monitoring, training, research and reporting of whistleblower protection matters.

10. THE WITNESS PROTECTION DIVISION

10.1 Introduction

It is widely accepted that effective witness protection is essential to successful law enforcement. Witnesses need to be assured that in coming forward to authorities they will be protected from harm. In a speech to the International Anti-Corruption Conference John Feneley, then Solicitor to the Independent Commission Against Corruption, said:

*Successful law enforcement and anti-corruption strategies are largely dependent upon both the willingness and availability of individuals to provide information and/or to give evidence. Traditional witness protection focuses on the safety of the witness, however, experience shows that individuals will not be willing or available unless they have confidence that the State will protect their rights as well as their safety.*³⁸⁹

The Witness Protection Division (WPD) of the CJC was set up by the *Criminal Justice Act 1989* (the Act) under section 23(f)(ii), which reads:

The responsibilities of the Commission include—

(f) in discharge of such functions in the administration of criminal justice as, in the commission's opinion, are not appropriate to be discharged, or cannot be effectively discharged, by the police service or other agencies of the State, undertaking—

...

(ii) matters of witness protection...

Part 2, Division 8 further prescribes the operation of the unit. It has long been recognised however, that the *Criminal Justice Act* had not gone far enough in detailing how witness protection is to operate. As stated in the CJC submission to this review:

*Ever since 1993, the CJC has been seeking more specific witness protection legislation than the limited provisions in the Criminal Justice Act, and also legislation that would qualify as complementary legislation for the purposes of the Commonwealth witness protection legislation.*³⁹⁰

The new *Witness Protection Act 2000 (Qld)* (WPA 2000), which was passed by the Legislative Assembly on 10 November 2000 and commenced by Proclamation on 9 March 2001, will go a long way to addressing some of the deficiencies of the legislative regime under which witness protection has been operating since its inception in Queensland.

10.2 Background

Part 2, Division 8 of the *Criminal Justice Act* affords protection of the personal safety of a person who has assisted the CJC or a law enforcement agency in the discharge of its functions or responsibilities, whether or not the person has been summoned or called as a witness before the CJC or a court. The unit is to give protection to those who, in the opinion of the Chairperson, in

³⁸⁹ Feneley, J., Solicitor to the New South Wales Independent Corruption Against Corruption, *Witness Protection Schemes – Pitfalls and Best Practice and Covert Investigations*, paper presented to the Eighth International Anti-Corruption Conference, 1997, Peru, at 1.

³⁹⁰ CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane, at 42.

consultation with the Director of the WPD, are in need of it. Under section 62 of the Act the division's functions include:

- providing witness protection;
- facilitating witnesses assuming new identities if necessary;
- devising training programs for personnel;
- maintaining a register of those protected; and
- liaising with the Minister and the Commission about arrangements with other states and territories, with a view to the establishment and operation of a national witness protection program.

10.3 Structure of the Witness Protection Division

The WPD is managed by the Director, Witness Protection who is an Assistant Commissioner of the QPS. The day-to-day operations of the WPD are supervised by the Officer-in-Charge, who is a Detective Inspector of the QPS. The decision to admit a person to the witness protection program is made by the Chairperson of the CJC on the advice of the Director of the WPD who takes advice from the Witness Protection Advisory Committee. This Committee is made up of the Director, the Officer-in-Charge of the WPD, the Executive Director and the Official Solicitor.

During 1999-2000, an organisational restructure transferred responsibility for surveillance activities of the CJC from the Official Misconduct Division to the Operations and Witness Protection Division. The Operations and Witness Protection Division has a current staffing establishment of 53, with 50.4 staff on hand. WPD positions are primarily filled by QPS officers appointed to the WPD.

10.4 Activities of the Witness Protection Division since the last Three Yearly Review

Given the confidential nature of most of the work carried out by the WPD, a detailed review of the activities of the division is problematic. However, some assessment of its efficiency and effectiveness can be ascertained from statistics relating to some of the activities of the division since the last three yearly review was carried out.

Activities	1997-1998 Annual Report (CJC)	1998-1999 Annual Report (CJC)	1999-2000 Annual Report (CJC)
Referrals	92	114	126
Offers of witness protection accepted	55 persons in 27 operations	59 persons in 26 operations	78 people in 50 operations
Provided support and protection	118 persons in 53 operations	115 persons in 50 operations	133 persons in 76 operations
Concluded protection arrangements	60 persons in 31 operations	59 persons in 26 operations	69 persons in 49 operations

Approved staff	28	29	55 (now Operations and Witness Protection)
Actual staff	27.4	25.8	50.4

As outlined above, in making a decision to admit a person to the program, the Chairperson of the CJC takes advice from the Director of the Division who takes advice from the Witness Protection Advisory Committee.

Interim protection can be offered within 36 hours of an application being received, with formal admission usually taking 8 weeks, during which a threat assessment is conducted to determine if the person fulfils the eligibility criteria under the Act. The WPD also provides security at courts for witnesses required to give evidence.

The CJC's submission to this review states that since its establishment the WPD has maintained a 100 per cent success rate in protecting witnesses.³⁹¹ The Committee considers this to be the most important, though not the only, measure of the effectiveness of the division.

10.4.1 Training of division officers

The Committee notes the high priority placed on training officers of the WPD. Witness protection officers are subject to major psychological demands in dealing with people who are fearful for their safety, and who often have previously been involved with criminal activity.

In its submission the CJC pointed out to the Committee in its submission that the division has developed a Witness Protection Course which complies with National Competencies for witness protection and which has recently been approved by the QPS. The Commission reports that work is currently underway on its implementation.³⁹² The Committee is pleased to note the WPD's involvement in the development of National Competency Standards and the QPS' approval of the Witness Protection Course.

10.4.2 Marketing of the division

The CJC has taken a proactive approach in marketing itself to clients through a statewide education and marketing exercise. The CJC points out that this has led to a 25 per cent increase in applications above those for the same period of the previous year. The Committee views favourably this proactive approach as it is important that potential witnesses are aware of the protection available to encourage people to assist law enforcement agencies.

10.4.3 Conclusion

Conclusion 60

The Committee considers that the witness protection function continues to be an important and necessary function in Queensland and appears to be well utilised by both the CJC and other agencies. The Division continues to fulfil its main obligation of keeping protectees safe, which the Committee considers to be a vital measure of success.

³⁹¹ Note 390 at 42.

³⁹² Note 390 at 43.

10.5 Location and staffing of the Witness Protection Division

10.5.1 Background

The Fitzgerald Report envisaged that witness protection would be undertaken by a body separate from the rest of the Police Service, staffed at least in part by police officers. The model prescribed that the division should not be answerable to any police officer, and its police members should be answerable only to their superiors in the unit.³⁹³

As in previous three yearly reviews, the Committee takes this opportunity to examine the appropriateness of the current location and staffing of the witness protection program in Queensland.

10.5.2 Prior PCJC recommendations

The third PCJC recommended in its Report No. 45 on its three yearly review of the CJC that the WPD be retained as a separate division within the CJC. The Committee concluded that it is essential to have a witness protection function separate from the Police Service and that the best available option was for the function to be carried out by a separate unit within the CJC. The third PCJC also recommended that the WPD continue to be staffed by police officers to the extent considered necessary. The third PCJC considered that attracting appropriately qualified and experienced staff would be extremely difficult without drawing on police officers, and that procedures in place mitigated concerns about ensuring the independence of the WPD from the police service.

10.5.3 Location of the witness protection program

Queensland is unique in maintaining a witness protection program that is external to the police service. In the Federal jurisdiction, the Commissioner of the Australian Federal Police administers the program. In New South Wales, Victoria, Western Australia and South Australia (and under as yet uncommenced legislation in Tasmania) the witness protection program is located within the police service.

The Committee has considered the various options for location of the WPD – including retention as a division of the CJC, a stand-alone body or removal to the QPS or other body, such as the Queensland Crime Commission. At its hearings the Committee canvassed the appropriateness of the CJC having a witness protection function at its hearings. Assistant Commissioner Kidcaff, then Director of the Witness Protection Division, commented that:

When I first came to the CJC, and even before I came to the CJC, I thought that maybe witness protection should not have been with the CJC because it was common to have the witness protection throughout Australia with the law enforcement agencies like the State police services. Having it at the CJC gives it an air of independence, whereas if it was with the QPS it may be said that the QPS puts people on the witness protection program and favours them to the detriment (of) others.

...

The current situation of it being at the CJC gives it that air of independence. I think it provides the Witness Protection Division with a high degree of integrity in the way it operates the program, and our services are sought after.

³⁹³ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC), 1989, Brisbane, at 319.

...

*I firmly believe that the Witness Protection Division is in its rightful place with the CJC and I would advocate its staying there. Other States should really look towards doing the same thing.*³⁹⁴

The Committee received no submissions commenting on the location of the WPD. The QPS submission to this review stated only:

*The CJC's witness protection division appears to be functioning well. However, there is a need for continual monitoring of the costs associated with this type of work.*³⁹⁵

The previous Committee in examining the location of witness protection, considered arguments from the CJC and other bodies, including:

- Autonomy and independence are vital to the success of any witness protection program. Its place in the CJC gives the program integrity;
- It is desirable that witness protection is separated from the police because it minimises the possibility of witnesses 'colouring' their evidence to please their protectors;
- A number of witnesses require protection because of their involvement in investigations of corrupt activity by police. If witness protection were transferred to the QPS, the CJC would need to maintain a separate program to protect these witnesses; and
- A stand alone body would have no significant advantages over the CJC's current program but would incur a large additional expense in its establishment and in accessing facilities that the CJC has immediate access to, such as legal advice and intelligence.

That Committee saw no advantage would be gained from transferring the witness protection function to the Queensland Crime Commission and that such transference would be expensive and create a risk to those already on the program.³⁹⁶

The Consultancy Bureau examined the previous Committee's report and stated:

*While it is arguably ideal for a Witness Protection facility to be located independently, the costs of achieving this are not warranted.*³⁹⁷

The Consultancy Bureau concluded the division should remain at its present location.

10.5.3.1 Analysis and comment

Although the position in every other comparable jurisdiction is different from that in Queensland, there seems to be no suggestion in submissions to the current Committee that the witness protection function would be better located in an organisation other than the CJC or as a stand alone body.

³⁹⁴ PCJC, Transcript of Public Hearing - Three Yearly Review of the CJC, 14-15 December 2000, Brisbane at 31

³⁹⁵ Queensland Police Service, *Submission to the PCJC Review of the CJC*, dated July 2000, Brisbane, at 17.

³⁹⁶ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 45, Legislative Assembly of Queensland, 1998, Brisbane, at 150-153.

³⁹⁷ Consultancy Bureau, *Report on an Organisational Review of the Criminal Justice Commission*, (unpublished), 1998, Brisbane, at 62.

10.5.3.2 Conclusion

Conclusion 61

The Committee recognises the 100 per cent success rate of the WPD in protecting those on the program as an indication that the function is operating well in its current location, and that the extra expense of relocating the function elsewhere is not justified.

10.5.4 Co-location of witness and VIP protection

10.5.4.1 Introduction

The Fitzgerald Report stated that, ‘witness protection officers should also be used to provide VIP protection’ on the basis that:

This type of duty is similar in some ways to witness protection, but is less psychologically stressful. The rotation of duties would help relieve the tedium of protecting witnesses.³⁹⁸

So far, this function has not been assigned to the WPD.

10.5.4.2 Analysis and comment

The previous PCJC canvassed arguments put forward in relation to co-location of these functions, and considered that no benefits which might accrue from placing the two functions within the same organisation would be significant enough to justify the expense of the transition.³⁹⁹ The Committee has not been presented with any arguments to the contrary.

10.5.5 Conclusion

Conclusion 62

Co-location of witness and VIP protection has not been addressed in any submissions to this review. The Committee considers that there are no grounds for altering the status quo.

10.5.6 Staffing of the Witness Protection Division

10.5.6.1 Introduction

The WPD is staffed primarily by police officers. This is consistent with the model favoured in the Fitzgerald Report, which envisaged police officers serving in the division. That report noted that the skills and training essential for witness protection officers in order to deal with the physical and psychological demands of witness protection were those usually held by police officers.⁴⁰⁰

Staffing of the division by police has caused concern in that one of the main arguments for maintaining a witness protection program separate from the police force is to separate the protection and investigation functions. This is to ensure the protection of people who are required to give evidence about police, and to eliminate the possibility of witnesses colouring their evidence to favour their protectors. In practice, however, police staffing of the division appears to have presented few, if any, problems. Also, it is virtually impossible to suggest an alternative source of personnel with the necessary skills.

³⁹⁸ Note 393 at 320.

³⁹⁹ Note 396 at 154.

⁴⁰⁰ Note 393 at 319.

One issue that was addressed by the Consultancy Bureau in relation to the staffing of the WPD by police officers is the possible effect on the careers of these officers. The Consultancy Bureau reported that WPD police officers had experienced difficulty in obtaining transfers or promotions on their return to mainstream policing. The Consultancy Bureau saw this as creating a problem for the division by potentially diminishing the calibre of officers seeking to serve at the WPD. The Consultancy Bureau recommended that the CJC examine the option of negotiating with the Queensland Police Service for WPD staff to be seconded for a fixed term.⁴⁰¹

The option of secondments was not addressed at the hearing but Assistant Commissioner Kidcaff informed the Committee:

*The disadvantages of having it (the WPD) at the CJC lie mainly in getting officers to come to the Witness Protection Division, although there is no-one out there who does not seem to want to come to the Witness Protection Division because they see it as a stepping stone to better things. But if I have a problem officer in the Witness Protection Division, I take certain steps to make certain they move to other pastures. You have to go through the process where the officer leaves and you have to Gazette the vacancy. If the division was with the QPS, there may be ways that you could shift them around.*⁴⁰²

10.5.6.2 Analysis and comment

The Committee notes that while there are some theoretical problems involved in police staffing the WPD it seems that such problems have not arisen in practice. As long as suitable officers are selected for service this seems to be the best option for ensuring the WPD is staffed by personnel with appropriate skills, training and integrity.

The extent of difficulties experienced by police officers in obtaining transfer and promotion on returning to mainstream policing is unknown. However, as stated by Assistant Commissioner Kidcaff, service with the WPD can also be a “stepping stone” to new opportunities in mainstream policing. The Assistant Commissioner reported no shortage of officers willing to serve at the WPD. There could be some value in seconding police officers for a set period. This should be further explored by the WPD if it is clear that a problem does exist, or in the event that it becomes difficult to attract police with a high degree of integrity to serve with the division. It is vital to the successful functioning of the program and the security of witnesses and staff that personnel of the highest calibre serve with the division.

10.5.7 Conclusion

Conclusion 63

The Committee considers that it is appropriate that police officers staff the Witness Protection Division as they have the necessary skills and training required for effective witness protection. The Committee further considers that, as long as appropriate officers are selected for appointment to the WPD, potential problems from not separating the investigation and witness protection functions should not arise.

Conclusion 64

The Committee is uncertain about the extent to which the effect of serving in the WPD will affect a police officer's career when they return to mainstream policing but considers that, if such a problem does exist, it can be dealt with by establishing a system of seconding officers to the WPD.

⁴⁰¹ Note 397 at 61-65.

⁴⁰² Note 394 at 31.

10.5.8 Recommendations

Recommendation 35

The Committee recommends that the Witness Protection Division remain as a separate Division within the CJC, and that it continue to be staffed by police.

Recommendation 36

The Committee recommends that, if it appears that the calibre of police officers seeking to serve with the division is diminishing, the division should liaise with the QPS to second officers.

10.6 Legislation and policies governing witness protection in Queensland

10.6.1 Introduction

It has long been recognised by the CJC, and by the previous PCJC, that the provisions relating to witness protection in the Act did not satisfactorily prescribe the necessary legislative framework in which to operate a witness protection scheme.

The *Witness Protection Act 1994 (Cth)* implemented the National Witness Protection Program (NWPP) and a scheme of complementary witness protection legislation. Complementary legislation has been enacted in the Australian Capital Territory, South Australia, New South Wales, and Victoria. There is also as yet uncommenced complementary legislation in Tasmania.

In not implementing complementary legislation Queensland was disadvantaged, not only by having a scheme in operation that did not have a solid legislative base, but also because the Commonwealth legislation provides that Commonwealth identity documents will only be issued to persons under state witness protection where complementary legislation is in place. This includes documents such as passports and tax file numbers.

10.6.2 Prior PCJC recommendations

The third PCJC examined the need for Queensland to enact complementary legislation. The Committee recognised that the need for Commonwealth identity documents does not arise frequently but where the need did arise the documents are likely to be critical for effective protection.⁴⁰³ The Committee considered that there is a high risk that the consequences of not being able to provide adequate protection would be extremely serious.

The Committee considered also that it was imperative for legislation to contain clear guidelines governing the exercise of discretion by officers making decisions in relation to witness protection matters. The Committee recommended that the Attorney-General conduct a comprehensive review of the legislation governing witness protection in Queensland as a matter of priority.

The Committee considered that the following issues needed to be addressed in a review, as they were not adequately dealt with in the then existing legislation:

- accountability and review of the actions and decisions of the Witness Protection Division;

⁴⁰³ Note 396 at 159.

- the need to ensure to the greatest degree possible, protection of third parties who come into contact with a witness under protection, particularly where the witness has changed identity;
- the eligibility of relatives and certain other associates of witnesses for witness protection;
- documentation which forms the basis of admission to the program;
- the disclosure of prior criminal history where the witness is involved in court proceedings;
- guidelines for refusing protection, removal of a person from the witness protection program and termination of protection;
- interim protection while an assessment is being made about whether to include a person on the program;
- disclosure of a new identity and location where a witness has committed an offence;
- provision for the issue of new birth certificates;
- provisions creating offences for the disclosure of particular information;
- restoration of a former identity in certain circumstances;
- protection from liability and legal proceedings of staff and those who assist in providing documentation to change identity; and
- payment to persons on the program.

The Witness Protection Bill 2000 was introduced into the Legislative Assembly by the Premier of Queensland, Hon P Beattie MP, on 22 June 2000, and directly addresses all but the first two of the above issues (discussed below at 10.6.3.1 and 10.6.3.3).

10.6.3 Witness Protection Act 2000 (Qld)

The Bill was passed by the Assembly on 10 November 2000. The *Witness Protection Act 2000* commenced by proclamation on 9 March 2001.

The Explanatory Notes to the Bill outline the effect of not implementing the complementary legislation, stating:

Without complementary witness protection legislation the current scheme of witness protection under the Criminal Justice Act 1989 could continue. This would mean, however, that Queensland would not deliver on its support of the national scheme and that services from other State and Commonwealth agencies will continue to be denied to witnesses protected on the Queensland witness protection program.

According to the Explanatory Notes, the Bill provides legislative backing to the current witness protection scheme operated by the Criminal Justice Commission through the following means:

- the Bill meets the vision of a national coordinated witness protection scheme, launched in 1994 by the Federal Government;⁴⁰⁴
- complementary Queensland legislation is required before Federal agencies will provide Commonwealth identity documents, such as passports and tax file numbers, to Queensland protected witnesses;
- the Bill will overcome inadequacies in the previous legislation on witness protection, in that it:

⁴⁰⁴ It should be noted that other States had already implemented the scheme.

- provides a statutory basis for arrangements with witness protection authorities in other jurisdictions;
- provides an outline of the conditions pursuant to which protection is offered and maintained, including a requirement that a witness accepted onto the program sign a Protection Agreement;
- sets criteria for the Chairperson of the CJC to consider before accepting a person onto the program;
- outlines the circumstances in which termination of protection may occur;
- provides for the ability for interim protection to be offered pending the consideration of an application for full protection;
- provides that where a witness is assessed as being in need of protection on a long-term basis, steps may be taken to have the identity of the witness changed;
- allows for the creation of a new birth certificate to assist in the establishment of a new identity;
- provides for witness anonymity in a proceeding where a protected witness or former protected witness who has been given a new identity is or may be required to give evidence;
- creates various offences including an offence of disclosure of information about the program or a witness;
- authorises the chairperson to disclose a witness's former identity and personal details in circumstances where the interests of justice require this; and
- exempts decisions made by the chairperson under the WPA 2000 from the operation of the *Judicial Review Act 1991 (Qld)* and exempts witness protection documents from the operation of the *Freedom of Information Act 1992 (Qld)*.

The effect of the new legislation was outlined by the CJC during the public hearings conducted by the Committee as part of this review. CJC General Counsel, Theresa Hamilton, told the Committee:

*The Committee would be aware that the new Witness Protection Act specifies in some detail the factors that need to be taken into account. It specifies which agencies are entitled to come to the commission for witness protection for their informants, and it broadens the range of agencies to include commissions of inquiry and the Australian Federal Police, et cetera. It also sets out the factors the chairperson must take into account in deciding witness protection and allows for interim witness protection. In short, it is hoped that this Act will go a long way towards protecting the rights of the commission and protected witnesses and clarifying the roles.*⁴⁰⁵

Assistant Commissioner Kidcaff pointed out the following:

The specific State witness protection legislation will provide complementary legislation so that Queensland will be able to make use of Federal witness protection legislation, thereby making it possible to conduct witness protection operations in accordance with the way that the Federal Police operate their witness protection programs. It also provides for complementary

⁴⁰⁵ Note 394 at 11.

witness protection arrangements with other States. The new legislation itself will also provide greater scope in securing witnesses and securing their identities, and that goes a long way towards protecting witnesses.

*The proposed legislation also provides a much stronger legislative base to successfully operate a witness protection program and, amongst other things, it takes into account the seriousness of the information being used to compromise the security protection by providing a number of offence provisions.*⁴⁰⁶

The Assistant Commissioner informed the Committee that the CJC was in the process of creating new forms and developing operational procedures in readiness for the commencement of the new legislation.

The Committee considers that there are two issues not directly addressed by the legislation - review of the decisions of the WPD, and protection for third parties who deal with persons who are protected witnesses.

10.6.3.1 Review of WPD decisions

One issue that the Committee wishes to canvass in relation to the new legislation is that it does not provide a system for the review of decisions made under the WPA 2000. As mentioned above, the third PCJC considered this to be one issue that required attention in any review of the legislation. The Scrutiny of Legislation Committee also identified this issue in their Alert Digest No. 9 of 2000.

Sections of the Act dealing with varying or terminating a protection agreement, or restoring a person's former identity, require the Chairperson to take certain steps to give a protectee a reasonable opportunity to explain why the Chairperson should not take the action or to comment on the variation. However, the initial decision to admit a person to the program is non-reviewable.

The CJC commented extensively on the review of decisions made in relation to witness protection in its submission to the former Connolly / Ryan Inquiry. The CJC submitted it would be possible to establish an internal review mechanism, under which decisions relating to whether a person is accepted into, or removed from, the CJC's witness protection program would be made by a senior (but not the most senior) officer within the organisation responsible for providing protection (the Director of the WPD) and that the most senior officer (the Chairperson) would be the reviewing officer.⁴⁰⁷

The CJC also addressed in this submission whether decisions relating to witness protection should be judicially reviewable. The CJC submitted that there are legitimate safety concerns with reviewing witness protection decisions externally having regard to the evidence which might be required to be adduced in an external review. The CJC submitted that the internal review mechanism described above would provide an adequate review process.⁴⁰⁸

In his response to the Scrutiny of Legislation Committee, published in Alert Digest No. 10 of 2000, the Premier addressed that Committee's concerns relating to review of WPD decisions. He wrote:

⁴⁰⁶ Note 394 at 30.

⁴⁰⁷ CJC, *Criminal Justice Commission Submission to the Commission of Inquiry into the Effectiveness of the Criminal Justice Commission*, 1997, Brisbane, at 212.

⁴⁰⁸ Note 407 at 212-213.

Whilst the Bill does not provide any system of review it must be noted that internal levels of assessment within the Criminal Justice Commission are strict and numerous. Currently, where officers of the witness protection division make assessments these are reviewed by team leaders, senior officials and the Inspector in Charge. The assessment is then reviewed by the director of the witness protection division and the Witness Protection Advisory Committee. The director then makes a recommendation to the chairperson.

Under the Criminal Justice Act 1989 (the CJ Act) a person can complain to the Parliamentary Criminal Justice Committee (PCJC) over a decision made by the chairperson. Where this right has been exercised in the past, the PCJC has requested the Criminal Justice Commission to give a report on the matter to the PCJC. Under the CJ Act the PCJC may also refer a matter to the Parliamentary Commissioner. In addition, under section 118R(2) of the CJ Act, the Parliamentary Commissioner has the function, as required by the PCJC, to audit records and operational files including for the purpose of determining whether the way the Criminal Justice Commission has exercised its powers is appropriate.

The Bill provides that decisions made by the chairperson in relation to witness protection are excluded from the operation of the Judicial Review Act 1991. This is justifiable as evidence required to be adduced in a judicial review of a decision involving witness protection, may disclose processes which could prejudice witness protection methods, and in turn put at risk witnesses under protection. The Bill provides that documents relating to witness protection are excluded from the operation of the Freedom of Information Act 1992 (FOI Act). Witness protection documents currently fall within the exemptions that may be claimed under the FOI Act, however, this is not considered sufficient protection as these provisions do not give automatic exemption and could involve review of an exemption claim. Again, for the reasons outlined above, external review processes have the potential to compromise the security of the program and put witnesses at risk. The exemptions are justifiable in this context.⁴⁰⁹

The Committee would like to point out, with respect, that while part of its functioning is to receive complaints about the CJC, it does not operate as an appeal body against CJC decisions. The Committee is empowered under section 118(1)(g) of the *Criminal Justice Act* to “issue guidelines and give directions” to the CJC and, under section 118E, to direct the CJC to investigate a matter, but it cannot overturn a decision of the CJC nor can it force the CJC to reverse a particular decision. The Premier is correct in stating that the Parliamentary Commissioner can audit records of the CJC and operational files under 118R(2) of the *Criminal Justice Act* as required by the Committee. However, this cannot redress the situation of particular individuals whose complaints may require urgent attention.

The Committee notes that in New South Wales an appeal lies to the Ombudsman against decisions of the police service not to admit a person to the witness protection program. Under section 5 of the *Witness Protection Act 1995 (NSW)* the witness must appeal within 3 days after being informed of the decision not to include the witness in the program. The Ombudsman must determine the appeal within 72 hours after the appeal is received. The Ombudsman may make any decision that was available to the Commissioner of Police.

⁴⁰⁹ Scrutiny of Legislation Committee, *Alert Digest No. 10 of 2000*, Legislative Assembly of Queensland, 2000, Brisbane, at 56-57. Note that the provisions of the Bill which specifically exempted witness protection material from the operation of the *Freedom of Information Act 1992* were omitted by an amendment moved by the Premier in the Committee Stage of the Bill’s reading. The Premier explained that this was because he had received advice to the effect that the provision may cause the very harm that is trying to be prevented and that it was preferable for the CJC to rely on section 35 (Information as to the existence of certain documents) of the *Freedom of Information Act* which would allow the CJC to “neither confirm nor deny” the existence of a document – Queensland Legislative Assembly, *Daily Hansard*, 10 November 2000, at 4302.

Under the Commonwealth legislation, and in Victoria and South Australia, there is an avenue of appeal from the Deputy Commissioner to the Commissioner in relation to decisions to terminate protection.

10.6.3.2 Analysis and comment

The Committee sees some value in a system of appeal being established, although, as pointed out by the Premier (and quoted above), the Commission has “strict and numerous” internal levels of assessment. The Committee understands that the current process for determining whether or not a person will be admitted to the program involves the Witness Protection Advisory Committee assisting the Director to advise the Chairperson in his decision making. As outlined above, the Witness Protection Advisory Committee is made up of four senior officers of the CJC, from different divisions and each bringing a different kind of expertise and point of view to the process. The Committee considers that this process is one which should be monitored in light of the new legislation to determine the appropriateness of this system in producing adequate consideration of decisions to admit a person to the program.

10.6.3.3 Protection for innocent third parties dealing with protected witnesses

One of the major problems which has arisen for the WPD is to what extent the Commission owes a duty of care to third parties in their dealings with persons on the witness protection program. This became a major issue in relation to ‘Operation Melody’, the subject of the third PCJC’s Reports Nos. 32 and 36. In those reports the previous PCJC considered the CJC’s statutory duty to protect their protected witness, Melody, and whether the Commission owes a duty of care to innocent third parties who deal with witnesses on its protection program. The Committee concluded that:

- the CJC’s actions were sufficient in the circumstances to fulfil the statutory duty in relation to the protection of Melody; and
- even if the CJC did have a duty of care to ensure that innocent third persons dealing with witnesses on its protection program are not placed at a disadvantage, the Committee did not believe the CJC had breached such a duty.⁴¹⁰

The Committee did, however, recommend that the CJC review its procedures with a view to further reducing the risk or prejudice to third parties as a result of a person being accepted into the witness protection program.⁴¹¹ The Committee noted the following cases where it considered a duty of care may be owed to third parties:

- the CJC has provided a witness with a new identity;
- that witness has then conducted activities which the witness would not have been able to conduct under their former identity;
- the CJC has become aware, or should have become aware, that the witness was conducting those activities under their new identity and has not intervened to stop those activities being conducted; and
- the CJC would be aware that harm (economic or otherwise) was likely to result to innocent third persons from that witness conducting those certain activities in their new identity.⁴¹²

⁴¹⁰ PCJC, *Report on Operation Melody - No. 2*, Report No. 36, Legislative Assembly of Queensland, 1996, Brisbane, at 27.

⁴¹¹ Note 410 at 27.

⁴¹² Note 410 at 22.

In May 1999 this Committee requested the Parliamentary Commissioner to review the CJC's Witness Protection Division Policy and Procedures Manual, focusing on the risk of prejudice to innocent third parties that deal with persons on the program. The Committee asked the Parliamentary Commissioner to:

- ensure that the revised policies and procedures implemented by the CJC, subsequent to 'Operation Melody', limit, as far as possible, the risk of prejudice to innocent third parties who deal with persons on the CJC's Witness Protection Program; and
- identify what, if any, further amendments to the CJC's Witness Protection Division Policy and Procedures Manual are necessary or desirable.

The Parliamentary Commissioner, in a confidential report to the Committee, concluded:

The amendments to the Witness Protection Policy and Procedures Manual have certainly reduced the risk to innocent third parties.

It is not possible to envisage every circumstance that may arise in relation to a protectee, but it can be said that at least some attempts have been made to cover the concerns expressed by the third PCJC.⁴¹³

There are some provisions in the WPA 2000, which may have the effect of reducing the risk to innocent third parties by restricting the behaviour of protectees. Section 8(2) of the WPA 2000 provides that a protection agreement may include *inter alia* a condition that:

- a person must not contravene a law of the Commonwealth or a State;
- the person must not engage in a stated kind of activity;
- a person must surrender passports and other identity documents; and
- while on the program the person will disclose to the Chairperson details of any criminal charges against the person and any civil proceeding, including any bankruptcy proceeding, started against the person.

Section 6(3) of the WPA 2000 also requires the Chairperson to have regard to matters such as the person's criminal history in making a decision to include a person in the program. Such provisions could help to prevent circumstances such as those in the case of Melody recurring.

10.6.4 Conclusions

Conclusion 65

The Committee is pleased to note the new Witness Protection Act 2000 appears to adequately address the deficiencies in the existing legislative framework for witness protection. However, when the new regime commences, operational problems may be identified. The Committee would like to receive periodical updates as to any operational problems that arise under the new scheme. In the first instance the Committee believes it would be satisfactory to receive updates in the forum of its joint bi-monthly meetings with the CJC.

Conclusion 66

The Committee considers that the WPD has amended its policies and procedures to reduce the risk of harm coming to innocent third parties in their dealings with protectees, in situations where a duty of care to those parties would arise. The Committee agrees with the conclusion of the

⁴¹³ Confidential report of the Parliamentary Criminal Justice Commissioner, 1999.

Parliamentary Commissioner that it is not possible to envisage every situation that may arise in relation to a protectee. The Committee considers that the CJC has taken appropriate steps to deal with the issues that arose in relation to Melody.

Conclusion 67

The Committee considers that, while the new provisions of the Witness Protection Act 2000 do not directly address any duty of care owed by the CJC to third parties in its dealings with protectees, the legislation directs the Chairperson to consider issues which may influence the behaviour of the protectee in dealing with third parties in deciding to admit a person onto the program.

Conclusion 68

The Committee considers that the changes to the WPD procedures, combined with a solid legislative framework, will probably address outstanding concerns about third parties dealing with protectees. The Committee will continue to monitor the operation of the legislation and procedures and will seek updates from the CJC on problems arising in their operation.

10.6.5 Recommendations

Recommendation 37

The Committee recommends that the CJC report to the Committee at its bi-monthly meetings on any problems which arise in the operation of the *Witness Protection Act 2000*.

Recommendation 38

The Committee recommends that the new Committee monitor the operation of the *Witness Protection Act 2000* and, after an appropriate time from its commencement, conduct a review into the operation of the legislation, and the revised policies and procedures of the Witness Protection Division, with particular regard to protection for third parties dealing with protectees.

10.7 Witness protection for persons who have assisted the Queensland Crime Commission

10.7.1 Background

In the third PCJC's three yearly review of the CJC, the Committee identified an anomaly relating to the provision of protection for witnesses under the *Criminal Justice Act* and the *Crime Commission Act 1997 (Qld)*.

Section 128 of the *Crime Commission Act* provides that if it appeared to the Queensland Crime Commission (QCC) that a person was at risk or subject to intimidation or harassment because the person has assisted the Crime Commission by producing a document or thing at a QCC hearing or otherwise to the QCC, the QCC must ask the CJC to provide witness protection for the person. However, the *Criminal Justice Act* prescribes a broader scope for the provision of witness protection in that it can be given to persons in need of it because they have, '*assisted the Commission or a law enforcement agency of the State in the discharge of its functions*' whether or not the person has been summoned or called as a witness before the CJC or a court.

The anomaly exists in that a person who has assisted the Crime Commission, but who has not produced a document or thing, is ineligible for protection under the *Crime Commission Act* but

eligible under the *Criminal Justice Act*. There appeared to be no explanation or reason for this difference.

The previous Committee noted that in practice the anomaly could be side stepped by a person applying for protection directly to the CJC but considered that it was necessary to clarify the issue in legislation.

10.7.2 Prior PCJC recommendations

The third PCJC therefore recommended that the *Crime Commission Act* be amended by the removal of s 128 from the *Crime Commission Act* and that the term “law enforcement agency” be defined in the *Criminal Justice Act* and include, clearly, the QCC. Alternatively, the Committee recommended the issue could be clarified by inserting a provision into the *Crime Commission Act* to provide that the QCC is a “law enforcement agency of the state” for the purposes of the *Criminal Justice Act*, and by removing s 128 of the *Crime Commission Act*.

10.7.3 Legislative changes

Although neither of these alternatives has been adopted, the *Crime Commission Act* has been amended by the WPA 2000 to broaden the categories of witness who are eligible for protection. Schedule 1 of the WPA 2000 amends s 128 so that the QCC can ask the CJC to provide witness protection if it appears to the QCC that the safety of a person may be at risk or the person may be subject to intimidation or harassment because the person, ‘*is helping or has helped the QCC in the performance of its functions.*’ The existing provisions also remain to protect witnesses who produce a document or thing to the QCC. This amendment effectively alleviates the problem identified by the previous Committee.

The wording of the *Criminal Justice Act* is also amended by the WPA 2000. Section 61 of the *Criminal Justice Act*, which provides for protection of witnesses who have ‘*assisted any law enforcement agency of the State in the discharge of its functions and responsibilities*’, is omitted by the new legislation. Section 6(1)(a) of the WPA 2000 provides that a person may be included on the program ‘*because the person has helped, or is helping, a law enforcement agency in the performance of its functions.*’ Thus, the wording of the relevant provisions is the same in the *Crime Commission Act* and the WPA 2000, thereby overcoming the problem identified by the previous Committee, (although not in the manner recommended by the previous Committee).

10.8 Accountability of the Witness Protection Division to the PCJC

10.8.1 Introduction

One issue of which the Committee has been constantly mindful in its statutory role is how to monitor the discharge of the functions of the Witness Protection Division, given the highly protected nature of the division’s operations. Certainly, statistics, which are regularly provided to the Committee by the CJC, are a valuable tool in obtaining a picture of the division’s workload. The Committee also believes that the effectiveness of the division can be gauged by monitoring complaints that are made about the division, either from those whose applications for protection have been denied or those who have experienced problems whilst on the program.

10.8.2 Analysis and comment

The Committee has received few complaints relating to witness protection matters. In those complaints the Committee has generally determined that the actions of the division have not been inappropriate.

The Committee now also has the benefit of the Office of the Parliamentary Commissioner being able to examine material previously beyond the scrutiny of the Committee. The Committee appreciates this explicit accountability mechanism, particularly in relation to operationally sensitive areas such as witness protection where accountability is necessary for the Committee to fully discharge its role but difficult to facilitate because of the sensitive nature of the material.

10.8.3 Conclusion

Conclusion 69

The Committee is aware of the problem of making the Witness Protection Division accountable to the Committee and is appreciative of the necessity for restrictions to be placed on information provided to the Committee. At present, the Committee considers that this does not create any problems, and that the role of the Parliamentary Commissioner ensures that the Witness Protection Division can be monitored and made accountable to the Committee.

10.9 Relationship between the Witness Protection Division and other divisions of the CJC

10.9.1 Background

In response to a complaint to the Committee in relation to a witness protection matter, the Committee referred the matter to the Parliamentary Commissioner for investigation in 1999. While confidentiality requirements prevent the matter from being discussed in any detail, it can be said that the Parliamentary Commissioner identified some conflict between the Official Misconduct Division (OMD) and the Witness Protection Division. The tension existed in the OMD's involvement in protecting a witness outside of the procedures of the WPD. This can be seen as a compromise of the principle underlying effective witness protection - that the witness protection function must be separate to an investigation function to ensure a witness' evidence is not, and cannot be perceived to be, tainted in favour of the protectors or given as a reward for assistance. Part of the problem was caused by the WPD being restricted in its operations by a deficient legislative framework, particularly in relation to obtaining Commonwealth documents.

The problems identified by the Parliamentary Commissioner in this matter have largely been addressed. Certainly, the new witness protection legislation eliminates problems in obtaining Commonwealth documents. The matter has been further addressed by a change in the composition of the Witness Protection Advisory Committee. Previously, the Witness Protection Advisory Committee included the Director or Deputy Director of the Official Misconduct Division, apparently in the primary role of legal officer. In response to the apparent conflict between the OMD and the WPD, this officer was replaced by an officer from the Office of General Counsel. Under the current system the OMD can make submissions to the Advisory Committee but has no part in decisions made by the Committee.

In its submission to the Committee the CJC in fact commented on the divisional interaction, stating:

The Witness Protection Division draws on assistance from other areas of the CJC, particularly the Corporate Services Division (especially the Finance Section), the Intelligence and

*Information Divisions (especially the information retrieval area), OMD (especially the financial analysts), and the Surveillance and Technical Unit.*⁴¹⁴

10.9.2 Conclusion

Conclusion 70

This Committee is of the view that the new witness protection legislation and revised constitution of the Witness Protection Advisory Committee will go a long way to addressing the tension that previously existed. The Committee believes that if a cooperative approach is adopted throughout the Commission, divisions will be in a position to provide expert services and advice to other divisions. However, it must be remembered that the WPD has important reasons for remaining independent of the other divisions and that the Official Misconduct Division should not simply see it as a service provider. It is only adherence to the policy and procedures of the WPD and the Commission that can prevent a recurrence of the events that led to the particular circumstances referred to above.

10.10 Family Court and other legal obligations on witnesses

10.10.1 Introduction

One issue that has presented difficulties for the WPD is the existence of family court orders or other legal obligations relating to a witness. The former Director of the WPD, Assistant Commissioner Kidcaff, commented on this issue at the hearings conducted by the Committee as part of this review:

*The first question relates to operational difficulties that the division has encountered with Family Law Courts and the Family Law Court orders where the division itself is required to manage the protection of witnesses and family members where Family Court orders have been made. Witness protection security concerns then become subordinate to the orders that have been made by the Family Court and it has resulted in witnesses and the Witness Protection Division staff being placed at a greater risk than was considered desirable in the circumstances. When we are involved in those Family Law Court matters, we have representation by way of the official solicitor from the Commission.*⁴¹⁵

The CJC also commented on this issue in its submission to this review, stating that:

*This is a concern shared by other witness protection agencies operating in Australia, and remains an issue that needs to be managed on a case-by-case basis.*⁴¹⁶

10.10.2 Analysis and comment

The Committee notes that the issue is not directly dealt with in the WPA 2000. However, section 8 provides that a protection agreement may include, *inter alia*:

- a list of the person's outstanding legal obligations, including, for example, family and taxation obligations;
- an agreement about how these obligations are to be met;
- a financial support arrangement; and

⁴¹⁴ Note 390 at 43.

⁴¹⁵ Note 394 at 30.

⁴¹⁶ Note 390 at 43.

- details of marriage, family, taxation, welfare and other domestic or relationship obligations.

While the legislation does not provide a solution to the problems experienced by the CJC it allows for specific arrangements to be made for pre-existing legal or other obligations, and presumably makes continuation of the protection agreement dependent on the ongoing fulfilment of such obligations.

10.10.3 Conclusions

Conclusion 71

The Committee is pleased to note that the Witness Protection Act 2000 is formulated so that legal obligations cannot be avoided by a person's admission to the program.

Conclusion 72

The Committee considers that the CJC's approach of dealing with matters on a case-by-case basis in relation to Family Court matters is appropriate.

11. OFFICE OF GENERAL COUNSEL

11.1 Introduction

The chapter examines the role of the Office of General Counsel. Although legal officers are employed in several of the Divisions of the CJC, the Office of General Counsel provides legal advice and representation for the CJC as a whole, as well as the divisions of the CJC to varying degrees.

In this chapter the Committee examines the role of the Office of General Counsel, the necessity for the CJC to retain in-house counsel, the effectiveness of the Office and the use of external counsel by the CJC.

11.2 Structure of the Office of General Counsel

The Office of General Counsel was established in December 1992 pursuant to the then section 19(2)(a) of the *Criminal Justice Act* (the Act) which gave the CJC the capacity to establish new organisational units.

The Office of General Counsel has taken various forms and had varying staffing levels. Currently, the Office of General Counsel is made up of the positions of General Counsel, Official Solicitor and Freedom of Information Coordinator. The Official Solicitor has taken on the role of Freedom of Information Coordinator for the CJC.

The Office of General Counsel is established as an independent unit of the CJC and reports directly to the Chairperson.

11.3 The Role of the Office of General Counsel

According to the CJC's *Annual Report 1999-2000* the Office of General Counsel is responsible for:

*...providing independent legal advice and legal representation for the CJC and the various divisions within the CJC. The Office also arranges external legal advice and representation for the more serious and sensitive legal matters that arise out of the CJC's operations.*⁴¹⁷

The CJC listed the activities of the Office of General Counsel during 1999-2000 as follows:

- *appeared to instruct senior and junior counsel before various courts including the Supreme Court and the Court of Appeal*
- *instructed counsel to appear at private hearings*
- *appeared or instructed counsel to appear in all jurisdictions to respond to subpoenas and other legal process served on the CJC, to ensure that confidentiality was maintained where appropriate in respect of CJC information and operations*
- *provided legal advice to the CJC on various matters involving criminal law, administrative law, contract law and personal injuries claims*
- *coordinated the CJC's response to various external accountability bodies including the*

⁴¹⁷ CJC, *Annual Report 1999-2000*, 2000, Brisbane, at 58.

*Parliamentary Criminal Justice Commissioner and the PCJC.*⁴¹⁸

This list provides a picture of the broad functions and role of the Office of General Counsel.

The Office of General Counsel provides legal advice for all Divisions of the CJC and, in doing so, facilitates development of a whole-of-commission approach to legal matters. The Office of General Counsel also has a role to play in the CJC's response to external oversight.⁴¹⁹

Further, the Office supervises the CJC's freedom of information responses. General Counsel, Ms Theresa Hamilton, elaborated on this role in the hearings conducted by the Committee as part of this review:

*...the Office of General Counsel supervises the commission's FOI responses. Except for certain areas, the commission has no general immunity to freedom of information legislation. Of course, because of the work we do this can often involve a balancing exercise between the public's right to know and obviously confidential or operational material. It also involves, as the Committee would be aware, sometimes parliamentary privilege issues because of our dealings with this Committee.*⁴²⁰

The Office has a broad role within the CJC. The broad range of functions of the CJC mean that legal advice could potentially be sought from the Office of General Counsel on criminal law, administrative law, industrial law, contract law, statutory interpretation and policy issues.

11.4 Retention of the Office of General Counsel

11.4.1 Introduction

An on going issue has been whether the CJC should retain the Office of General Counsel. It could be argued that an in-house legal service cannot properly provide independent legal advice to the Commission and its divisions and that frequent use of external counsel by the CJC is evidence that all matters could be dealt with by external counsel. In the following sections the Committee examines the arguments for and against retaining the Office of General Counsel by looking at its roles, its effectiveness and its incidental functions.

11.4.2 Prior PCJC recommendations

The third PCJC made a strong recommendation in its Report No. 45, on its three yearly review of the CJC, that the Office of General Counsel be disbanded and that legal services be provided to the CJC by external, independent legal counsel or solicitors. The third PCJC further recommended that the position of Official Solicitor be retained to act as a liaison point for the CJC in any proceedings in which it is involved, to receive legal process, to brief counsel and solicitors and to monitor the use of external legal services.⁴²¹ These recommendations were based on conclusions drawn by the Committee that:

- the provision of independent and objective advice to the Commission was of paramount importance and this was not possible given the proximity of the staff of the Office to their employer;

⁴¹⁸ Note 417 at 59.

⁴¹⁹ Discussed below at 11.7 and 11.8.

⁴²⁰ PCJC, Transcript of Public Hearing - Three Yearly Review of the CJC, 14-15 December 2000, Brisbane, at 10-11.

⁴²¹ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 45, Legislative Assembly of Queensland, 1998, Brisbane, at 172.

- the Commission required legal advice across many areas of the law and staff of the Office could not possibly provide expert advice in relation to all matters; and
- while cost was a factor to be considered in arguments for retaining the Office, it was not the overriding or predominant factor.⁴²²

11.4.3 Analysis and comment

The Committee considers that there are sound arguments that can be made both for retaining in-house counsel and for engaging external counsel for all CJC legal advice.

The Queensland Law Society (QLS) submitted that the CJC should, as a rule, obtain independent legal advice from external counsel. The QLS expressed agreement with the reasons given by the third PCJC, stating the following:

*The provision of impartial and objective advice to the Commission is of paramount importance, and cannot be consistently obtained by an employee. The role of General Counsel should therefore be external to the Commission. It is however accepted that a role such as that of Official Solicitor needs to be retained within the Commission to co-ordinate the briefing of General Counsel.*⁴²³

In its response to the QLS's submission to this review the CJC stated:

*The Commission has to respond on a daily basis to many matters of varying degrees of difficulty concerning legal issues. It would be impractical and prohibitively costly to brief all these matters out. For this reason, the Commission and most other similar large agencies (for example, the QCC and the NCA) employ "General Counsel" to deal with such matters. In the Commission's view, this is practical and cost efficient.*⁴²⁴

These issues were canvassed by CJC officers at the public hearings conducted by the Committee as part of this review. The CJC's General Counsel, Ms Hamilton, outlined the reasons that it may be perceived that the Office relies mainly on external counsel:

Most of the community only gets to see the commission's legal work when it becomes public, when it goes into the court, and that is normally handled by external counsel. Because the commission, like any other large organisation, has to take legal advice and the divisions have to take legal advice, most of that advice remains confidential. Like any organisation, the commission needs to be able to be confidentially advised.

*This has led over the years to fairly divergent views about the legal work of the commission. In the past there have been submissions that all of the legal work should be done externally to the commission. There have also been views that not enough work is being done by the internal counsel and that not much should be briefed out at all. I think both views are based on a misconception about the sort of work done in-house.*⁴²⁵

Ms Hamilton went on to inform the Committee of the many roles of the Office of General Counsel, performed on a day-to-day basis which are not in the public arena, including:

- providing high quality legal advice on a daily basis about legal, operational and policy issues to the Chairperson and Commissioners;

⁴²² Note 421 at 171.

⁴²³ Queensland Law Society, Queensland Law Society, submission, *Three Yearly Review of the Criminal Justice Commission*, dated 9 October 2000, Brisbane, at 2.

⁴²⁴ CJC, *CJC Comments on the Queensland Law Society's Submission to the PCJC Three Yearly Review*, 13 December 2000, Brisbane, at 1.

⁴²⁵ Note 420 at 9.

- reviewing reports of the Research and Prevention Division and the Official Misconduct Division before publication to ensure the rules of procedural fairness have been followed and to ensure that presentations given to community and other bodies, which might refer to specific cases, also comply with the principles of natural justice;
- assisting the OMD lawyers with statutory interpretation problems or issues that arise which may have a Commission-wide impact;
- providing advice, particularly to the Corporate Services Division, on contracts with outside bodies, staff matters, tax matters, privacy issues and personal injury liability;
- providing advice to the Witness Protection Division (which has no in-house lawyers), including advice about family court matters and whether the WPD can resist subpoenas involving sensitive operational matters;
- supervising the Commission's freedom of information request responses; and
- liaising with bodies responsible for the external oversight of the CJC, including the Parliamentary Commissioner, the Public Interest Monitor, the PCJC and the Supreme Court.

The Office of General Counsel is also playing a fundamental role in preparing for the implementation of the new witness protection legislation at an operational level within the CJC.⁴²⁶

At the Committee's public hearings, the CJC Chairperson, Mr Butler SC, pointed out that the Office of General Counsel is now structured in such a way that it has no direct involvement in the operational committees or operational involvement so that independent, arms-length advice can be provided.⁴²⁷ Its separation from the executive is a measure to guarantee its independence.

The Consultancy Bureau *Report on an Organisational Review of the Criminal Justice Commission* outlined a number of other factors supporting the retention of the Office.⁴²⁸ The Consultancy Bureau identified a three-fold function of the Office of General Counsel as follows:

- The provision of formal advice about complex legal issues impacting on the Commission overall.
- The provision of immediate informal advice on legal issues identified by other Commission legal staff.
- The assembling, filing and distribution of summaries of legal precedents relevant to Commission legal staff.⁴²⁹

The Consultancy Bureau noted the comments of the third PCJC and concluded:

*Of the three essential roles described above, only the first could be fulfilled by briefing private counsel as recommended by the PCJC.*⁴³⁰

The Consultancy Bureau pointed out that engaging private counsel could compromise the continuity of advice obtained. Retaining in-house counsel ensures that consistent advice will be given. The retention of the Office of General Counsel ensures that matters can be dealt with expeditiously. If external counsel were required to be briefed for every matter it would take some time for such counsel to familiarise themselves with matters. The Consultancy Bureau also notes that an in-house

⁴²⁶ Discussed in detail in Chapter 10 (Witness Protection Division).

⁴²⁷ Note 420 at 11.

⁴²⁸ Consultancy Bureau, *Report on an Organisational Review of the Criminal Justice Commission*, (unpublished), 1998, Brisbane.

⁴²⁹ Note 428 at 56.

⁴³⁰ Note 428 at 56-57.

office ensures that there is high level of knowledge of the *Criminal Justice Act* and expertise in its application and operation.

The Consultancy Bureau concluded that:

...while the Commission may ideally source its legal advice from external sources perceived to be more independent, issues of cost, access and continuity make this option less feasible.⁴³¹

In its response to the third PCJC's recommendation that the Office of General Counsel be disbanded in order to ensure advice provided was independent, the CJC wrote:

In the CJC's view, there is at least an equal danger of non-objective advice being gained from members of the private bar, who depend for their livelihood on the continuing patronage of instructing solicitors or agencies such as the CJC...In addition all legal practitioners have a separate and independent professional duty to give appropriate advice.⁴³²

The Committee considers that the arguments for retaining in-house counsel are more persuasive than the arguments for disbanding the Office of General Counsel. This assessment is based on more than cost considerations.

11.4.4 Conclusions

Conclusion 73

The Committee is conscious that it would be impossible for the work done by the Office of General Counsel to be provided by external counsel at a comparable cost. While the Committee agrees with the third PCJC - that the cost of providing the service should not be an overriding consideration in arguing for the retention of in-house counsel - the Committee considers that it is an extremely important consideration if the level of service across the CJC is to be maintained.

Conclusion 74

Further, the Committee considers that the role of in-house counsel, in the provision of immediate advice and in dealing with day-to-day operational matters, could not be adequately undertaken by external counsel. The Committee also considers that in-house counsel is the most efficient means of obtaining consistent advice.

Conclusion 75

The Committee has considered arguments about the independence of advice. The CJC has pointed out that the question of independence can be equally applied to external counsel. The CJC also pointed out that all legal practitioners are officers of the court and are expected to behave in an independent manner. The Committee considers that independent advice can be provided by in-house counsel.

⁴³¹ Note 430 at 60

⁴³² CJC, *CJC response to PCJC Three-Year Review of the Activities of the CJC*, August 1998, Brisbane, at 12.

11.4.5 Recommendation

Recommendation 39

The Committee recommends that the CJC retain in-house counsel in the form of the Office of General Counsel.

11.5 Briefing external counsel

11.5.1 Introduction

The Office of General Counsel briefs external counsel for all litigation matters. At the public hearings conducted by the Committee for this review CJC General Counsel, Ms Hamilton, also explained other reasons for briefing matters out to external counsel:

As the Committee would probably be aware, the commission does use external counsel for all litigation matters. This, of course, is in line with the practice of most large organisations. Because it is very specialised work, it can be very time consuming. If the in-house counsel is tied up for weeks on end on a matter like that, it means that no other work of the commission is being attended to. It is also necessary to brief out matters where there might be a conflict of interest, which sometimes happens in relation to, say, staff members being represented before inquiries. And there are other matters where it is in the public interest that it be briefed out.⁴³³

11.5.2 Analysis and comment

The Committee is of the view that it is appropriate that certain matters are briefed out to external counsel, especially where it is necessary to avoid conflicts of interest. The Committee is appreciative of the CJC's argument that litigation is extremely specialised and time consuming and agrees that it seems to be the most efficient use of CJC resources to engage external counsel to undertake such matters, while leaving in-house counsel available to attend to the more urgent day-to-day matters that require attention in the Office of General Counsel.

The Committee notes recent changes to the Policy and Procedures of the Office of General Counsel which have amended the process for engaging external counsel across the CJC. Information provided to the Committee by the CJC⁴³⁴ indicates that the process for engaging external counsel has been streamlined across the CJC to ensure that uniform procedures are followed. Ms Hamilton has previously explained to the Committee⁴³⁵ that this process is to ensure that, except in urgent situations, all counsel will be briefed through the Office of General Counsel, in order to negotiate uniform fees, and to ensure the criteria of the current policy and procedures manual are considered. These criteria include expertise of counsel, seniority, importance of the case, whether it is necessary for senior counsel to be engaged and whether the matter could be handled in-house.

The Committee considers that this process will ensure more efficient use of CJC resources than an *ad hoc* approach with separate divisions devising their own systems and methods in engaging external counsel.

⁴³³ Note 420 at 9.

⁴³⁴ For example, minutes of the CJC Executive on 12 August 2000 at 19-20.

⁴³⁵ At a joint meeting of the PCJC and the CJC on 2 June 2000.

11.5.3 Conclusion

Conclusion 76

The Committee considers that it is appropriate that certain matters be briefed out to external counsel, in order to ensure that no potential conflicts of interest arise in the provision of such advice and to maximise the efficiency of the Office of General Counsel.

Conclusion 77

The Committee considers that it is appropriate that briefing out be undertaken in a uniform way through the Office of General Counsel, in order to ensure that the use of external counsel is as efficient as possible.

11.6 Effectiveness of the Office of General Counsel

11.6.1 Introduction

In the same way as it is difficult to measure the effectiveness of a unique organisation such as the CJC as a whole, so too it is difficult to measure the effectiveness of its individual divisions and units. Certainly, it difficult to measure the effectiveness of the Office of General Counsel. It is however, possible to measure the commercial cost of some of the tasks performed by the officers of the Office of General Counsel to ascertain whether the use of in-house counsel is the most effective means for the CJC to obtain legal advice.

11.6.2 Analysis and comment

The Committee has not had the resources to undertake a recent study of the activities of the Office of General Counsel but looks to a cost analysis carried out by the Consultancy Bureau for the first four months of 1998. The Consultancy Bureau undertook a cost analysis of the private counsel equivalent of the major work that had been undertaken by the Office of General Counsel.

Not including the provision of immediate advice and operational tasks, the Consultancy Bureau conservatively estimated that it would have cost the CJC \$367 200 in 1998 to brief out the main work done by the officer who holds the position of General Counsel. This was compared to the salary package of the General Counsel of approximately \$112 000.⁴³⁶ The following table is taken from the Consultancy Bureau report and shows how the above estimate was ascertained.⁴³⁷

Dates	Task Description	Days	Cost \$
Jan 5-19	Reviewing voluminous material for the discovery process on a contested contempt matter in the Supreme Court.	9	18,000
	This matter has been ongoing for nearly four years. Any counsel not familiar with it would require about two weeks reading time prior to undertaking this task.	10	20,000
Jan 19-27	Preparation of observations and affidavits and researching procedural fairness issues for the Supreme Court action to provide detailed instructions to Counsel.	5	15,000

⁴³⁶ Note 430 at 59.

⁴³⁷ Note 430 at 58-59.

Feb 2-6	Advising on the question of access to Commission holdings concerning a defamation action.	2	4,000
Feb 6-May 13	Advising the Commission following an extended QPS investigation into a former Commission staff member.	15	30,000
Feb 9-18	Providing advice on an FOI decision concerning access sought by a former police officer. The material is voluminous and has been raised before two Senate Committee Inquiries. The cost estimate involves preparatory reading which would be necessary for private Counsel to become familiar.	6	12,000
Feb 13-16	Preparing and settling new forms for charges and summonses in Misconduct Tribunal matters to take into account recent amendments to Acts.	3	6,000
March 4-9	Preparing affidavits, observations and liaising with Counsel concerning the trial of a civilian who was charged on evidence gathered with the aid of a listening device.	4	8,000
March 10-May 30	Drafting and settling the CJC's response to allegations that its officers gave false and misleading evidence to a Senate Committee.	5	10,000
	These matters developed over five years and private counsel would have required an additional five days for preparatory reading.	5	10,000
Feb 23-May 22	Advising on the effect on CJC's operations of recent legislative changes due to the (<i>Police Powers and Responsibilities Act and Code</i>). This included drafting recommended attachments and submissions to the Committee overseeing the legislation.	5	10,000
April 2-30	Settling and drafting portions of the Commission's submission to Parliamentary Commissioner concerning allegations made by Mr Grice, MLA.	5	10,000
	TOTALS	74	153,000

It is clear from this analysis that the Office of General Counsel is an extremely cost effective means of the CJC obtaining legal advice. Clearly, there is no way that external counsel could provide the same amount of work to the Commission at a comparable cost. The above calculations do not include the provision of immediate advice and day-to-day operational issues that require attention from the Office of General Counsel.

11.6.3 Conclusions

Conclusion 78

It is difficult to quantify the effectiveness of the Office of General Counsel. However, the Committee considers that the available information demonstrates that in-house counsel is certainly more effective and efficient than a system of engaging external counsel for advice on every legal matter that arises within the CJC.

11.7 Assistance to and liaison with the Office of the Parliamentary Commissioner

11.7.1 Introduction

The Office of General Counsel has become a primary liaison point between the CJC and the Office of the Parliamentary Commissioner.

Liaison takes place between these two offices in relation to the CJC providing responses to reports of the Parliamentary Commissioner, arrangements for attendances at hearings and briefing of counsel, and the CJC responding to Notices to Produce from the Parliamentary Commissioner. In this section the Committee examines the role of the Office of General Counsel in liaison with the Office of the Parliamentary Commissioner in the CJC's complying with Notices to Produce.

11.7.2 Background

The Strategic Implementation Group (SIG) examined the issue of the regular requests received from the Parliamentary Commissioner for production of considerable physical and electronic holdings from the CJC.⁴³⁸ At the time of the SIG Report, retrieval of this information was being undertaken by the Principal Information Officer. The SIG outlined the process as follows:

- *Pre-Notice and strictly confidential liaison is conducted between the Parliamentary Commissioner's office and the Principal Information Officer, who currently reports directly to the Information Manager. This liaison frequently involves assessment of the holdings likely to be relevant to the matter to allow refinement of the requirements of the Parliamentary Commissioner.*
- *Upon receipt of the formal Notice, the Principal Information Officer identifies and extracts the relevant material, seeks any necessary clarifications from the Parliamentary Commissioner's Office, and prepares transmission documentation.*
- *General Counsel provides review of the transmission documentation and associated material.*⁴³⁹

The SIG Report identified concerns with this arrangement which required attention:

- *The prime role of the Information Officer is crucial project management in IT and RM projects. On average 25 per cent of the role is being dedicated to Parliamentary Commissioner activities; however, the demands have proven to be very uneven and it is not common for up to two or three weeks full-time being dedicated to Notices. Such peaks are incompatible with the principal duty of the officer to manage ongoing projects.*
- *Some of the time-consuming information retrieval duties undertaken by the Principal Information Officer could be performed by lower-level officers with relevant expertise. Moving this aspect of the role would also alleviate potential future problems with making available a replacement officer (through leave, resignation etc) who has both the appropriate senior officer skills to deal with the liaison, coordination and determination activities as well as the lower-level information retrieval skills – such a combination will be near impossible to find.*⁴⁴⁰

The SIG recommended removing this duty from the Principal Information Officer and placing it with the Office of General Counsel. The Office of General Counsel would carry out liaison, coordination, determination and correspondence with the Information Retrieval Section of the Intelligence and Information Division to carry out location and extraction of material. This would

⁴³⁸ CJC, *Continuing the Reform Process: The Report of the Strategic Information Group*, 1999, Brisbane, at 91-92.

⁴³⁹ Note 438 at 91-92.

⁴⁴⁰ Note 438 at 92.

have the effect of streamlining the whole process and allowing more direct control of the process by the Office of General Counsel.

11.7.3 Analysis and comment

The issue has arisen because the Parliamentary Commissioner does not have direct and discreet access to CJC documents.⁴⁴¹ Thus, when seeking documents or other holdings from the CJC, it is necessary for the Parliamentary Commissioner to supply Notices to Produce to the CJC. The Committee considers that the CJC has sound reasons for having the Office of General Counsel review transmission documentation and materials before they are provided to the Parliamentary Commissioner. However, the process does create a problem by alerting CJC officers to the nature of any investigations being undertaken by the Office of the Parliamentary Commissioner.

The CJC has submitted to this review:

...the CJC has put in place a liaison role with the Parliamentary Commissioner's Office to ensure that confidentiality is observed in respect of Notices to Produce and other requests for information, at the discretion of the Parliamentary Commissioner.

The Committee is concerned that there is the potential for the Office of General Counsel to be compromised in 'maintaining confidentiality in respect of Notices to Produce information from the Parliamentary Commissioner'. A potential conflict exists between the role of the Office of General Counsel in complying with Notices to Produce and the associated confidentiality requirements on the one hand and the role of the Office of General Counsel in providing legal advice to the Commission on the other hand.

There is considerable 'forensic advantage' to an investigator in not disclosing the nature of a matter under investigation. To be fully effective, an investigation may need to be covert in some or all aspects. Clearly, the necessity for the Parliamentary Commissioner to provide Notices to Produce and the subsequent liaison with the Office of General Counsel, will alert the Office of General Counsel to the existence and nature of an investigation being undertaken by the Parliamentary Commissioner.

Herein lies the Committee's concern. While the CJC has emphasised that confidentiality is to be maintained in respect of Notices to Produce, the Office of General Counsel will be aware of investigations. Such awareness may give rise to a duty to provide legal advice to the Commission, even though confidentiality is required.

The Committee considers that this conflict can be resolved by ensuring that only one officer of the Office of General Counsel deals with Notices to Produce and that the contents of such Notices are kept confidential from all other CJC officers, particularly other officers within the Office of General Counsel. In practice, this could be a role given to the Official Solicitor, with strict confidentiality to be maintained from the General Counsel, who could later give legal advice to the Commission when it was required.

⁴⁴¹ This issue is discussed in detail in paragraph 14.12.3.

11.7.4 Conclusions

Conclusion 79

The Committee considers that generally, it is appropriate for the Office of General Counsel to be a primary liaison point with the Office of the Parliamentary Commissioner.

Conclusion 80

The Committee is of the view, however, in relation to complying with Notices to Produce, that the liaison and coordination role of the Office of General Counsel is incompatible with the Office of General Counsel's role of giving legal advice to the Commission. Although the CJC has stated its commitment to confidentiality being maintained, the contents of Notices to Produce will alert legal counsel to the existence and nature of investigations being conducted by the Parliamentary Commissioner. The Parliamentary Commissioner could potentially lose the 'forensic advantage' over the CJC in conducting investigations.

Conclusion 81

As there is currently no alternative mechanism which allows the Parliamentary Commissioner to obtain CJC documents directly or discreetly, the Committee considers that a system needs to be devised whereby only one officer of the Office of General Counsel is to liaise, determine, coordinate and correspond with the Office of the Parliamentary Commissioner in answering Notices to Produce. The Committee is of the view that strict confidentiality must be maintained from all other CJC officers, particularly the General Counsel, who may later be required to give legal advice to the Commission about the matter. This will allow the General Counsel to provide advice without conflict between confidentiality relating to what the Officer has been alerted to by answering a Notice to Produce and the duty to the Commission to provide comprehensive advice.

11.7.5 Recommendation

Recommendation 40

The Committee recommends that, in the absence of an alternative mechanism which allows the Parliamentary Commissioner to have direct, confidential and discreet access to CJC documents and materials, the Official Solicitor be the sole officer of the Office of General Counsel to answer Notices to Produce from the Parliamentary Commissioner, and that confidentiality must be maintained by this officer in relation to the Notice. This leaves the General Counsel able to provide appropriate advice to the Commission without the Parliamentary Commissioner losing any 'forensic advantage.'

Recommendation 41

The Committee further recommends that the next Parliamentary Committee further discuss with the CJC the issue of the provision of information to the Parliamentary Commissioner with a view to giving consideration to issuing, following consultation with the CJC and the Parliamentary Commissioner as to its terms, a protocol or guideline governing the provision of information to the Parliamentary Commissioner including the confidentiality of such requests and the appropriate role for the Office of General Counsel.

11.8 Office of General Counsel as an internal accountability mechanism

The Committee has explored the notion that the Office of General Counsel acts as a form of accountability mechanism. The Office of General Counsel, in its role of liaising with various external accountability bodies, such as this Committee, and in reviewing the reports and some activities of the various Divisions, maintains a general overview of the CJC's activities and is a check on the legality of the actions thereof.

11.8.1 Conclusion

Conclusion 82

The Committee considers that the activities of the Office of General Counsel have the incidental effect of acting as an internal accountability mechanism by checking the legality of the actions of the various divisions of the CJC. The Committee considers this to be an important and appropriate function of the Office of General Counsel. Such incidental functions provide further evidence to justify the retention of the Office of General Counsel.

11.9 Placement of the Office of General Counsel within the CJC

11.9.1 Introduction

The placement of the Office of General Counsel within the CJC has been the subject of some consideration. Incorporating the Office of General Counsel within the Office of the Commission was considered in the report of the Strategic Implementation Group (SIG Report) which was finalised in December 1999. The SIG Report concluded that to do so would create a risk or a perception that the independence of the Office of General Counsel could be compromised. The report states:

*It is essential that the Chairperson and the Commission can resort to a legal adviser who can critique the information provided to them by other officers of the CJC and who can provide legal advice from a different perspective than that held by the officers involved in operational activities. Therefore, the SIG considers that the Office of General Counsel should remain as a stand-alone unit answering to the Chairperson.*⁴⁴²

11.9.2 Analysis and comment

It is appropriate that the Office of General Counsel be established within the CJC as a separate office from the Divisions and from the Executive in the Office of the Commission. This separation ensures, as far as possible, independence of legal advice. The second PCJC made brief reference to this issue in its three yearly review of the CJC, stating:

*The Committee recognises the importance of independent legal advice, that is, independent from the OMD for example.*⁴⁴³

The Committee considers, however, that while this independence is important, so too is the Office of General Counsel's knowledge of operational issues and the Office of General Counsel's ability to give advice in the context of operational considerations. The separation of the Office of General Counsel from the operational divisions ensures that the Office of General Counsel itself has no

⁴⁴² Note 438 at 91.

⁴⁴³ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, Legislative Assembly of Queensland, 1995, Brisbane, at 192.

operational interest in advising that a particular course of action be pursued. The Office of General Counsel can give legal advice at arms-length from the particular operation, while maintaining a whole-of-Commission approach.

In being answerable to the Chairperson, the integrity of the Office of General Counsel is maintained as far as is possible within the CJC itself.

11.9.3 Conclusion

Conclusion 83

The Committee considers that it is vital that the Office of General Counsel be maintained as a unit separate from the divisions and from the Executive of the CJC in order to ensure as far as possible that:

- *the Office of General Counsel can provide independent advice on information that may be provided to the Commission by other officers of the CJC; and,*
- *such advice is considered on a whole-of-commission basis.*

11.9.4 Recommendation

Recommendation 42

The Committee recommends that the Office of General Counsel be maintained as a separate unit within the CJC, answerable to the Chairperson.

11.10 Litigation matters involving the CJC

11.10.1 Introduction

The Committee notes criticism that has been levelled at the CJC arising from its involvement in litigation. Such criticism was made by the Queensland Law Society (QLS) in its submission to this review, which stated:

The CJC has maintained its reputation in recent years as a very ready litigant and appellant in the Queensland courts. It is fair to say that over the years the CJC has been involved in its share of controversy, some of which has necessitated resolution in the courts. A matter of concern however is the Commission's apparent willingness and readiness to appeal any decision made at first instance which does not favour the Commission. It is fair comment that the Commission seems intolerant of, and overly sensitive to criticism. The CJC commonly devotes resources to litigation which effectively seeks to do no more than protect the Commission's reputation. The Society particularly has in mind actions such as:

(i) The CJC's recent appeal (yet to be heard) against the Supreme Court declaration that the Commission acted unlawfully in its placement of listening devices in the home of witness Matthew Heery during the course of the Carruthers Inquiry.

(ii) The CJC's recent (unsuccessful) application to the Supreme Court against Ms Dick, the Parliamentary Criminal Justice Commissioner, in relation to Ms Dick's report on the CJC's leaking of confidential information.

(iii) The CJC's (unsuccessful) appeal against the Supreme Court declaration that it does not

*accord procedural fairness to the Queensland Police Credit Union in a report by Mr Carter QC following his inquiry into police and drugs.*⁴⁴⁴

11.10.2 Analysis and comment

The Committee considers that the above criticisms imply that the advice of the Office of General Counsel is flawed in some way, probably through lack of independence. The CJC has responded to these comments. In its comments on the QLS's submission to this review, the CJC stated:

*The (QLS) submission proceeds on the mistaken assumption that the above cases were instituted as a result of advice from the Office of General Counsel. As the Committee would be aware from its review of the minutes of CJC meetings, the decisions to institute the proceedings in question were made by the full Commission acting on the advice of independent senior counsel. In fact, the Commission has never commenced a Supreme Court action or appeal without taking such advice. The suggestion therefore that the CJC "should, as a rule, obtain independent legal advice external to the Commission" in such matters is gratuitous and proceeds on a misapprehension about how the Commission operates.*⁴⁴⁵

The CJC's General Counsel, Ms Hamilton, responded in more detail about the particular cases cited as examples by the QLS in the hearings held as part of this review:

A few litigation matters were referred to in the Law Society's submission to this Committee. I think they are all good examples of actions that were taken by the commission on the advice of independent counsel, and for good reason. Without going into the details of those actions, I would like to refer to them briefly.

The first action raised was the Police Credit Union action in respect of the commission's report by the Honourable W. Carter, QC. I point out firstly that this action was initiated by the Police Credit Union, not the commission. The commission was the respondent initially. In all of the cases mentioned it has been suggested that perhaps the commission is too defensive, that it commences litigation simply to protect its reputation, that it cannot bear any criticism.

The Police Credit Union case is a good example of the fact that the damage to reputation was already done in that matter by the judgment at first instance. I think the commission is realistic enough to know that even reversing a matter on appeal never takes you back to the position where you have not had that adverse publicity. The bad news is the big news. If it is reversed on appeal, it is hardly ever of interest to anybody. So the commission proceeds on these matters not on the basis that it cannot bear any criticism or that it has to at all stages restore its reputation.

In that matter, as in other matters, an appeal was taken on the advice of an independent senior counsel that grounds existed for appeal. More importantly in that matter, there was a principle involved of what comments may be made in a public report, which had not really been clarified, particularly by the judgment at first instance. So the commission had to consider that it regularly publishes reports and that this matter was likely to arise again and again so that in those circumstances an appeal was justified.

The second specific case referred to in the submission to this Committee was the matter of Heery v. the commission. Again, this was an action which the commission did not commence at first instance; it was commenced by another person. This was another case where I would suggest that any damage to reputation was done by the judgment at first instance. Often in these cases an appeal only stirs up the interest in the matter again. So it is certainly not a case that the commission would decide to appeal simply to try to redress damage to reputation.

⁴⁴⁴ Note 423 at 2.

⁴⁴⁵ Note 424 at 1.

Again in that matter there was advice of senior counsel that there were grounds for appeal, and it was another case where the judgment at first instance had left questions about orders which the commission has to take out on a regular basis. So obviously the commission needed guidance about the sorts of matters that needed to be included in those orders and was looking not just to the past but also to the future and to other orders which it would have to make.

Finally, the case of the commission's action in respect of the Parliamentary Criminal Justice Commissioner's Paff report was referred to. The Committee would recall that that decision raised substantial concern amongst various sections of the community and the media. It also raised some fairly fundamental issues about the relationship between the Committee, the CJC and the Parliamentary Commissioner. The decision in that matter was taken again on the advice of independent senior counsel on the basis that there was an important legal issue there which needed to be resolved, not simply as a knee-jerk reaction to criticism of the commission.⁴⁴⁶

The CJC clearly rejects the assertion that it is a 'very ready litigant' and that litigation is commenced because the CJC is 'intolerant of or overly sensitive to criticism.' The CJC has clarified that it has sought external legal advice in relation to each of the matters discussed.

The Committee notes that the actions taken by the CJC in these matters were taken on advice from external counsel. However, the Committee also notes that the CJC has been unsuccessful in its appeals in *Heery v CJC*⁴⁴⁷ and *CJC v Queensland Police Credit Union*.⁴⁴⁸

The Committee notes, however, the words of Thomas JA in *Heery v CJC* in his decision relating to the awarding of costs in the matter. He said in his judgment:

The CJC has shown that there was misapprehension on the part of the trial judge for which Mr Heery was responsible, and this court has in the end re-exercised the necessary discretion, though not in favour of the CJC. It was certainly not unreasonable for the CJC to seek to have the matter ventilated, though in the result it has been unsuccessful.

The Committee notes that the matter of *CJC and Others v Julie Maree Dick* is currently on appeal to the Court of Appeal. The Committee makes no comment on this matter.

11.10.3 Conclusion

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The Committee considers that the examples cited by the Queensland Law Society do not necessarily demonstrate that the CJC is unreasonable in its use of litigation. Further, the CJC's involvement in litigation is not of itself demonstrative of any bias in the provision of legal advice by the Office of General Counsel as external advice has been sought in decisions to appeal all of these matters.

⁴⁴⁶ Note 420 at 9-10.

⁴⁴⁷ [2000] QCA 511.

⁴⁴⁸ [1998] QCA 233.

12. CORPORATE INFRASTRUCTURE AND GOVERNANCE

12.1 Introduction

The Corporate Services Division (CSD) and the Office of the Commission (OC) are responsible for providing most of the CJC's corporate support.

The Corporate Services Division is responsible for administration, finance and human resources. The Office of the Commission provides a secretariat for the Commission, corporate governance activities, publications and media and communications. The Intelligence and Information Division also provides corporate support in information management and security.

12.2 Operation of the Corporate Services Division

12.2.1 Background

12.2.1.1 Criminal Justice Act 1989

Section 64 of the *Criminal Justice Act* provides that the Commission may employ such directors and other staff as are necessary for the effective and efficient discharge of the functions and responsibilities, and exercise of the powers, of the Commission and of each of its organisational units. The Corporate Services Division and other areas providing corporate support ensure the operational divisions of the CJC are equipped to effectively and efficiently discharge their functions.

12.2.1.2 Structure of the Corporate Services Division

The CSD is responsible for the CJC's administration, consultancies, finance and human resources. The Corporate Services Division currently employs 15 of the CJC's 234 staff. This is a significant reduction since the last three year review of the CJC, although this is in part attributable to a restructure in which responsibility for information management was transferred from the CSD to the Intelligence and Information Division. The CSD is headed by the Executive Director of the CJC.

12.2.1.3 Prior PCJC recommendations

In the last three yearly review of the CJC the third PCJC examined the possibility of a contraction of the CSD. The Committee considered the possibility of the services provided by the CSD being provided instead by an existing body, such as the Department of Justice, in order to reduce costs. The Committee concluded that it was not appropriate for outside agencies to perform support tasks for the CJC because it could compromise public confidence in the integrity and independence of the CJC. The Committee concluded it would be counter-productive, inefficient and produce no actual cost benefit to transfer tasks undertaken by the CSD to other public sector bodies.⁴⁴⁹

12.2.2 Administration

The administration section of the CSD is responsible for purchasing, asset management, accommodation and stationery.

⁴⁴⁹ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 45, Legislative Assembly of Queensland, 1998, Brisbane, at 185.

The main challenge for the CSD since the last three yearly review of the CJC was generating options for accommodation for the CJC, by either a refurbishment of the then existing Coronation Drive premises or seeking new premises suitable to the needs of the CJC. The decision was made to relocate the CJC to Terrica Place, 140 Creek Street, Brisbane, for a number of reasons, principally:

- to make the CJC more accessible to its clients;
- to enable CJC staff to interact more easily with government agencies; and
- to reject the ‘bunker mentality’ image that the Coronation Drive location tended to attract.⁴⁵⁰

Substantial incentives from the new landlord made Terrica Place the most attractive option and allowed the move to occur within budget. The CJC submits that the security needs of the CJC are fully addressed in the new premises.⁴⁵¹ It appears that few problems have been encountered in the move to the new premises.

12.2.3 Finance

During the period since the last three yearly review of the CJC, the CJC has used the SAP financial system, maintenance of which has been outsourced to the Queensland Government Corporate Administration Agency (CAA). The CJC reports that the CAA released a tender for the supply of a new financial package. The CAA obtained approval from Queensland Treasury to change to the new Queensland developed ‘Finance One’ package. Usage of the new package began in the CJC in November 2000.⁴⁵²

The Committee is pleased to note from the CJC Annual Reports for both 1998-1999 and 1999-2000 that external auditing by the Queensland Audit Office of the CJC’s accounts resulted in an unqualified favourable audit report.

The Committee discusses issues relating to the CJC budget below at 12.6.

12.2.4 Human resources

As at 1 February 2001 the staffing establishment of the CJC was 248, with 234 staff on hand. Staffing levels of the CJC have fluctuated since the last three year review, increasing to 263 established positions in 1999 before decreasing to the current 248.

Policies have been developed covering diversity management, rehabilitation, use of official resources and recognition of staff achievements.

Performance management of all staff was introduced in 1999-2000 on a twice-yearly basis. The Committee is pleased to note the training and development provided to staff, particularly ethics workshops attended by all staff.

12.2.4.1 Enterprise bargaining

At the conclusion of the previous Committee’s three yearly review of the CJC, a new enterprise agreement was negotiated. The *CJC Enterprise Agreement 1998* provided civilian staff with wage increases totalling 12 per cent over a three-year period and ended on 30 June 2000. The CJC outlines in its submission to the Committee that the *Enterprise Agreement 1998* identified 28 initiatives, the achievement of which involved 70 officers in working parties formed to identify

⁴⁵⁰ CJC, *Annual Report 1999-2000*, 2000, Brisbane, at 53.

⁴⁵¹ CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane, at 49.

⁴⁵² Note 451 at 51.

measures to make cost savings and to improve productivity and service delivery. The submission outlines some of the specific ways the targets were met.⁴⁵³

The CJC reports that in August 2000 the Cabinet Budget Review Committee approved the *CJC Enterprise Agreement 2000* which is based largely on the *Core Queensland Government Departments Agreement 2000* and provides for a total wage increase of 10 per cent over a 40 month period.

12.2.4.2 Equal Employment Opportunity and Workplace Health and Safety

The CJC has established an Equal Employment Opportunity (EEO) Consultative Committee. This Committee has developed and implemented the *EEO Management Plan 1998-2000*.

Further, the EEO Consultative Committee conducts an audit in May each year in the form of an voluntary and anonymous survey of staff experiences in the workplace. That committee seeks staff views about the success of strategies aimed at eliminating harassment and discrimination.

Workplace health and safety is monitored on an ongoing basis by the Workplace Health and Safety Committee.

12.2.5 Tenure of Directors

12.2.5.1 Introduction

Currently Directors of Divisions within the CJC are appointed under section 64 of the *Criminal Justice Act* which simply provides that the Commission may employ such directors and staff as are necessary for the effective and efficient discharge of the functions and responsibilities and the exercise of powers of the Commission and each of its organisational units. The Commission may, with the Minister's approval, decide on salaries, wages, allowances and conditions of employment.

The Committee has considered whether the tenure of Directors at the CJC should be subject to a time limit.

12.2.5.2 Background

The issue of tenure of directors was addressed by the CJC in its submissions to the Connolly / Ryan Inquiry and to the previous Committee as part of its three yearly review of the CJC. In its submission to the third PCJC, the CJC made the following comments:

*To impose such a limit raises concerns about continuity and organisational effectiveness. These concerns would be increased if a number of directors were replaced at or around the same time. It may also be difficult to attract appropriately skilled staff if a maximum term applied. No such limit applies to the tenure of Senior Executives at comparable levels in the Queensland public service. However, this matter is open to review by the Commission from time to time.*⁴⁵⁴

12.2.5.3 Prior PCJC recommendations

The third PCJC concluded that the tenure of Divisional Directors should be limited. The Committee recommended that the tenure of Directors of the CJC should be limited to a period of five years, in line with the tenure of part-time CJC commissioners. The rationale was that such a limitation would ensure that Directors do not become desensitised to emerging issues and trends within the ambit of

⁴⁵³ Note 451 at 50.

⁴⁵⁴ CJC, *CJC Submission to the Three Yearly PCJC Review of the Criminal Justice Commission*, 1998, Brisbane, at 10.

their authority and would assist to alleviate the risk that objectivity, impartiality and an openness to reform may be eroded.

The Committee also recommended that the appointment of Directors be staggered to prevent dislocation in the operations of the CJC and to limit the potential drain of corporate memory which may impede the effective discharge of its functions.⁴⁵⁵

12.2.5.4 Submissions on the tenure of directors

In its submission to the Connolly / Ryan Inquiry the CJC objected to a limitation being imposed on its directors for the following reasons:

- To impose a limit on the length of time Directors can hold this position would raise concerns about the potential to interrupt the continuity and organisational effectiveness of the CJC;
- This would be exacerbated if a number of Directors were replaced at or around the same time;
- The time limit may make it difficult to attract appropriately skilled staff;
- No such time limit applies to the tenure of senior executives of the public service on comparable levels; and
- Currently, extensions of contract are only made based on organisational requirements and the merit of the employee and this acts as a safeguard against the problems that can arise from a lengthy period of service.⁴⁵⁶

In its response to the third PCJC's three yearly review report, the CJC argued that CJC processes were such that Directors were accountable to the Commission formally under the *Criminal Justice Act* and informally through CJC processes. The CJC stated:

*Suggestions that Directors are or may become inflexible, lacking in objectivity and impartiality, or unable to manage sensitive issues would, if accurate, indicate a failure of management by the Commission and the Chairperson rather than some structural issue requiring legislative change.*⁴⁵⁷

The CJC pointed out that once older contracts were renewed all Directors would be appointed on fixed term contracts of up to five years with no automatic right to renew. The CJC also contended that no Australian organisation comparable to the CJC imposes similar restrictions on its senior executives.⁴⁵⁸

The issue of the tenure of CJC Directors was raised in submissions to this review by the Queensland Law Society and the Queensland Police Service.

In its submission to this review the Queensland Law Society (QLS) submitted:

Serious concerns are held concerning the length of service of senior staff within the Commission. It is vital for the independence and proper functioning of the Commission that officials do not develop a personal interest in protecting the Commission – their interests should not extend beyond the desire to ensure the impartial discharge of the Commission's functions and responsibilities. In his report Fitzgerald QC (as he then was) warned that:

⁴⁵⁵ Note 449 at 37.

⁴⁵⁶ CJC, *Criminal Justice Commission Submission to the Commission of Inquiry into the Effectiveness of the Criminal Justice Commission*, 1997, Brisbane, at 76.

⁴⁵⁷ CJC, *CJC response to PCJC Three-Year Review of the Activities of the CJC*, August 1998, Brisbane, at 5.

⁴⁵⁸ Note 457 at 5.

(T)here is a risk that any autonomous investigative body, particularly one infused by its own inevitable sense of importance and crusading zeal, may become increasingly insensitive to the delicate balance between conflicting public and private interests... Fitzgerald Report (p302)

The Society is aware that certain senior officials within the Commission are now longstanding employees of the Commission. Whilst the Commission needs a degree of continuity and stability, the Society considers that it is unhealthy for persons to effectively make employment in the commission their career. The Society adopts the view of the Parliamentary Criminal Justice Committee expressed in its 1988 report that the tenure of divisional directors of the Commission be limited to a period of 5 years, in line with the part-time Commissioners. The Society agrees with the Committee that such limitation would assist in ensuring that objectivity, impartiality and openness to reform are not eroded.⁴⁵⁹

In its submission to this review the Queensland Police Service (QPS) argued for examination of the tenure of senior CJC officers as follows:

Many officers at the Commission have been there either since inception or for prolonged periods. This might well be appropriate, particularly in areas where skills and reputation are scarce (eg. Research). However, the work of the CJC itself, in particular the Carter Inquiry, highlights the need for tenure of officers in an agency to be reviewed. It is acknowledged that the Carter Inquiry related to Police and Drugs. Nonetheless, in terms of risk of exposure to corruption or institutionalisation, it could be argued that the CJC is one area where the issue of tenure of senior officers needs to be firmly addressed.⁴⁶⁰

The issue of tenure was raised at the Committee's hearings held as part of this review. The Chairperson of the CJC, Mr Brendan Butler SC, told the Committee:

There seems to be an expectation about the CJC that there should be a change of staff running down to relatively lower levels. The first point to be made is that I am the CEO of the organisation. I have limited tenure pursuant to the statute. The major decisions in the organisation are made by the commission. All of the commissioners have limited tenure under the statute. In terms of directors of the various divisions, they are now all appointed on contracts which give them no guarantee of tenure beyond the life of a contract.

...

The CJC would say that while it is important that there be that scope for directors to be terminated at the end of their contract, it is also important that, where a person is operating effectively and producing the goods - in Public Service terms, in terms of director's positions, certainly no public servant at those levels would have other than permanent tenure - there should be that ability to retain people who are performing well. As I say, the option exists there when the period of reappointment arises.⁴⁶¹

One option considered by the Committee was to limit the tenure of directors and also to make any reappointment subject to approval by the Committee. The CJC has commented on this option, stating that such an amendment would involve the PCJC in direct decision making about employment of senior CJC personnel. The CJC submitted that such power was "unusual" and "unprecedented" to give to a Parliamentary Committee and noted that the Committee already had power to control the appointment and reappointment of the CEO and board of the Commission. The CJC was also concerned that incumbent Directors would not be given the opportunity to put their

⁴⁵⁹ Queensland Law Society, submission, *Three Yearly Review of the Criminal Justice Commission*, dated 9 October 2000, Brisbane, at 1.

⁴⁶⁰ Queensland Police Service, *Submission to the PCJC Review of the CJC*, dated July 2000, Brisbane at 18.

⁴⁶¹ PCJC, Transcript of Public Hearings 14/15 December 2000, Brisbane, at 7.

case for reappointment to the Committee and, therefore, there would be possible breaches of procedural fairness in the process.

The CJC further submitted that it is inappropriate that the PCJC be given further power to direct the Commission not to employ a specified person as a director, and that such a power has the potential to inhibit independent decision making by affected officers in regard to politically sensitive issues.

12.2.5.5 Analysis and comment

The Committee does not accept the CJC's position in respect of this issue.

The Committee recognises the argument that a high turnover of Directors could lead to a loss of corporate knowledge which would have the potential to affect the continuity and organisational effectiveness of the CJC. It can be argued that directors who serve for longer periods are likely to increase the effectiveness of a Division's operations.

The previous Committee expressed concern, that issues of a broader and more fundamental nature confront the CJC and must be addressed if the relevance and effectiveness of the organisation is to continue.⁴⁶² The current PCJC holds the same view. A long serving director may become over familiar with processes and operations of the Division and may be less sensitive to trends or issues that face the Division. Long serving officers may be reluctant to identify the need for change or be less willing to implement change when it is required. Relationships with staff may be affected by a person's long tenure, as actual or perceived impartiality could become a problem.

The previous Committee drew an analogy between the functions of a Director and a part-time Commissioner. The Commission depends on Directors for advice in their day-to-day decision making and the implementation of policies decided by the Commission. The third PCJC stated:

*It is not possible, in the Committee's view, to draw a distinction between the Commissioners and Directors such that Directors need not be subject to a finite tenure while Commissioners are so limited. Such officers play an equally significant role in the decision making processes of the Commission to require the application of equivalent restrictions.*⁴⁶³

On this basis the previous Committee was further satisfied that five years would be an appropriate tenure, in line with the term of a part time Commissioner. Such a limit would allow a long enough period to ensure corporate knowledge is retained at an acceptable level.

Further, new Directors would mean new ideas, skills and experiences are brought to the Commission, which could only serve to benefit the Commission.

The Committee agrees with the CJC's submission that if a number of Directors left the organisation at or around the same time there could be a detrimental effect on the operations of the CJC. However, the Committee believes that this problem would be alleviated by staggering the appointment of Directors and suggests a legislative provision to entrench this practice similar to that in place in section 14(1A) of the *Criminal Justice Act* for the appointment of the part-time Commissioners. That provision reads:

The term of appointment of a commissioner must be specified with a view to ensuring that, at any time, the offices of all commissioners will not be vacant.

⁴⁶² Note 449 at 35.

⁴⁶³ Note 449 at 35.

A similar provision, perhaps limiting the number of director positions that can be altered at one time, would overcome the CJC's concerns.

The Committee does not agree with the CJC that limited tenure appointments will inhibit applications for the positions from suitably skilled and qualified persons. As pointed out by the previous Committee, such limitations on employment tenure are not uncommon in the current industrial climate.⁴⁶⁴

The previous also Committee stated:

The argument that new arrangements ensure contracts are renewed for a fixed term based solely on the merit of the employee and organisational requirements, does not persuade the Committee that the need to impose an overriding tenure restriction is alleviated.

*As has been discussed, the issues of concern to the Committee are, in its view, fundamental to the ongoing effectiveness and relevance of the Commission. They are of a nature significantly broader than whether or not a particular officer has performed satisfactorily, is sufficiently meritorious to warrant a renewal of contract, or even whether the organisation continues to require the services of such an officer.*⁴⁶⁵

The current Committee agrees with these comments of the third PCJC.

The CJC has made clear its reasons for opposing the PCJC being directly involved in the reappointment of Directors. The Committee does not accept the CJC's position.

The Committee is of the view that any extension of a contract of employment for a 'Director' of the CJC beyond an initial five year appointment should be approved by the Committee.

The Committee is of the view that it may not be in the public interest for senior officers in law enforcement to stay in one position for too long. A number of positions at the CJC have significant powers attached to them.

The Committee concedes it is important to have some flexibility in making appointments but believes that the public interest in having external scrutiny of extensions to the tenure of law enforcement officers is compelling. Other alternatives such as maximum terms for officers are inherently restrictive and therefore unsatisfactory.

The Committee accepts that it should be required to consider issues of natural justice in making a decision and that it would be appropriate to allow a person who is seeking an extension to their contract a right to be heard.

The Committee considers that an amendment that provides a requirement for any direction to have bipartisan support overcomes the CJC's concern that the power has the 'potential to inhibit independent decision making by affected officers in regard to politically sensitive issues'.

12.2.5.6 Conclusions

Conclusion 85

The Committee considers that:

⁴⁶⁴ Note 449 at 36.

⁴⁶⁵ Note 449 at 37.

- *Contracts of employment for directors of the CJC should, in principle, be limited to a term of five years subject to possible extension with the approval of the Committee;*
- *in considering any extension of a contract of employment for a Director, the Commission should be required to consult with the Committee;*
- *unless any proposed extension of a contract of employment is vetoed by a bi-partisan majority of the Committee, the extension of contract should be affirmed; and*
- *in considering any extension of a contract, the Committee should be required to provide the officer with an opportunity to be heard.*

12.2.5.7 Recommendation

Recommendation 43

The Committee recommends that the Act should be amended to provide that:

- (a) contracts of employment for ‘Directors’ of the CJC should, in principle, be limited to a term of 5 years, subject to possible extension with the approval of the Committee;**
 - (b) in considering any extension of a contract of employment for a Director, the CJC should be required to consult with the Committee;**
 - (c) unless any proposed extension of a contract of employment is vetoed by a bi-partisan majority of the Committee, the extension of contract should be affirmed; and**
 - (d) in considering an extension of a contract, the Committee be required to provide the officer with an opportunity to be heard.**
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12.3 Intelligence and Information Division

12.3.1 Information management

The Commission states that in 1996-97 and 1997-98, its information technology facilities suffered severely from financial and human resource restrictions. In 1998-99 and 1999-2000 this neglect was remedied with the successful completion of infrastructure and application projects.⁴⁶⁶ The CJC cites several reforms including the introduction of COMPASS, the new complaints management database, and IRAS, the new intelligence recording and analysis system.

The Committee is pleased to note that the Commission’s information technology problems have been remedied.

12.3.2 Security

In its submission to the Committee the CJC states:

*Organisations that handle sensitive information, such as the CJC, have a clear responsibility to ensure that such information is not made available to unauthorised persons.*⁴⁶⁷

⁴⁶⁶ Note 451 at 49-50.

⁴⁶⁷ Note 451 at 53.

The CJC's submission outlines the stringent security processes utilised by the CJC in its internal operations:

- Commission premises are secure.
- Staff of the CJC undergo a stringent vetting process and are made aware of the confidentiality provisions of the *Criminal Justice Act* and the CJC's security classification system.
- Every new employee is given a copy of the code of conduct.
- Policies and procedures are regularly reviewed and changes brought to the attention of staff.
- A Protective Security Assessment was carried out in April 1999 to ensure the CJC's personnel and assets were protected. As a result, classified waste disposal arrangements and security awareness training for staff were improved.⁴⁶⁸

The CJC emphasises its 'clear desk' policy that requires all staff, on conclusion of their work, or when absent from their workstation for lengthy periods, to secure all classified material within lockable security containers. Compliance is monitored and infringements are brought to the attention of the relevant staff member and his or her Director and Security Manager by way of a Security Infringement Notice (SIN). Increasing awareness has significantly reduced infringements.⁴⁶⁹

The CJC further advises that the move to Terrica Place provided an opportunity for the CJC to overhaul its outdated security system.⁴⁷⁰

12.4 Office of the Commission

The Office of the Commission (OC) provides corporate support for the CJC in media and communications, publications and corporate governance. The OC currently employs 7 staff and is a separate unit of the CJC.

12.4.1 Media unit

12.4.1.1 Introduction

In mid 1998, the position of Media and Communications Manager was created as part of the new Office of the Commission, to enhance the CJC's public profile and improve internal communications.⁴⁷¹ The Media Manager can, in appropriate circumstances and as authorised by the CJC Chairperson, act as spokesperson for the CJC.

The Committee notes the CJC's development since then of a proactive media stance. The CJC's submission states:

*Interviews are now regularly given, vision opportunities are provided whenever possible and purpose-recorded in-house interviews are often provided to the commercial radio networks. Where appropriate, we target research material to specific media outlets for demographic purposes.*⁴⁷²

The CJC also states that it sees enormous scope for expanding the CJC's profile in regional Queensland with regular regional tours.

⁴⁶⁸ Note 451 at 53.

⁴⁶⁹ Note 451 at 54.

⁴⁷⁰ Note 450 at 60.

⁴⁷¹ CJC, *Annual Report 1998-1999*, 1999, Brisbane, at 61.

⁴⁷² Note 451 at 51.

The Committee takes this opportunity to examine some of the issues that arise in relation to the media unit and the media profile of the CJC.

12.4.1.2 Prior PCJC recommendations

The second PCJC examined the procedures of the media unit and drew the following conclusions:

- It is essential that the CJC is fair and impartial in its dealings with the media and that the Media Unit should perform this function.
- Any journalist accepting a position at the CJC, including the position of media liaison officer, must accept and comply with the provisions of the *Criminal Justice Act* and the policies of the CJC.
- All officers of the CJC are bound by the confidentiality provisions of the Act. The journalists Code of Ethics in relation to sources of information cannot be claimed. The provisions of the Act would override the Code of Ethics.

The second PCJC was firm in its view that, ‘...once a person accepts the position of media liaison officer with the Commission they put on hold their career as a journalist even though they have been employed on the basis of their professional capacity.’⁴⁷³

12.4.1.3 Need for a designated media unit

The Committee has examined the issue of whether the CJC has a need for a designated media unit or whether media liaison could be better achieved by journalists contacting Directors of the Divisions or individual officers of the CJC directly.

This issue was addressed by the CJC in its submission to the Connolly / Ryan Inquiry. At that time the CJC’s approach to media liaison was largely reactive. The Media Liaison Officer was a first point of contact for journalists seeking information and was the only person, apart from the Chairperson and Divisional Directors authorised to deal with the media on the Commission’s behalf. Any contact with the media by the Chairperson or a Director had to be reported to the Media Liaison Officer.⁴⁷⁴ The Media Liaison Officer could give journalists an approved response if the officer was fully briefed on the issue, or the officer could consult with the relevant CJC officers, Director or Chairperson so that an approved response could be formulated.

The CJC submitted there was a need for this designated officer and outlined the problems associated with journalists directly contacting Directors for a response:

- *The journalist would need to know whom to contact for an answer to a specific query. In the case of information about a complaint, this procedure could result in a number of complaints officers being called by journalists.*
- *The demand on a Director’s time could be excessive at particularly busy times. Moreover, because of other commitments, Directors may not be available.*
- *There would not be sufficient coordination or recording of the CJC’s responses.*
- *A Director may not be in a position to give a Commission-wide response.*
- *The Directors and Chairperson would have to have their telephone numbers widely*

⁴⁷³ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, Legislative Assembly of Queensland, 1995, Brisbane, at 201.

⁴⁷⁴ Note 456 at 72.

*known to journalists and to take calls at any time, including weekends.*⁴⁷⁵

The CJC also pointed out that other law enforcement agencies and corruption prevention bodies recognise the need for designated officers to assist in informing the public about current activities or the organisation's viewpoint.⁴⁷⁶

The Committee considers that all of these arguments remain relevant.

Currently, the Media Manager, the Chairperson and Directors are the only officers authorised to provide information to the media.

12.4.1.4 The CJC's media profile and confidentiality issues

While the Committee sees the CJC's proactive approach as a positive one, it is concerned about the inherent difficulty in striking the balance between information dissemination and confidentiality, a concern also recognised by the CJC.

In its submission to the Committee the Queensland Law Society (QLS) expressed a similar concern:

*Whilst it is conceded that the Commission requires a degree of public profile to ensure that potential complainants are aware of the Commission as a possible avenue of redress, the concern expressed is that this may sometimes be done at the cost of fairness to the person subject to investigation. Examples include the Commission's more recent practice of holding press conferences or issuing media releases following the successful closure of operations. Similarly, the CJC's courting of the media during hearings conducted by the Commission is open to criticism. Reference is made to reports that the Commission, during the recent inquiry into the alleged misuse of the police computer database, acceded to requests from the media that police witnesses not be allowed access via internal elevators of the Commission (as had always been the case for police visiting the Commission) because media crews could not film those in question entering and leaving the Commission.*⁴⁷⁷

The Committee notes Chapter 2 of the CJC's Policy and Procedures Manual on Media and Communications, which provides that it is Commission policy not to comment on current investigations unless details of the investigation are a matter of public record or it is clear that the media possess knowledge of an investigation and are about to publish material which could jeopardise the success of the investigation. The CJC claims that this policy is designed to protect the rights of those under investigation.⁴⁷⁸

Chapter 3 of the Media Policy and Procedures Manual sets down guidelines for the release of information as follows:

The CJC must balance accountability considerations against the clear legislative emphasis on confidentiality. Where privacy considerations and the protection of operational information take on significance, they must ultimately outweigh the otherwise legitimate desire to generally inform the public.

In considering a release concerning a current investigation, it must be borne in mind that the reputations of individuals may be seriously damaged by information as to the existence of an investigation or details of the nature of an investigation. This consideration will ordinarily take

⁴⁷⁵ Note 456 at 73.

⁴⁷⁶ Note 456 at 73.

⁴⁷⁷ Note 459 at 3.

⁴⁷⁸ CJC, *Policy and Procedures Manual Volume 16 - Publications and Media*, April 1999 at 2-1.

*precedence over otherwise justifiable reasons for disclosure.*⁴⁷⁹

These policies are an attempt to limit the release of information from the CJC but do not deal with situations like that outlined by the QLS above. The Committee is not in a position to comment on the actions of the CJC in the circumstances described by the QLS. However, the situation raises the question to what extent the CJC owes persons under investigation protection from media attention.

12.4.1.5 Conflict of interest

The Committee notes that a potential conflict of interest could arise between the Media Manager's role as an officer of the CJC and their professional status as a journalist. This issue could be seen as even more prominent given that the CJC's new Media Manager is currently appointed on a part-time basis. It is likely that whoever holds the position from time to time will have had previous dealings on a professional level with the very journalists who seek information from the CJC. Old professional rivalries might give rise to real or perceived preferential treatment. If the person continues to work as a journalist while holding the position of part-time Media Manager there may also be real or perceived use of that person's knowledge attained in their role as an officer of the CJC to their own advantage and to the disadvantage of others.

The Committee notes that the Policy and Procedures Manual for the CJC's Media Office requires information to be provided in a *'fair and equitable manner to all interested media outlets.'*⁴⁸⁰ Appointment of a person to the position of Media Manager who can demonstrate professionalism and commitment to this policy is probably the only way to ensure actual problems do not arise. Problems with perception could be dealt with by appointing a person with a background in marketing or public relations rather than journalism. The Committee suggests that the CJC give some consideration to this in appointing future Media Managers.

12.4.1.6 Analysis and comment

The Committee considers that it is preferable to have a whole-of-Commission approach to the dissemination of information and, therefore, it is vital that the CJC has a designated officer to provide approved responses to the media. While it is appropriate that the Chairperson and Directors are authorised to speak to the media, use of a designated media officer creates efficiency for both the media and CJC officers and ensures consistency in the type of information given out and its content.

The Committee considers that the CJC's media profile is important in creating public awareness of the CJC and its functions and activities. Much of the CJC's work is in the public eye and, therefore, a proactive approach to providing the media with appropriate information is appropriate. The Committee is concerned, however, about the provision of information to the public which may cause detriment to individuals who are or have been under investigation. The Committee considers however, that the balance between providing information to the public through the media and observing the principles of confidentiality and protection of persons under investigation from inappropriate media attention stemming from information provided by the CJC, can only be determined by the CJC on a case-by-case basis, in accordance with its established policy and procedures.

The Committee is not in a position to comment on the actions of the CJC in the situation described above by the Queensland Law Society. However, the Committee considers that in relation to media attention to a particular investigation the CJC's guiding principles, as described in Chapter 3 of its

⁴⁷⁹ Note 478 at 3-1.

⁴⁸⁰ Note 478 at 2-1.

media policy, should ensure that individuals are appropriately protected. Thus the emphasis is on confidentiality, privacy and regard to the reputation of individuals under investigation.

12.4.1.7 Conclusions

Conclusion 86

The Committee considers that the CJC should retain a dedicated media officer to coordinate and record the CJC's dealings with the media and to ensure a whole-of-Commission approach in the type and content of information released.

Conclusion 87

The Committee recognises the CJC's need to balance provision of information with confidentiality issues but believes that adherence to the principles espoused in the CJC's Policy and Procedures Manual ensures appropriate decisions are made.

Conclusion 88

The Committee considers that if the principle of "fair and equitable" dissemination of information is adhered to by the Media Manager, and the Media Manager acts appropriately in dealing with information that he or she has come across because of his or her position, no conflict of interest should arise. The Committee also considers that the CJC should give consideration to appointing a person from outside the profession of journalism and suggests that suitably qualified persons could be found in the marketing or public relations fields.

12.4.1.8 Recommendation

Recommendation 44

The Committee recommends that the CJC give consideration in the future appointment of Media Managers to appointing a person from outside the profession of journalism, such as a person qualified in the marketing or public relations fields.

12.5 Corporate governance - strategic planning, performance and reviews

The CJC views corporate governance as, 'how an organisation manages and governs itself in order to achieve its goals and objectives.'⁴⁸¹ In this section the Committee looks at the methods adopted by the CJC in setting objectives and how it measures its performance. The Committee also examines the issue of organisational reviews of the CJC.

12.5.1 Strategic planning and performance

In accordance with the *Financial Management Standard 1977 (Qld)* the CJC develops annual strategic plans. In 1999, the CJC employed a consulting firm⁴⁸² to assist in the revision of the CJC's Strategic Plan 1999-2002. To achieve the new organisational goals of the revised plan the CJC created an internal working group, the Strategic Implementation Group (SIG), to identify and report on changes to the organisational structure of the CJC necessary to support the new Strategic Plan

⁴⁸¹ Note 450 at 10.

⁴⁸² DGR Consulting.

2000-2004.⁴⁸³ The SIG report made 92 recommendations. The CJC expected implementation of the recommendations to be completed by the end of 2000.⁴⁸⁴

The Strategic Plan sets out the corporate goals of the CJC, methods of achieving these goals on a CJC-wide basis and how they will be achieved and measured in each of the operational Divisions. The CJC also informed the Committee in its submission to this review that in 1999-2000 the CJC adopted a simpler format with its internal business (operational) plans and that, as part of the strategic planning process, an Asset Strategic Plan has been developed for the years 2000 to 2004 (but points out that assets do not represent a major focus for the organisation).⁴⁸⁵ The CJC also reports on its risk management and fraud prevention activities, program evaluations and internal audit procedures.⁴⁸⁶

12.5.2 Performance measures

The CJC's Strategic Plan 2000-2004 sets out its measures of success for achieving its corporate goals for each operational division in terms of quantity, quality, time and cost. Its stated performance measures are specific to the aim and operational division. In all but one instance the basis for comparison is "trends over time".

It is difficult to implement meaningful performance measures in an organisation such as the CJC. This issue was addressed in detail by the New South Wales Joint Parliamentary Committee on the NSW Independent Commission Against Corruption (JPC on the ICAC) in its report *The ICAC: Accounting for Extraordinary Powers*, tabled in May 2000. In examining performance indicators and measuring in the ICAC, the Joint Parliamentary Committee stated:

*Accountability for performance forms an essential part of the accountability regime for public sector agencies. It is generally recognised that there are inherent difficulties in performance measurement for independent watchdogs within the public sector. Those performance indicators which are easily quantifiable are generally crude indicators of activity rather than effectiveness. In relation to the ICAC for instance, statistics on numbers of arrests or use of powers do little to reveal whether the ICAC's actions have exposed and reduced corruption. The difficulties in assessing existing levels of corruption, which by its very nature is a secretive activity, makes it extremely difficult to assess the real impact of the activities of the ICAC.*⁴⁸⁷

The JPC on the ICAC pointed out the need for performance indicators to be both quantitative and qualitative to give a meaningful assessment of whether activities have furthered the organisation's goals.

The JPC on the ICAC looked to the NSW Audit Office report *Key Performance Indicators* (KPIs), for methods of creating meaningful performance indicators, which included the following:

- desired or anticipated results being specified in advance (at program and agency level, and where possible at a whole-of-government level);
- resources and authority commensurate with responsibility;
- performance information being generated or otherwise obtained (for outcomes as well as for inputs and operations);

⁴⁸³ The CJC's *Strategic Plan 2000-2004* is attached as Appendix 3 to this report.

⁴⁸⁴ Note 450 at 11.

⁴⁸⁵ Note 451 at 50.

⁴⁸⁶ Note 450 at 11.

⁴⁸⁷ Parliamentary Committee on the Independent Commission Against Corruption, *The ICAC: Accounting for Extraordinary Powers*, Report No. 2/52nd Parliament, Parliament of New South Wales, Sydney, at 70.

- performance information being relevant, and related to the goals specified;
- performance information being used to assess the adequacy of results achieved;
- relevant KPIs being externally (publicly) published;
- a regime of incentives and penalties operating to stimulate desired performance (even to the extent of performance based funding); and
- relevant KPIs being independently evaluated.⁴⁸⁸

The NSW Joint Committee looked at the difficulties of comparative benchmarking as a means of measuring performance but emphasised the importance of doing so. Dr David Brereton, the Director of the CJC's Research and Prevention Division, in giving evidence before the NSW Committee, noted that statistics can be meaningless without a comparison. He also noted there is a difficulty in obtaining like criteria and counting methods between organisations. He stated:

*Another set of problems, which are more technical in nature, relate to the difficulties of comparing like with like. A performance measure at any given time does not tell you anything. To give you an example, to know that an organisation is achieving 20% of its investigations resulting in someone being charged, what does that statistic mean?...You can address that only by either comparing that rate with the performance of a similar organisation or by comparing that with how the organisation was performing a couple of years ago, to see whether it was getting better or worse.*⁴⁸⁹

The difficulties identified by the JPC on the ICAC apply equally to the CJC in its performance measures. The points listed above should be considered by the CJC in its development of performance indicators.

The Committee notes favourably the performance measures and indicators in the CJC's 2000-2004 Strategic Plan. The Committee notes that the CJC has not simply relied on one method of measuring success but rather has made collected statistics more meaningful by measuring quantity, quality, time and costs of activities. The Committee is concerned, however, at the "basis for comparison". The term "trends over time" is very much a given and will only be useful as long as methods of calculation remain the same. The Committee concedes, however, that benchmarking in any other way is virtually impossible, given the unique functions of the CJC.

12.5.3 Conclusion

Conclusion 89

The Committee would like to see methods of counting maintained for a period so that meaningful benchmarks can be identified for use in future years.

12.5.4 Strategic reviews

12.5.4.1 Introduction

Strategic reviews, or external performance audits, are performed on many large organisations in the public and private sector. A strategic review of the CJC would operate as a tool to measure its performance from an external perspective.

⁴⁸⁸ Note 487 at 75-76.

⁴⁸⁹ Note 487 at 79-80.

An organisational review of the CJC was undertaken at the request of the CJC by the Consultancy Bureau in 1998. The trigger for the review was amendments to the *Criminal Justice Act* in 1997 which removed the organised and major crime function from the CJC and transferred it to the Queensland Crime Commission.

The Committee here examines the appropriateness of the CJC commissioning reviews and the role of the PCJC in strategic reviews of the CJC.

12.5.4.2 Prior PCJC recommendations

The idea of strategic reviews of the CJC was canvassed by the third PCJC in 1997 in its Report No. 38 on the accountability of the CJC to the PCJC. The third PCJC concluded that regular conduct of external performance and management audits or “strategic reviews” of the CJC were an essential part of the CJC’s accountability and that the PCJC should play an instrumental role in these reviews. The third PCJC envisaged such a review would include reviews of:

- strategic plans, goals, operational conduct and policies of the CJC;
- operational efficiency including records maintenance, storage and retrieval;
- standards of service provided;
- the CJC Policy and Procedures Manual on Audit and Evaluation (Volume 15);
- internal audits conducted by the CJC;
- program evaluation;
- management structure and efficiency; and
- areas of waste/duplication within the organisation including areas identified for potential cost reduction.⁴⁹⁰

The third PCJC made a strong recommendation that a requirement for regular strategic reviews of the CJC be inserted into the *Criminal Justice Act* requiring that:

- such reviews be conducted at least every three years;
- the reviewer should be an appropriately qualified person (who has cleared the requisite security standard) appointed by the Governor in Council;
- the terms of reference for the review should be determined by the Governor in Council;
- before a person is appointed to conduct a review, the Minister must consult with a quorum of the CJC Commissioners about:
 - the appointment of the reviewer; and
 - the terms of reference for the review;
- before a person is appointed to conduct a review, the Minister must seek the approval of a majority of members of the PCJC, unanimously or by a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Assembly, about:
 - the appointment of the reviewer; and

⁴⁹⁰ PCJC, *Report on the Accountability of the CJC to the PCJC*, Report No. 38, Legislative Assembly of Queensland, 1997, Brisbane, at 71.

- the terms of reference for the review;
- the remuneration and other terms of appointment of a person appointed to conduct a review are to be determined by the Governor in Council. However, all costs of the review, including such remuneration, are to be borne by the CJC;
- for the purposes of conducting the review:
 - the reviewer is to have all powers that an authorised auditor has for the purposes of auditing an entity; and
 - the CJC is to grant the reviewer full and free access to the CJC's premises, staff, processes and procedures;

However, nothing in this provision is to allow the reviewer access to any operational material held by the CJC;

- the PCJC should have the power to give directions to the reviewer in respect of any matter which the Committee considers relevant to the review and to call for the reviewer to give interim reports on the review as and when the PCJC determines fit;
- on completion of the review the reviewer must provide a written report to the Minister, the PCJC and CJC Commissioners;
- if the reviewer proposes to include in the report a matter which in his/her opinion is a matter of significance, the reviewer must:
 - (a) give the Minister, the PCJC and the Chairperson of the CJC written advice of the matter; and
 - (b) include in the advice a statement to the effect that comments on the matter may be made in writing to the person within –
 - (i) 21 days after the advice is received; or
 - (ii) such longer period as is specified in the advice.

Further, if such a matter of significance is included in the review report, any comments so given to the reviewer must also be included in the report;

- the Minister must lay the reviewer's report before the Legislative Assembly within three sitting days after the Minister receives the report; and
- the PCJC should review the reviewer's report and in its discretion determine to table its own report in Parliament on the review, including in its report any recommendations and comments which it sees fit and stipulating who should implement those recommendations.⁴⁹¹

The Committee saw it as critical that the review be "external" to the CJC and also that the process of appointment of the reviewer and the terms of reference be determined by a body external to the CJC.⁴⁹²

This recommendation has not been implemented. In his Ministerial Response to this recommendation, the then Attorney-General, Hon. Denver Beanland MLA, explained his reasons for not implementing the recommendation as follows:

⁴⁹¹ Note 490 at 73-74.

⁴⁹² Note 490 at 72.

*Having regard to the existing process for monitoring and reviewing the CJC and the proposal to create an office of the Parliamentary Commissioner, I do not consider that it is appropriate at this time to introduce the further layer of strategic review as a statutory requirement.*⁴⁹³

The CJC provided a response to the third PCJC's recommendations in this area, expressing concerns about costs, particularly in relation to the need to bring reviewers up to the necessary level of familiarity with processes and issues for the review to be conducted expeditiously. The CJC requested that any reviews should alternate with the PCJC's reviews at three yearly intervals, so that each type of review is conducted only once every six years.⁴⁹⁴

12.5.4.3 Analysis and comment

Although the requirement for strategic reviews has not been introduced into the *Criminal Justice Act* the CJC has engaged consultants to undertake strategic reviews on its behalf and report back to the CJC.

The Committee believes there is an inherent problem in the CJC itself engaging a person or entity to report to the Commission itself on the outcome of such a review. While the Committee respects the professionalism of any entity which may be engaged, the nature of such an appointment is fundamentally commercial - in reporting directly to the CJC there is a natural potential for consultants to be influenced by the desire to ensure the return business of the organisation. The independence of the reviewer could not be assured.

If appointment were to be made by an external body, with the terms of reference set by the external body and report to be made directly to the external body, this would significantly reduce the possibility of the reviewing entity tailoring its report to suit the desires or interests of the CJC. It would of course be necessary for the external body to consult with the CJC in making these decisions.

In relation to the comments of the then Attorney-General noted above, the Committee considers that a strategic review of the CJC is different from the three yearly review undertaken by the PCJC for several reasons. Firstly, an external performance review differs from the PCJC's three yearly reviews by virtue of it being undertaken externally to the CJC and the Committee. Also, it is likely that the focus of a strategic review would be broader than the Committee's three year review in that it would address more day to day management and efficiency issues while the Committee focuses on the CJC's areas of responsibility, adherence to the *Criminal Justice Act* and policy and procedures. The Committee's review is based largely on the Committee's experience in dealing with the CJC in the preceding three years and issues that come to its attention through complaints, through the application of the *Criminal Justice Act*, the necessity for legislative amendment and the activities of the Parliamentary Criminal Justice Commissioner. The PCJC's area of expertise is accountability of the CJC and the *Criminal Justice Act*. The Committee envisages that a strategic review would have a more corporate governance and organisational approach.

It is arguable that the powers of the Parliamentary Commissioner could be extended to conduct such a review of the CJC. However, to obtain the full value of an independent review, the Committee considers that it is necessary for the review to be conducted by an entity whose independence could not be brought into question. Further, the Parliamentary Commissioner would not necessarily have the requisite skills to carry out an organisational / management style review.

⁴⁹³ Beanland, D., Hon. Attorney-General and Minister for Justice, *Ministerial Response to the Parliamentary Criminal Justice Committee Reports Numbered 34, 38 and 39*, tabled in the Legislative Assembly on 8 October 1997.

⁴⁹⁴ Note 804 at 38-39.

The Committee has considered a less formal approach than that recommended by the previous PCJC by examining whether the PCJC itself is in a position to appoint a person to conduct the review, set the terms of reference and to have the reviewer report to the Committee, rather than the Governor in Council. While the Committee considers that this would alleviate the problems which could arise in the CJC appointing a reviewer itself, the Committee considers that the most value would be gained by ensuring the reviewer is as far removed from the CJC as possible. An appointment by Governor in Council, on the recommendation of the Minister, in consultation with the CJC and the Committee, is highly appropriate.

Precedents exist for the previous Committee's recommendation. Section 32 of the *Parliamentary Commissioner Act 1974 (Qld)* prescribes a process for the strategic review of the Office of the Parliamentary Commissioner for Administrative Investigations (Ombudsman) that is virtually identical to the one recommended by the previous Committee. Section 72 of the *Financial Administration and Audit Act 1977 (Qld)* prescribes a similar process for strategic review of the Queensland Audit Office.

The Committee disagrees with the CJC's proposition that strategic reviews and PCJC reviews of the CJC should be carried out alternatively at three yearly intervals. The Committee notes that the CJC itself has commissioned a strategic review since the last three yearly review. Further, the Committee is of the view that the reviews are so different that it is necessary for each to be conducted every three years to complement the other. Further, the Committee considers that, since the CJC has engaged a body to undertake a strategic review in the absence of a legislative requirement or guidelines, a statutory provision in the terms recommended by the Committee would only serve to increase the value of that review.

12.5.4.4 Conclusions

Conclusion 90

The Committee is supportive of regular strategic reviews of the CJC, in addition to the PCJC's three yearly review.

Conclusion 91

The Committee considers regular strategic reviews of the CJC comprise an important part of the accountability process in that the issues addressed in a strategic review differ from those addressed by the Committee and such a review also provides an external review and assessment of the CJC's performance. The Committee has not been presented with any argument which would lead it to a different conclusion from the previous PCJC's recommendation. The Committee endorses that recommendation.

12.5.4.5 Recommendation

Recommendation 45

The Committee endorses the recommendation of the third PCJC and recommends that a requirement for regular strategic reviews of the CJC be inserted in the *Criminal Justice Act* requiring, amongst other things, that:

- **such reviews be conducted at least every three years;**
- **the reviewer should be an appropriately qualified person (who has cleared the requisite security standard) appointed by the Governor in Council;**

- the terms of reference for the review should be determined by the Governor in Council;
- before a person is appointed to conduct a review, the Minister must consult with a quorum of the CJC Commissioners about:
 - the appointment of the reviewer; and
 - the terms of reference for the review;
- before a person is appointed to conduct a review, the Minister must seek the approval of a majority of members of the PCJC, unanimously or by a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Assembly, about:
 - the appointment of the reviewer; and
 - the terms of reference for the review;
- the remuneration and other terms of appointment of a person appointed to conduct a review are to be determined by the Governor in Council. However, all costs of the review, including such remuneration, are to be borne by the CJC;
- for the purposes of conducting the review:
 - the reviewer is to have all powers that an authorised auditor has for the purposes of auditing an entity; and
 - the CJC is to grant the reviewer full and free access to the CJC's premises, staff, processes and procedures;

However, nothing in this provision is to allow the reviewer access to any operational material held by the CJC;

- the PCJC should have the power to give directions to the reviewer in respect of any matter which the Committee considers relevant to the review and to call for the reviewer to give interim reports on the review as and when the PCJC determines fit;
- on completion of the review the reviewer must provide a written report to the Minister, PCJC and CJC Commissioners;
- if the reviewer proposes to include in the report a matter which in his/her opinion is a matter of significance, the reviewer must –
 - (a) give the Minister, the PCJC and the Chairperson of the CJC written advice of the matter; and
 - (b) include in the advice a statement to the effect that comments on the matter may be made in writing to the person within –
 - (i) 21 days after the advice is received; or
 - (ii) such longer period as is specified in the advice.

Further, if such matter is included in the review report, any comments so given to the reviewer must also be included in the report;

- **the Minister must lay the reviewer's report before the Legislative Assembly within three sitting days after the Minister receives the report; and**
 - **the PCJC should review the reviewer's report and in its discretion determine to table its own report in Parliament on the review, including in its report any recommendations and comments which it sees fit and stipulating who should implement those recommendations.**
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12.6 Budget

The third PCJC in its Report No. 38 expressed concern at the lack of accountability of the CJC to the Committee in relation to the CJC's budget. The Committee's concern extended beyond this to the possibility that the budget process by which the CJC is bound has the potential to compromise the independence of the CJC from the Executive.

The Committee emphasises that no issues in this respect have arisen during its term. However, as the third PCJC made a strong recommendation on the issue, it warrants attention here.

12.6.1 Prior PCJC recommendations

The third PCJC was concerned that the Committee has no specific statutory role in the development of the CJC's budget. The Committee reported that it:

*has felt constrained in its ability to fully and critically assess many financial, budgetary and associated matters as they pertain to the CJC. The Committee is often seeking such information after the occurrence of events which it believes it should have been part of.*⁴⁹⁵

The previous Committee was also concerned because the relevant Minister is responsible for making budgetary decisions about the CJC without having insight into its operations and functions. The Committee believed it was in a unique position with respect to the claims made by the CJC in budget development because of the 'statutory relationship of confidentiality' between the Committee and the CJC.⁴⁹⁶

The previous Committee recommended that it was essential for the independence and accountability of the CJC that the *Criminal Justice Act* be amended to provide that the Minister / Treasurer be required to consult with the Committee in developing the proposed budget of the CJC. The previous Committee recommended that a consultative process be developed to enable the Committee to participate in the Commission's budget in the interim.⁴⁹⁷

The previous Committee was also concerned about the lack of guidance in section 147 of the *Criminal Justice Act* concerning how much information is to be provided to the Minister and what matters the Minister is required to take into account in determining whether to approve the proposed

⁴⁹⁵ Note 490 at 65.

⁴⁹⁶ Note 490 at 69.

⁴⁹⁷ Note 449 at 182-183.

budget.⁴⁹⁸ The Committee recommended that section 147 be amended to establish the matters to which the Minister must have regard in approving the proposed CJC budget.⁴⁹⁹

The Committee also concluded that the involvement of an external body or organisation in the development of the CJC's budget has potential to compromise the independence of the CJC and recommended that it remain a task of the CJC itself.⁵⁰⁰

12.6.2 Analysis and comment

In its submission to the previous PCJC's three yearly review, the CJC submitted its preferred budget process was for independent funding which would involve:

- direct presentation of the CJC's budget bid to the Cabinet Budget Review Committee, with CJC representatives providing information directly to that Committee rather than through the Minister;
- the Chairperson as accountable officer under the *Financial Administration and Audit Act 1977*; and,
- performance by the PCJC of the estimates scrutiny process role (given its detailed knowledge of CJC operations).⁵⁰¹

In considering this option in its three yearly review, the third PCJC concluded that such a model involved radical change to the current process of budget allocation and that:

*The Committee is not convinced that the potential difficulties with the current model are such that it should be abandoned completely, to be replaced by a model that is novel in nature, and untested in practice. The Committee would prefer to see modest alterations to the current arrangements, which would go some way to alleviating the Committee's concerns, while having a real possibility of being implemented.*⁵⁰²

The third PCJC's recommendations relating to the budget have not been implemented. In his response to the recommendations, the Premier, as the Minister administering the *Criminal Justice Act*, stated that the Government did not support the PCJC's recommendations for amendments relating to the Committee's role in the CJC's budget development and approval. He stated:

*The Parliamentary Committee may have a role in advocating for funding on behalf of the Commission. However, the Government does not consider it necessary to make legislative amendments to achieve this.*⁵⁰³

The Committee canvassed some of the issues relating to the CJC's budget at the public hearings held as part of this review. The Executive Director of the CJC, Mr Graham Brighton, told the Committee:

...I do not believe that the commission has experienced any operational difficulties which it could be suggested arose from any ministerial interference. In relation to the way the budget process is managed at the present moment, we obviously present a budget to the Minister once the appropriations are announced. We provide the Minister with all the supporting budget documentation that any other consolidated revenue funded organisation would provide and the

⁴⁹⁸ Note 449 at 181.

⁴⁹⁹ Note 449 at 183.

⁵⁰⁰ Note 449 at 183.

⁵⁰¹ Note 457 at 4.

⁵⁰² Note 449 at 181.

⁵⁰³ Beattie, P., Hon. the Premier of Queensland, *Ministerial Response to the Parliamentary Criminal Justice Committee Report No. 45*, tabled in the Legislative Assembly on 26 October 1999.

*Minister approves it...I guess it is a little bit unusual in that the Minister approves the budget, but for everything else the organisation answers to this Committee. I have not experienced a problem that has entered the organisation at this stage.*⁵⁰⁴

When asked whether he saw any advantage in the Minister being required to consult with this Committee prior to finalising budget approval, the Executor Director replied:

*I would imagine that there may well be situations in which the Committee would be aware of initiatives or strategies that the commission is trying to introduce or implement whereas the Minister would not, other than what we provided to him in our submissions and requests. Budget requests are subject to the usual Treasury rigour of scrutiny that every other Government department is subjected to. The chairperson has to go and appear before the Cabinet Budget Review Committee and state his case the same as any other Government agency does. As you are well aware, the Committee is aware of operations that the Minister is not aware of. So there may be situations where the Committee might look upon things more favourably than perhaps the Minister might.*⁵⁰⁵

The Committee notes the statutory role of other Parliamentary Committees of the Queensland Legislative Assembly, namely:

- the Public Accounts Committee in the development of the budget for the Queensland Audit Office (QAO) under section 68 of the *Financial Administration and Audit Act 1997 (Qld)*; and
- the Legal, Constitutional and Administrative Review Committee in the development of the budget for the Parliamentary Commissioner for Administrative Investigations (Ombudsman) under section 31 of the *Parliamentary Commissioner Act 1974 (Qld)*.

The Committee considers that the CJC can be likened to these two entities in that, for all three organisations, independence from the Executive is vital to the effective discharge of their functions. The Committee considers it would be appropriate for a parallel statutory role to be given to the PCJC in order to further ensure the CJC's independence from the Executive and accountability to the Committee.

12.6.3 Conclusions

Conclusion 92

The Committee agrees in principle with the recommendations of the previous PCJC. The Committee considers that a requirement that the responsible Minister consult with the Committee in the formulation of the CJC's budget will make the CJC's budget process more transparent and efficacious. While a commitment to an informal process of consultation is appreciated by the Committee, the Committee cannot differentiate between the QAO, the Ombudsman and the CJC to see justification for the different processes and considers that the same formal processes should be in place.

⁵⁰⁴ Note 461 at 39.

⁵⁰⁵ Note 461 at 39.

12.6.4 Recommendation

Recommendation 46

The Committee endorses the recommendation of the previous Committee and recommends that the *Criminal Justice Act* be amended to require that the Minister consult with the Committee in developing the budget of the CJC for each financial year.

PART C: EXTERNAL ACCOUNTABILITY OF THE CRIMINAL JUSTICE COMMISSION

13. PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE

13.1 Introduction

The Latin question, ‘quis cusodiet ipsos custodes?’, meaning literally ‘who will guard the guards?’ was asked by Decimus Junius Juvenials in the first Century AD.

That question was addressed, many years later, in the Fitzgerald Report which recommended that a Parliamentary committee be established, the Parliamentary Criminal Justice Committee (PCJC or the Committee) to act as a watchdog over the Criminal Justice Commission (CJC). The Committee was subsequently established by the *Criminal Justice Act 1989* (the Act) and the Legislative Assembly.

This chapter will examine the role, functions and powers of the Committee.

13.2 Background

13.2.1 The Fitzgerald Report

When recommending the creation of the CJC, the Fitzgerald Report emphasised the need for such a body to be both independent and accountable.

Fitzgerald stressed that the CJC be an independent as opposed to an autonomous body. This means that the CJC must be independent from the Police, the Judiciary, the Government and the Opposition. However, the CJC was also intended to be an *accountable* body.

*The administration of criminal justice should be independent of Executive controls. It is an apolitical, vital public function. Such administration must be accountable for its activities and should be open to public review and accountable to the Parliament.*⁵⁰⁶

The intent of the Fitzgerald Report was that Parliament is the institution ultimately accountable to the electorate and that the CJC should be accountable to the Parliament through a Committee of members of Parliament.

As a result, the Fitzgerald Report recommended the creation of a Parliamentary committee to which the CJC was to be accountable.

Fitzgerald also proposed that this committee have the following features:

- the committee should be a standing committee not charged with any other responsibility;
- the committee’s membership should reflect the balance of power in the Legislative Assembly and its members should be subject to specific obligations of confidentiality;
- the committee should have the power to;

⁵⁰⁶ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC), 1989, Brisbane, at 307.

- formulate policies and guidelines to be obeyed by the CJC;
- direct the CJC to initiate and pursue investigations;
- direct the CJC to report to the Parliament;
- conduct hearings in camera;
- decide what matters were reported to and tabled in Parliament and when that was to be done;⁵⁰⁷ and
- although the Committee should be entitled to be informed of the basis on which any CJC investigation was being undertaken, the Committee should not have the power to prevent or hinder any investigation by the CJC or do more than require the CJC to review a decision to carry out any investigation.⁵⁰⁸

Fitzgerald also envisaged that the CJC was to report to the Committee and that it should be able to do so on a confidential basis.

This standing Parliamentary committee was described by Fitzgerald as a:

*... necessary, effective and sufficient oversight of the operations, methods and priorities of the CJC ... against the background of the constitution of the CJC and reinforced by the checks and balances within it.*⁵⁰⁹

Thus, the accountability framework outlined was clear. The CJC was to be accountable to the Committee, the Committee was accountable to the Parliament, and the Parliament was accountable to the people.

Fitzgerald recommended that the *Executive* have authority and control over the CJC in only one way - the financing of the CJC.

It should also be noted here that the establishment of such a Parliamentary committee is not unique. Other committees in a similar role include:

- the Commonwealth Parliamentary Joint Committee on the National Crime Authority (NCA);
- the Commonwealth Parliamentary Joint Committee on the Australian Security and Intelligence Organisation (ASIO);
- the NSW Joint Parliamentary Committee on the Independent Commission against Corruption (ICAC);
- the NSW Joint Parliamentary Committee on the Ombudsman and the Police Integrity Commission (PIC) [and PIC Inspector]; and
- the Western Australian Joint Parliamentary Committee on the Anti-Corruption Commission.

The manner in which these committees attempt to ensure the accountability of their respective agencies and recent reforms recommended by those committees is discussed in paragraph 14.6 below.

⁵⁰⁷ It was also recognised that some matters may never be tabled.

⁵⁰⁸ Note 506 at 308-309.

⁵⁰⁹ Note 506 at 309.

13.2.2 *The Criminal Justice Act 1989 (Qld)*

In accordance with Fitzgerald's recommendations, Part 4 of the *Criminal Justice Act* makes provision for the establishment of a Parliamentary committee to which the CJC is accountable.⁵¹⁰

In accordance with Fitzgerald's recommendations, the Act contains a number of provisions specifically aimed at the accountability of the CJC. In particular, section 118(1) of the Act provides that the functions of the Parliamentary committee are:

(a) to monitor and review the discharge of the functions of the Commission as a whole and of the Official Misconduct Division in particular;

(b) to report to the Legislative Assembly, with such comments as it thinks fit, on any matters pertinent to the Commission, the discharge of the Commission's functions or the exercise of the powers of the Commission, a commissioner, or of officers of the Commission, to which the attention of the Assembly should, in the committee's opinion, be directed;

(c) to examine the annual report and other reports of the Commission and report to the Legislative Assembly on any matter appearing in or arising out of any such report;

(d) to report on any matter pertinent to its functions that is referred to it by the Legislative Assembly;

(e) to participate in the constitution of the Commission and the removal from office of a Commissioner as prescribed;

(f) at a time appropriate to allow tabling of its report under this paragraph in the Legislative Assembly by which it was appointed, being a time near to the expiry of 3 years from its appointment

(i) to review the activities of the Commission during such three years;

and

(ii) to report to the Legislative Assembly and to the Minister as to further action that should be taken in relation to this Act or the functions, powers and operations of the Commission.

The manner in which the Committee fulfils these functions is elaborated upon below in paragraph 13.3 of this report.

13.3 **The role and functions of the Committee**

The functions and responsibilities of the Committee, as detailed in section 118 of the Act, may be summarised as follows:

- to monitor and review the activities of the CJC;
- to report to the Legislative Assembly where appropriate;
- to examine reports of the CJC;
- to participate in the appointment of CJC Commissioners;
- to conduct a review of the CJC at the end of the Committee's term; and
- to issue guidelines and give directions to the CJC, where appropriate.

Under section 118F of the Act, the Committee also has a specific role in relation to complaints made, or other concerns, about the conduct and activities of the CJC and its staff.

⁵¹⁰ See ss. 115 and 116 of the *Criminal Justice Act 1989*.

Under the *Misconduct Tribunals Act 1997* (Qld) the Committee also participates in the appointment of members of the Misconduct Tribunal⁵¹¹ and may conduct a review, where appropriate, of the Misconduct Tribunal as part of its three yearly review of the CJC.⁵¹²

The CJC is financially accountable to the responsible Minister who also performs a number of other functions under the Act.⁵¹³

13.3.1 Monitoring and reviewing the activities of the CJC

The phrase ‘monitor and review’ is not defined in the Act, but is generally understood to require the Committee to ensure the accountability of the CJC to the Parliament, as was specifically envisaged by the Fitzgerald Report.⁵¹⁴

In the absence of any definition, the Committee has developed a number of mechanisms which enable it to ‘monitor and review’ the activities of the CJC. These mechanisms have included:

- holding regular Committee meetings to consider issues relevant to the CJC;
- receiving confidential bi-monthly reports from the CJC in relation to its activities and the discharge of its functions;
- considering confidential minutes of internal meetings held by the CJC, including meetings of the CJC Commissioners and the CJC Executive;
- holding bi-monthly in-camera meetings with the Chairperson of the CJC, CJC Commissioners and senior CJC officers;
- receiving and considering complaints against the CJC and its officers;
- reviewing CJC guidelines and making suggestions for improvement of CJC practices;
- reviewing CJC reports including its annual report and research reports;
- requesting reports from the CJC on matters which have come to the Committee’s attention;
- conducting inquiries into:
 - the actions of the CJC and/or its officers;
 - matters involving the CJC;
 - issues arising from reports of the CJC as and when those matters arise;
- conducting audits of various registers maintained by the CJC and relevant files kept by the CJC detailing the use by the CJC of its powers;
- dealing with ad hoc issues concerning the CJC as they arise; and
- seeking independent advice from experienced legal Counsel, academics and persons with particular skills and expertise with respect to various matters concerning the CJC.

Some of these mechanisms are discussed in further detail below.

⁵¹¹ See s. 7 of the *Misconduct Tribunal Act 1997*.

⁵¹² See s. 38 of the *Misconduct Tribunal Act 1997*. [Given the time constraints imposed upon the Committee, this review will not include such a review.]

⁵¹³ On 29 June 1998, the Premier was reinstated as the responsible Minister (replacing the Attorney-General).

⁵¹⁴ Note 506.

13.3.1.1 Committee meetings

The Committee meets on a regular basis. When Parliament is sitting the Committee meets at least once a week. In addition, the Committee meets before every bi-monthly PCJC / CJC meeting to discuss as a Committee any issues which may arise out of the CJC's report of its activities for the previous two month period. The Committee also meets at other times when particular matters arise and for the purposes of considering draft reports.

13.3.1.2 Bi-monthly reports from the CJC and minutes of CJC meetings

The CJC provides the Committee, usually on a bi-monthly basis, with a strictly confidential detailed report which purports to summarise the significant activities of the CJC for the previous two month period. To this end, the reports contain a summary of each Division's activities and information including statistics, updates as to the status of operational matters and complaints, and information relating to (future) legal proceedings. The bi-monthly reports are also structured in such a way as to allow reference back to previous reports. This allows the Committee to continually monitor the progress of investigations, projects and/or initiatives of the CJC.

The information in these bi-monthly reports is supplemented by the provision to the Committee of the minutes of meetings of the CJC Commissioners and of the CJC Executive Group.⁵¹⁵

13.3.1.3 Bi-monthly meetings with the CJC

The Committee meets on a bi-monthly basis with the CJC Commissioners, the directors of each Division of the CJC, the Chief officer, Complaints, the CJC's General Counsel, and, when required, other officers of the CJC, in order to discuss the CJC's activities. Whilst often termed 'joint meetings', these meetings are in fact Committee meetings to which members and officers of the CJC are invited.

The agenda for each bi-monthly meeting is set by the Chairman of the Committee. Basically the format allows each Divisional director to elaborate further upon, or update, their particular section of the bi-monthly report. Members also have the opportunity to ask questions of each Commissioner and officer. Additionally, there are often other issues which the Chairman of the Committee will raise for discussion at the meeting, both with and without notice. Officers of the CJC can then give the Committee verbal briefings as to particular issues and complaints in response to the Committee's request, or take questions on notice.

The bi-monthly meetings between the Committee and the CJC, and the provision of bi-monthly reports and minutes of CJC meetings are vital to the accountability process. These mechanisms attempt to ensure the regular flow of information between the bodies and keep Committee members informed as to the CJC's activities. The meetings also enable the Committee members to ask questions and scrutinise the actions of CJC officers who are responsible for particular matters, and promote the frank interchange of opinions between the Committee and the CJC.

13.3.1.4 Audits of the records of the CJC

The most significant coercive investigative powers of the CJC are found in Part 3 of the Act and include the power to:

- issue a notice to discover information or to produce a record or thing - section 69;

⁵¹⁵ The Executive Group consists of the Division directors and other senior staff.

- enter and search public premises and to inspect, seize and remove, or copy any record or thing found therein - section 70;
- apply to the Supreme Court for a warrant to enter, search and seize - section 71 and section 73;
- issue a notice to summon a person to attend before the CJC and give evidence or produce a record or thing - section 74;
- apply to the Supreme Court for a warrant permitting the apprehension of a witness - section 79;
- apply to a judge of the Supreme Court for an order approving the use of a listening device - section 82.

The CJC maintains a number of internal registers which represent a manual record (with computer back-up) detailing key information relating to the use by the CJC of its coercive investigative powers. These registers refer to, and must be read with, the ‘accompanying documentary material’ and in some cases the CJC’s relevant ‘operational files’.

The ‘accompanying documentary material’ comprises what may be described as the necessary key documents prepared by the CJC to support the use of the particular power. Usually these are the notice/warrant, statement in support of its issuance and the oath of service. The ‘operational file’ may be described as the internal CJC file which encompasses all relevant documents, file-notes and other dealings concerning each particular operation including the use of any coercive investigative powers.

The Committee has the power to ask the Parliamentary Criminal Justice Commissioner to undertake an audit of the records of the CJC pursuant to section 118R(2)(a) of the Act.

13.3.1.5 Committee inquiries

The Committee has the power to conduct an inquiry into any issue concerning the CJC. The following philosophies underpin inquiries conducted by the Committee:

- to ensure that the public record is accurate;
- to fully consider and canvass all relevant issues and options;
- to allow members of the public and interested bodies the opportunity to be consulted and make comment on relevant issues and to promote public discussion;
- to advertise its processes and activities wherever possible in order to promote public discussion, consultation and public feedback; and
- to ensure that, as far as requirements of confidentiality allow, the Legislative Assembly is kept informed as to the Committee’s activities.

Whilst the decision as to whether to conduct an inquiry will always be a matter within the Committee’s largely unfettered discretion, as a general rule, the Committee will undertake inquiries in relation to matters which have been the subject of considerable media attention and speculation, and where the Committee is of the opinion that such attention and speculation has not been balanced, has created uncertainty in the community and/or has uncovered a deficiency in the CJC’s operations. The Committee will also generally undertake inquiries into matters of significant public interest.

13.3.1.6 Advice

In order to assist the Committee perform its vital role, it has a full-time secretariat staffed by three qualified and experienced lawyers from which it regularly requests and receives advice. The Committee also has at its disposal the ability to seek the advice of consultants as and when the need arises. Both the current Committee and its predecessors have utilised this ability to seek independent expert advice in relation to a number of matters. Whilst advice sought by the Committee is usually of a legal nature relating to matters of particular significance or precedence, the Committee has also sought the advice and assistance of other professionals.

13.3.2 Reporting to the Parliament

The second main function of the Committee is to *report* to Parliament on the operations and activities of the CJC so that the CJC is accountable to the Parliament and to the people of Queensland.

The Committee's general function is to comment and report, at the Committee's discretion, in respect of any matter concerning the CJC's operations.

As part of this 'reporting' function the Committee is also required to conduct a three yearly review of the activities, functions, powers, and operations of the CJC and to report to Parliament thereon including recommendations for possible change.⁵¹⁶

13.3.3 Examining the annual report and other reports of the CJC

By virtue of section 118(1)(c) of the Act, the Committee is obliged to 'examine the annual report and other reports of the Commission and report to the Legislative Assembly on any matter appearing in or arising out of any such report'.

The Committee has approved and adopted, with approval, the reasoning of its predecessor Committees that it is counterproductive and duplicative for the Committee to engage in a detailed examination and reporting process for every CJC report. The Committee therefore adopted a practice of reporting to Parliament only where it determined that a CJC report was of sufficient public interest or importance to the community, and the Committee was able to add to the process in some way by reporting to Parliament in respect of the CJC's report.

The definition of 'report of the Commission' in section 26(9) of the Act also requires any report the CJC wishes to table in the Parliament under section 26, other than a report of a section 25 hearing, to be referred to the Committee, so that the Committee can consider whether it will direct that the report be so tabled.

13.3.4 Participating in the constitution of the (CJC)

The Commission comprises a full-time Chairperson and four Commissioners who are part-time. Before selecting any person for appointment as Chairperson or part-time Commissioner of the CJC, the responsible Minister, in this case the Premier, is required by section 11 of the Act to consult with the Committee. A person must not be appointed as Chairperson or part-time Commissioner of the CJC unless that appointment is supported by a bi-partisan majority of the Committee.

⁵¹⁶ See s. 118(1)(f) of the *Criminal Justice Act 1989*.

13.3.5 Conducting a three yearly review of the activities of the CJC and reform of the Act

Section 118(1)(f) of the Act obliges the Committee to conduct a review of the activities of the CJC every three years. This report is the culmination of such a review.

13.3.6 Considering complaints against the CJC and its officers

Given the nature of the CJC and its functions and responsibilities, it is inevitable that from time to time, complaints will be made regarding actions of officers of the CJC in the course of performing their duties.

The establishment of an appropriate mechanism for the assessment and investigation of complaints against officers of the CJC is critical to ensure public confidence in, and the effective accountability of, the CJC.

Section 118F of the Act provides the Committee with a specific role in relation to complaints made, or other concerns, about the conduct and activities of the CJC and its officers. In considering such complaints or concerns, the Committee may do one or more of the following:

- (a) ask the commission to give a report on the matter to the committee;*
- (b) ask the commission to investigate and give a report on the matter to the committee;*
- (c) ask the Queensland Police Service or another law enforcement agency to investigate and give a report on the matter to the committee;*
- (d) ask the parliamentary commissioner to investigate and give a report on the matter to the committee;*
- (e) take other action the committee considers appropriate.*

The consideration of such complaints can provide the Committee with a valuable window into the operations and activities of the CJC. Even where a complaint is not substantiated, procedural and administrative deficiencies may be identified which make revision or clarification of CJC policies and procedures appropriate. Further, the very issues raised by a complaint can often provide useful indicators of areas where additional communication and feedback by the CJC may assist in alleviating misunderstandings.

13.3.7 Participating in the appointment of Misconduct Tribunal panel members

The Committee also plays a role in determining the appointment of Misconduct Tribunal panel members.

The Minister may not nominate a person for appointment as a tribunal member unless that nomination is supported by a bi-partisan majority of the Committee.⁵¹⁷

13.4 Powers of the Committee

13.4.1 Introduction

To assist the PCJC in the discharge of its functions, section 118(2) of the Act provides that the Committee has such powers as:

- (a) are necessary to enable or assist the committee in the proper discharge of its functions*

⁵¹⁷ See s. 7 of the *Misconduct Tribunals Act 1997*.

prescribed by subsection (1); and

(b) are conferred on it by the Legislative Assembly with a view to the proper discharge by the committee of its functions prescribed by subsection (1).

In addition, section 118(3) of the Act provides the Committee with the power to:

- call for persons, documents and other things;
- administer oaths to witnesses; and
- examine witnesses on oath.

13.4.2 Power to issue guidelines to the CJC

Following passage of the *Criminal Justice Legislation Amendment Act 1997*, the Committee now has the power to issue guidelines to the CJC under section 118A of the Act. Section 118A(4) requires the CJC to comply with such guidelines.

13.4.3 Power to direct the CJC to investigate

Section 118E(1) of the Act also empowers the Committee to direct the CJC, in writing, to investigate the matters stated in the direction. The CJC is required to investigate the matters specified in the direction diligently and in a way reasonably expected of a law enforcement agency, and to report the results of its investigation to the Committee.

13.4.4 Power to seek the assistance of the Parliamentary Criminal Justice Commissioner

To enhance the committee's capacity to effectively monitor and review the CJC, amendments to the *Criminal Justice Act* in late 1997 provided for the appointment of a Parliamentary Criminal Justice Commissioner (Parliamentary Commissioner).

The Committee may request the Parliamentary Commissioner to undertake a range of important activities on the Committee's behalf and at the Committee's direction and to report back to the Committee. The Parliamentary Commissioner has all the special powers of a royal commission, and has unrestricted access to CJC files and CJC officers.⁵¹⁸

13.5 Analysis and comment

13.5.1 Effectiveness of Parliamentary committee oversight

The Committee refers with approval to the views of the previous Committee, the third PCJC, in its Report No. 38, on the first part of its three yearly review of the CJC, that:

...as the CJC is ultimately responsible to the Parliament, and as Parliament is asked to approve the legislation under which the CJC operates, Parliament must have a central role in monitoring and reviewing how that legislation is put into practice. A properly funded Parliamentary committee with the necessary powers which has an on-going role in monitoring and reviewing the CJC is the mechanism which best allows the Parliament to be continually informed as to the activities of the CJC and as to any issues of concern that may arise. This process then allows Parliament to make an informed decision on the effectiveness or otherwise

⁵¹⁸ The role, functions and powers of the Parliamentary Commissioner are discussed further below.

*of the CJC and any legislative fine-tuning which may be required.*⁵¹⁹

However, the third PCJC identified a number of deficiencies in the accountability of the CJC. These key deficiencies may be summarised as concerns about:

- appropriate access to confidential and sensitive information held by the CJC;⁵²⁰
- the effective investigation of complaints against the CJC;⁵²¹ and
- effective audits of the use by the CJC of its coercive powers.⁵²²

The third PCJC concluded that these deficiencies could be overcome through the creation of the office of Parliamentary Commissioner which it recommended.

13.5.2 Creation of the Office of Parliamentary Commissioner

As noted above and discussed below in paragraph 14.6, Parliamentary committee oversight, by itself, is not sufficient to ensure the accountability of the CJC. As other Parliamentary Committees have discovered, some additional accountability mechanism is necessary.

The office of Parliamentary Criminal Justice Commissioner was created by the *Criminal Justice Legislation Act 1997* (Qld). This office is discussed in greater detail in Chapter 14 below.

13.6 Conclusions

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The Committee is of the view that a properly funded and empowered Parliamentary committee which has an on-going role in monitoring and reviewing the CJC, is the mechanism which best allows the Parliament and the public to be continually informed as to the activities of the CJC and as to any issues of concern that may arise.

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The Committee is also of the view, as noted below in paragraph 14.6, that Parliamentary committee oversight, of itself, can not provide the detailed scrutiny of operational matters that is required to provide an appropriate level of accountability without compromising the operational integrity of the CJC and the confidentiality of witnesses and informants.

⁵¹⁹ PCJC, *Report on the Accountability of the CJC to the PCJC*, Report No. 38, Legislative Assembly of Queensland, 1997, Brisbane, at 114.

⁵²⁰ Note 519 at 39-50 (Chapter 3) and 117 (Chapter 7).

⁵²¹ Note 519 at 52-60 (Chapter 3) and 120 (Chapter 7).

⁵²² Note 519 at 60-64 (Chapter 3) and 120 (Chapter 7).

14. OFFICE OF THE PARLIAMENTARY CRIMINAL JUSTICE COMMISSIONER

14.1 Introduction

The office of Parliamentary Commissioner has now been in operation for almost three years. The Committee considers it is an opportune time for a careful examination of the position. This chapter will examine the background to the creation of the office of Parliamentary Commissioner, the present role, functions and powers of the Parliamentary Commissioner, and what reforms, if any, may be appropriate.

14.2 Background

The previous PCJC, the third PCJC of the 48th Parliament, undertook a detailed examination of the accountability of the CJC. In its Report No. 38, which was tabled in May 1998, the third PCJC made a number of recommendations for amendments to the *Criminal Justice Act 1989* in order to improve the accountability of the CJC to the Committee.

The key reform to the then existing accountability regime as recommended by the Committee was that the Committee be given the power to appoint, a 'Judicial or Parliamentary Commissioner' to investigate particular matters or otherwise assist the committee as directed by a bi-partisan majority of the Committee and to report back to the Committee. In the majority of cases, the Committee envisaged that it would in turn report to the Parliament.

To enhance the Committee's capacity to effectively monitor and review the CJC, amendments were made to the *Criminal Justice Act 1989* to provide for the appointment of a Parliamentary Criminal.

14.3 Role and functions of the Parliamentary Criminal Justice Commissioner

The Parliamentary Commissioner was ultimately given roles under both the *Criminal Justice Act 1989* and the *Crime Commission Act 1997*.

14.3.1 Criminal Justice Act 1989

14.3.1.1 Assistance to the Parliamentary Criminal Justice Committee

Under the *Criminal Justice Act*, the primary role of the Parliamentary Commissioner is to assist the Committee in enhancing the accountability of the CJC. The Parliamentary Commissioner assists the Committee by undertaking a range of important functions on behalf of the Committee, at its direction, and by reporting back to the Committee. These key functions include:

- conducting audits of records, operational files and other material held by the CJC including current sensitive operations for the purpose of determining, amongst other things:
 - whether the way the CJC has exercised power is appropriate;
 - whether matters under investigation are appropriate for investigation by the CJC or are more appropriately the responsibility of another law enforcement agency;

- whether registers are up to date and complete and all required documentation is on the file and correctly noted on the registers;
 - whether required authorisations for the exercise of powers have been obtained; and
 - whether the policy and procedures guidelines set by the CJC have been strictly complied with;
- investigating complaints against the CJC or officers of the CJC, including alleged unauthorised releases of confidential information;
 - inspecting the register of confidential information kept by the CJC to verify the CJC's reasons for withholding certain information from the Parliamentary Committee;
 - reviewing reports given by the CJC to the Parliamentary Committee to verify their accuracy and completeness, particularly in relation to an operational matter;
 - assisting the Parliamentary Committee with the preparation of its three yearly review of the activities of the CJC, and other reports; and
 - other functions the Parliamentary Committee considers necessary or desirable.

14.3.1.2 Records of the former CJC Inquiry

The Parliamentary Commissioner also has a role under section 118U of the *Criminal Justice Act* in relation to the records of the former Commission of Inquiry into the Effectiveness of the CJC. This role includes:

- conducting a review of those records with a view to deciding whether those records disclose any matter that should be investigated by an appropriate agency;⁵²³ and
- retaining possession and control of those records and permitting access to those records only to those persons who are able to satisfy the Parliamentary Commissioner that they have a 'legitimate need of access'.

14.3.2 Crime Commission Act 1997

Under the *Crime Commission Act 1997*, the Parliamentary Commissioner is required to perform three further functions.

14.3.2.1 Annual review of the intelligence data held by the QCC, QPS and the CJC.

The Parliamentary Commissioner is required to conduct an annual review of the intelligence data held by the Queensland Crime Commission (QCC), the Queensland Police Service and the CJC to consider:

- whether the intelligence data held by each agency is appropriate having regard to the agency's functions;
- whether there is any unnecessary duplication of intelligence data;
- whether the agencies are working cooperatively in the collection, management, and use of intelligence data; and
- whether an agency is placing inappropriate restrictions on access to intelligence data by other agencies.

⁵²³ This review is now complete.

The broad purpose of this review is intended to assess the effectiveness of the total criminal intelligence effort of the three law enforcement agencies.

14.3.2.2 Advice to the QCC Management Committee on the results of performing this review.

The Parliamentary Commissioner is required to provide advice to the Management Committee of the QCC on the results of the annual intelligence review.

14.3.2.3 Review of decisions of the QCC to refuse the CJC access to QCC information.

The Parliamentary Commissioner is also charged with the task of reviewing decisions of the QCC not to provide the CJC access to QCC information. Further, the Parliamentary Commissioner will be required to decide whether the CJC will be allowed access to QCC information in instances where the QCC denies the CJC such access.

14.4 Powers of the Parliamentary Commissioner

The powers of the Parliamentary Commissioner under the *Criminal Justice Act* (the Act) are set out in Part 4A of the Act. Section 118T of the Act provides, in essence, that the Parliamentary Commissioner has ‘power to do all things necessary or convenient for the performance of his or her functions’.⁵²⁴

Further, this power is enhanced and explained by section 118X of the Act which provides that:

Confidentiality obligations not to apply

118X. No obligation to maintain secrecy or other restriction on the disclosure of information in the possession, custody or control of—

(a) the commission; or

(b) a person because the person is or was a commissioner, officer of the commission or a person engaged by the commission under section 66;

whether imposed under this or another Act or by a rule of law, applies to the disclosure of information under this part.

Finally, once an investigation has been referred to the Parliamentary Commissioner by the Committee:

- the Parliamentary Commissioner has all the powers, rights and privileges of a Commission⁵²⁵ under the *Commission of Inquiry Act 1950* (Qld);⁵²⁶ and
- the ‘CJC is not entitled to claim any privilege in relation to the production of documents or the giving of evidence allowed by law in legal proceedings’.⁵²⁷

⁵²⁴ See s. 118T of the *Criminal Justice Act 1989*.

⁵²⁵ These powers include being able to compel people to give evidence, require documents, search and seize, if necessary.

⁵²⁶ See s. 118W of the *Criminal Justice Act 1989*.

⁵²⁷ See s. 118Y of the *Criminal Justice Act 1989*.

14.5 Budget of the Office of Parliamentary Commissioner

The total expenditure of the office of Parliamentary Commissioner for the 1999/2000 financial year was \$627,047, a reduction of some \$25,762 (or 4%) on the previous year.

By way of comparison, for the 1999/2000 financial year, the expenditure of the Committee was \$248,116 and the expenditure of the CJC was \$29,541,000.

Further, the Committee emphasises that the budget of the Parliamentary Commissioner is not expended solely in respect of functions performed at the request of the Committee. As noted above in paragraphs 14.3.1.2 and 14.3.2, the Parliamentary Commissioner performs other functions under other legislation.

Finally, the Committee anticipates that the expenditure for the office of Parliamentary Commissioner will be further reduced for the 2000/2001 and 2001/2002 financial years. This expenditure is expected to reduce in the 2000/2001 financial year to approximately \$525,000 (or a further 16% reduction) and in the 2001/2002 financial year to approximately \$375,000 (or a further 29% reduction).⁵²⁸ This reduced expenditure results from two key changes in the office of Parliamentary Commissioner. Firstly, and most significantly, as of 1 February 2001, the position of Parliamentary Commissioner was changed to a part-time one averaged out at approximately two days per week. Further, the leasing cost of premises for the office of Parliamentary Commissioner has been reduced through renegotiation of the lease premises and an arrangement by which the larger part of the current leased premises was taken up by another agency.

14.6 Comparisons with other jurisdictions

14.6.1 Introduction

Since the early 1980s a number of specialist anti-corruption and/or law enforcement agencies have been established both nationally and in the States. These agencies are either standing royal commissions or are able to exercise the powers of a royal commission.

The sequence of establishment of these Commissions is:

- The National Crime Commission (NCA) in 1984;
- The NSW Crime Commission in 1985;
- The NSW Independent Commission Against Corruption in 1988;
- The Criminal Justice Commission in 1989;
- The Western Australian Anti-Corruption Commission in 1996⁵²⁹; and
- The New South Wales Police Integrity Commission in 1996.

The primary reason for the creation of these specialist agencies was the failure of traditional law enforcement bodies using conventional law enforcement methods to effectively tackle serious corruption and criminal activity.

⁵²⁸ These figures are estimates only and are based on several assumptions, particularly that the position will remain part-time.

⁵²⁹ The ACC was established in 1996, essentially as a name change for the already existing statutory authority, the Official Corruption Commission (OCC) which was revamped and strengthened with new functions.

As these agencies would be inquiring into the conduct of the public sector within government, they were designed to be independent from the executive arm of government. It is important that these agencies be independent of political interference or the threat of such interference. It is also essential, as these agencies are able to exercise wide ranging powers, that they be publicly accountable and not completely autonomous.

To this end, in all Australian jurisdictions where such agencies have been created, various accountability mechanisms have been put in place. These accountability mechanisms have included:

- the appointment of part-time commissioners to represent the community and to bring a range of experience to an agency's deliberations;
- operational review committees, which in some ways perform a similar function to part-time commissioners;
- oversight by Parliamentary committees entrusted with the task of monitoring, reviewing and reporting to Parliament on the activities of these agencies;
- judicial review of an agency's decisions; and
- more recently, independent inspectors or commissioners to audit and oversee an agency's operations.

The most common accountability mechanism adopted has been the creation of Parliamentary committees.

It has also been common for these Parliamentary oversight committees to express concerns about perceived accountability gaps and their effectiveness.

14.6.2 The Commonwealth Parliamentary Joint Committee on ASIO and the Inspector-General of Intelligence and Security

14.6.2.1 Parliamentary Joint Committee on ASIO

Despite initial reservations, the Federal government proceeded to establish a Parliamentary committee to oversee the activities of ASIO. Opposition to Parliamentary committee oversight had been expressed by Mr Justice Hope, in his 1984 report on Australia's Security and Intelligence agencies. This opposition was mainly due to what he saw as difficulties associated with a Parliamentary committee requiring the production of information from ASIO.⁵³⁰ Instead, he expressed a preference for ASIO's accountability to be improved by strengthening the Attorney-General's ability to carry out functions in that area.

The *Australian Security Intelligence Organisation Act 1979* (Cth) establishes a joint Parliamentary committee on ASIO which has the functions to review aspects of the activities of ASIO that are referred to it (by either the Minister - being the Commonwealth Attorney-General - or a House of the Parliament), and to report to the Minister and Parliament the Committee's comments and recommendations following such a review.⁵³¹

Only those activities of ASIO which are operationally sensitive, or relate to individual complaints or foreign intelligence are precluded from the Committee's review.

⁵³⁰ Royal Commission on Australia's Security and Intelligence Agencies, *General Report*, December 1984, (Justice Hope), at 25.

⁵³¹ See s. 92C of the *Australian Security Intelligence Organisation Act 1979* (Cth).

The Committee has seven members - three from the Senate and four from the House of Representatives.

Although the Committee is not authorised to initiate its own references, it may by resolution request the Minister to refer a particular aspect of the activities of ASIO to the Committee.⁵³²

The ASIO Act limits the inquiry powers of the Committee by providing that the Committee may not:

- review matters that relate to the obtaining or communicating by ASIO of foreign intelligence;
- review an aspect of the activities of ASIO that does not affect any person who is an Australian citizen or permanent resident;
- review matters that are operationally sensitive; or
- inquire into individual complaints about ASIO's activities.⁵³³

The powers of the Committee as outlined in the Act include the power to require the attendance of witnesses and the production of documents relevant to an inquiry.⁵³⁴ The Committee can also require the Director-General to appear before the Committee and give evidence and/or produce documents.⁵³⁵

The Inspector-General of Intelligence and Security (IGIS) reports that during the 1999/2000 year, he met with the Joint Parliamentary Committee on ASIO once to discuss the work of the IGIS in relation to ASIO and on another occasion to assist the Committee with its consideration of amendments to the ASIO Act.⁵³⁶

14.6.2.2 Inspector-General of Intelligence and Security (IGIS)

As a result of recommendations made in 1984 by Mr Justice Hope in his inquiry into Australia's security and intelligence services, the Office of the Inspector-General of Intelligence and Security (IGIS or Inspector) was established under the *Inspector-General of Intelligence and Security Act 1986* (Cth).

The IGIS is not part of any government department or agency, and is appointed by the Governor-General for a three-year, non-renewable term.⁵³⁷

Basically, the role of the Inspector is to help the Ministers responsible for Australia's security and intelligence agencies to oversee and review the activities of those agencies to ensure that they act legally and with propriety, comply with ministerial guidelines and directives and respect human rights.

In line with this general concept, the *Inspector-General of Intelligence and Security Act* sets out the Inspector's responsibilities in relation to each of:

- Australian Security Intelligence Organisation (ASIO);
- Australian Secret Intelligence Service (ASIS);

⁵³² See s. 92C(3) of the *Australian Security Intelligence Organisation Act 1979* (Cth).

⁵³³ See s. 92C(4) of the *Australian Security Intelligence Organisation Act 1979* (Cth).

⁵³⁴ See s. 92H of the *Australian Security Intelligence Organisation Act 1979* (Cth).

⁵³⁵ See s. 92J of the *Australian Security Intelligence Organisation Act 1979* (Cth).

⁵³⁶ Inspector-General of Intelligence and Security, *Annual Report 1998-1999, 2000*, Canberra, at paragraph 21.

⁵³⁷ The current IGIS is Mr Bill Blick PSM.

- Defence Signals Directorate (DSD);
- Defence Intelligence Organisation (DIO);
- Australian Imagery Organisation (AIO); and
- Office of National Assessments (ONA). [the agencies]

Matters in relation to which the Inspector can inquire include:

- the legality and propriety of an agency's activities;
- the effectiveness and appropriateness of an agency's procedures;
- each agency's procedures for redressing employees grievances; and
- an act or practice referred to the Inspector by the Human Rights and Equal Opportunity Commission that may be inconsistent with any human right.

The Office of Inspector-General has full access to all ASIO records.

In general, the Inspector can conduct an inquiry on a complaint or a reference from a Minister and has the power to initiate inquiries of his or her own.

In conducting an inquiry, the Inspector has significant powers which include requiring the attendance of witnesses, the taking of sworn evidence, copying and retaining documents and entering an agency's premises.⁵³⁸

Persons who refuse or fail to be sworn or to give information, produce a document or answer a question, or who give information that is false in a material particular are guilty of a criminal offence.⁵³⁹

All of the Inspector-General's inquiries take place in private. Reports are not tabled in Parliament, but are made to the head of the agency the subject of the inquiry, and to the responsible Minister, and, in certain circumstances, the Prime Minister as well.⁵⁴⁰ Some matters may be reported in the Inspector-General's Annual Report.⁵⁴¹ In cases where the Inspector has conducted an inquiry into a matter relating to an agency and has given a copy of his/her resulting report to the head of that agency, that head is required to advise the Inspector of any action proposed to be taken as a result of the conclusions and recommendations set out in the report.⁵⁴²

14.6.2.3 Analysis and comment

Staffing and Administration of the office of Inspector-General of Intelligence and Security

In his Annual Report for 1999-2000, the current Inspector Mr Bill Blick PSM, reports that he is assisted by a staffing establishment of five full-time staff. In addition, the Inspector-General reports that 'as a very small agency, the office relies on the assistance of the Department of the Prime Minister and Cabinet (PM&C) in handling staff and other administration issues and in providing general support'.⁵⁴³

The budget for the Office for the same period was \$790,098.

⁵³⁸ See ss. 18 and 19 of the *Inspector-General of Intelligence and Security Act 1986* (Cth).

⁵³⁹ See s. 18(7) & (8) of the *Inspector-General of Intelligence and Security Act 1986* (Cth).

⁵⁴⁰ See ss. 21 and 22 of the *Inspector-General of Intelligence and Security Act 1986* (Cth).

⁵⁴¹ The Inspector is required to produce an annual report to Parliament. [See section 35 of the *IGIS Act*]

⁵⁴² See s. 24 of the *Inspector-General of Intelligence and Security Act 1986* (Cth).

⁵⁴³ Note 536 at paragraph 308.

Complaints considered during 1999/2000

In his Annual Report for 1999-2000, the Inspector-General reports that the total number of new or resumed complaints considered by his office was 49. Forty-five complaints were finalised.⁵⁴⁴ The Inspector-General further reports most of the complaints were about ASIO, the agency most likely to interact with members of the Australian community.

14.6.3 The NSW Parliamentary Joint Committee on the Ombudsman and the Police Integrity Commission (PIC) and the Inspector of the PIC

14.6.3.1 Background

The Wood Royal Commission into the NSW Police Service found that corruption in the NSW Police Service was both endemic and systemic. The findings made clear the need for an independent agency to deal with serious police misconduct, and resulted in the establishment of the Police Integrity Commission (PIC) in 1996.

The principal functions of the PIC as established and prescribed by the *Police Integrity Commission Act 1996* (NSW) (the PIC Act) are:

- to prevent serious police misconduct and other police misconduct;
- to detect or investigate, or manage other agencies in the detection or investigation of serious police misconduct;
- to detect or investigate, or oversee other agencies in the detection or investigation of, other police misconduct, as it thinks fit; and
- receive and assess all matters not completed by the Wood Royal Commission, and to initiate or continue the investigation of any such matters where appropriate.⁵⁴⁵

The PIC also has other functions in relation to:

- undertaking inquiries into, or audits of, any police activities in order to establish whether there is police misconduct or circumstances which may be conducive to police misconduct; and
- police corruption prevention and education programs; and
- assembling evidence and gathering other information to be furnished to appropriate persons for the purposes of criminal, disciplinary or other proceedings.⁵⁴⁶

In order to keep the PIC accountable for the use of its coercive powers, two mechanisms were ultimately incorporated into the PIC Act. Firstly, a Parliamentary Joint Committee was established to monitor and review the exercise by the PIC of its functions.⁵⁴⁷ Secondly, in addition to the Parliamentary Committee, an Office of Inspector of the Police Integrity Commission was created under Part 6 of the PIC Act.

⁵⁴⁴ Note 536 at paragraph 15.

⁵⁴⁵ See s. 13(1) of the *Police Integrity Commission Act 1996* (NSW).

⁵⁴⁶ See ss. 14 and 15 of the *Police Integrity Commission Act 1996* (NSW).

⁵⁴⁷ See s. 95 of the *Police Integrity Commission Act 1996* (NSW).

By way of background, Mr Justice Wood recognised that the PIC ‘*should be open to public review, and accountable to Parliament*’.⁵⁴⁸ In this regard the Wood Royal Commission proposed two avenues of accountability:

- an Inspector of the Police Corruption Commission who would be given wide functions in relation to the Police Commission including powers of audit, handling of complaints and reporting to Parliament, and wide powers in order to fulfil those functions; and
- accountability to Parliament in that the Inspector should submit an annual report to Parliament.⁵⁴⁹

However, the Wood Commission did not recommend the creation of a Parliamentary committee. Its reasoning was based on the narrow focus of the proposed Police Corruption Commission and the direct supervision of the Inspector.⁵⁵⁰ The addition of a Parliamentary committee to the oversight structure of this new body was nevertheless inserted by Parliament during debate on the Bill on the basis that such a powerful body should be the subject of more direct accountability to Parliament, as was consistent with other investigative bodies in New South Wales. Although initially it was proposed that the Joint Committee on the ICAC should assume this responsibility, this was subsequently amended to be the Joint Committee on the Ombudsman in light of the fact that its responsibilities already involved looking at police matters and therefore it was more appropriate.⁵⁵¹

14.6.3.2 Parliamentary Joint Committee on the Ombudsman and the PIC

The Joint Committee’s powers in relation to the PIC and the Inspector are set out in Part 7 of the PIC Act and are:

- to monitor and review the exercise by the PIC and the Inspector of their functions;
- to report to Parliament on any matter pertaining to the PIC or the Inspector;
- to examine each annual and other report of the PIC and of the Inspector and report to Parliament on any matter arising out of any such report;
- to examine trends and changes in police corruption and practices and methods relating to police corruption, and report to Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the PIC and the Inspector; and
- to inquire into any question in connection with its functions which is referred to it by Parliament and to report on that question.⁵⁵²

However, the Committee is not authorised to:

- investigate a matter relating to particular conduct;
- reconsider a decision to investigate/not to investigate/discontinue to investigate a particular matter; or
- reconsider the findings, recommendations, determinations or other decisions of the PIC in relation to a particular investigation or a particular complaint.

The Committee refers such complaints to the Inspector of the PIC.

⁵⁴⁸ Royal Commission into the New South Wales Police Service, *Interim Report*, (Commissioner the Hon JRT Wood), 1996, Sydney, at 95.

⁵⁴⁹ Note 548.

⁵⁵⁰ Note 548 at 96.

⁵⁵¹ See Legislative Assembly of Queensland, *Hansard*, 24 April 1996 p. 445 and p. 1248 and 4 June 1996 at p.2464.

⁵⁵² See s. 95(1) of the *Police Integrity Commission Act 1996* (NSW).

14.6.3.3 Inspector of the PIC

The principal functions of the Inspector are contained in section 89(1) of the PIC Act and are as follows-

- (a) to audit the operations of the PIC for the purpose of monitoring compliance with the law of the State;*
- (b) to deal with complaints of abuse of power, impropriety and other forms of misconduct on the part of the PIC or officers of the PIC; and*
- (c) to assess the effectiveness and appropriateness of the procedures of the PIC relating to the legality or propriety of its activities.*

The Inspector is completely independent of the PIC and may exercise these functions on his or her own initiative, in response to a complaint, or a reference by the Ombudsman, the ICAC, the NSW Crime Commission, the Joint Committee or any other agency.⁵⁵³

The Inspector may be a full-time or part-time appointment.⁵⁵⁴

The Inspector is appointed by the Governor with the advice of the Executive Council. The Joint Committee on the Ombudsman and the PIC is empowered to veto the proposed appointment which is required to be referred to the Committee by the Minister.⁵⁵⁵

The powers granted to the Inspector to carry out these functions are very extensive. Under section 90, the Inspector –

- (a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and*
- (b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and*
- (c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and*
- (d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission, and*
- (e) may investigate and assess complaints about the Commission or officers of the Commission, and*
- (f) may refer matters relating to the Commission or officers of the Commission to other agencies for consideration or action, and*
- (g) may recommend disciplinary action or criminal prosecution against officers of the Commission.*

In order to effectively fulfil his or her functions, the Inspector may make or hold inquiries, and for the purpose of any inquiry, the Inspector has the 'powers, authorities, protections and immunities'

⁵⁵³ See s. 89(2) of the *Police Integrity Commission Act 1996* (NSW).

⁵⁵⁴ The current Inspector, the Hon Mervyn Finlay QC, is appointed part-time, subject to work-load.

⁵⁵⁵ See Schedule 2 of the *Police Integrity Commission Act 1996* (NSW).

conferred on a commissioner by the *Royal Commissions Act 1923* (NSW). This Act also applies to any witness appearing before the Inspector as if that witness was appearing before a commissioner.⁵⁵⁶

The NSW Legal Representation Office provides, in appropriate circumstances, free legal advice and assistance to witnesses who are appearing or about to appear for a hearing held by the Inspector.⁵⁵⁷

Section 93 of the PIC Act further provides that –

The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of its functions. ...

Further, in fulfilling his functions, the Inspector of the PIC has electronic access to the records of the PIC which he or she can access without the knowledge of the PIC.⁵⁵⁸

The Inspector's reporting powers are described in sections 101 and 102 of the PIC Act.

The Inspector may recommend disciplinary or criminal prosecution of officers of the PIC.⁵⁵⁹ The Inspector may report to Parliament at any time on any matter affecting the PIC, or administrative or general policy matters relating to the Inspector.

The Inspector is required to report annually to the Parliament.

The Committee understands that the budget for the Office of the Inspector of the PIC for the 1999/2000 year was approximately \$260,000.⁵⁶⁰

The Annual Report of the Inspector of the PIC states that during the 1999/2000 year, the office of the Inspector received 15 new complaints relating to the activities of the PIC.⁵⁶¹ The Annual Report further states that three further matters were current at the commencement of the financial year.

14.6.3.4 Analysis and comment

The extensive powers granted to the Inspector of the PIC under the NSW structure indicate that in accountability terms the Inspector is in fact conducting the accountability minutiae and the Parliamentary committee has the ultimate oversight of both the exercise of the Inspector's functions and that of the PIC. The relationship between the Inspector and the Joint Committee in this case may be described as having two aspects.

Firstly, the Inspector may be said to be acting as the 'agent' of the Parliamentary oversight committee in the sense that he or she is doing the 'hands-on' work to ensure the PIC's accountability. (i.e performs a similar role to that of the Parliamentary Commissioner.)

Secondly, the Parliamentary committee is acting as a conduit from the Inspector to Parliament and therefore the community at large. This aspect of Parliamentary oversight of such a law enforcement agency is of course seen as most desirable.

⁵⁵⁶ See s. 91 of the *Police Integrity Commission Act 1996* (NSW).

⁵⁵⁷ Inspector of the Police Integrity Commission, *Annual report for the year ended 30 June 2000*, Sydney, NSW, at 19.

⁵⁵⁸ This power is canvassed in greater detail in paragraph 14.12.3 below.

⁵⁵⁹ See s. 90(1)(g) of the *Police Integrity Commission Act 1996* (NSW).

⁵⁶⁰ The budget of the Inspector of the PIC falls within the operating expenses of the Ministry of Police.

⁵⁶¹ Note 557 at 7.

14.6.4 *The Commonwealth Parliamentary Joint Committee on the National Crime Authority (NCA) and the proposed Inspector-General of the NCA*

14.6.4.1 Parliamentary Joint Committee on the NCA

The National Crime Authority (NCA) was established under the *National Crime Authority Act 1984* (Cth) (NCA Act). It is a national body whose main aim, broadly speaking, is to investigate and prevent organised crime. In undertaking this function, the NCA often works cooperatively with other law enforcement agencies in Australia.

Part III of the NCA Act provides for a Parliamentary Joint Committee on the NCA (PJC on the NCA) to oversee the NCA. In addition, section 8 of the NCA Act provides for an Inter-Governmental Committee (IGC), the principal function of which is to refer matters to the NCA for investigation, though the IGC also performs an oversight role.

The establishment of the PJC on the NCA was unique in the history of the Commonwealth Parliament as, for the first time, a Parliamentary committee was charged by the Parliament with the responsibility of overseeing a statutory authority in the performance of its functions.⁵⁶²

The duties of the PJC on the NCA as set out in section 55(1) of the NCA Act include:

- to monitor and review the performance by the NCA of its functions;
- to report to Parliament on any matter pertaining to the NCA;
- to examine the annual reports of the NCA and report to Parliament on any matter arising out of any such report;
- to examine trends and changes in criminal activities, practices and methods and report to Parliament any changes that the Joint Committee considers desirable to the functions, structures and procedures of the NCA; and
- to inquire into any question in connection with the PJC's functions which is referred to it by the Parliament and to report thereon.

Some restrictions are placed on the PJC on the NCA in that it does not have the authority to investigate a matter relating to a relevant criminal activity or to reconsider the findings of the NCA in relation to a particular investigation.⁵⁶³

The Committee notes that there has been a history of conflict over accountability issues between the NCA and successive Joint Parliamentary oversight Committees. In 1985, in its First Report, the PJC on the NCA criticised the NCA for not providing sufficient information to the Committee.⁵⁶⁴

The PJC on the NCA noted that the two bodies had a difference of opinion as to the nature of their relationship and as to the extent of the Committee's power to seek information.⁵⁶⁵ This, the Joint Committee claimed, meant that it could not properly perform its duties as imposed by section 55(1) of the NCA Act.

Accordingly, the PJC on the NCA recommended to Parliament in that report that the Act be amended to provide that:

⁵⁶² Parliamentary Joint Committee on the National Crime Authority, *First Report*, Parliament of the Commonwealth of Australia, AGPS, 1985, Canberra, at 4.

⁵⁶³ See s. 55(2) of the *National Crime Act 1984*.

⁵⁶⁴ Note 562 at 5.

⁵⁶⁵ Note 562.

- the Joint Committee should have the power to do such things and make such inquiries as it thinks necessary for the proper performance of its duties; and
- where information sought by the Committee is of such a nature that its disclosure to members of the public could prejudice the safety or reputations of persons or the operations of law enforcement agencies then it should be made the subject of a separate report to the Chairman and Deputy Chairman of the Committee.⁵⁶⁶

In its conclusion the PJC on the NCA noted that unless section 55 of the NCA Act was amended along the lines proposed by the report:

*there is no point in retaining a Parliamentary committee to act as a watchdog over the National Crime Authority. Indeed, in the absence of the necessary amendment, the retention of the Committee would be a charade, as it provides the appearance but not the substance of the Authority's accountability to Parliament.*⁵⁶⁷

Whilst this recommendation was not implemented, following the tabling of the First Report consultation took place between the Commonwealth Minister, the Joint Committee, and the NCA. This resulted in the NCA supplying the Joint Committee with comprehensive briefings, in relation to which the Joint Committee noted in its Second Report its satisfaction with the amount of information, especially on organisational and administrative matters.⁵⁶⁸

With respect to non-current operational matters, the PJC on the NCA noted that the NCA had been commendably forthcoming and that it believed it would be able to carry out its statutory and Parliamentary duties should the NCA continue to provide the appropriate information.⁵⁶⁹

The PJC on the NCA concluded in that Second Report that:

*At this stage it is neither possible nor desirable for the Committee to make definitive judgement as to the efficacy of the Authority's operations, however, it believes that its current relationship with the Authority will allow it to formulate such a judgement in due course.*⁵⁷⁰

Issues related to accountability of the NCA were again canvassed by the PJC on the NCA in its comprehensive 1991 report *Who is to guard the guards?* A number of relevant observations can be made about that report.

Firstly, the PJC on the NCA considered the suggestion as to whether, in addition to the Committee, other agencies should have a role in resolving individual complaints against NCA officers. This was on the basis that the Committee considered that the current mechanism by which individual complaints against the NCA were investigated and resolved needed to be improved. The PJC on the NCA stated:

The Committee considers that the mechanism by which individual complaints against the Authority are investigated and resolved needs to be improved. The Committee lacks the time and the investigative staff necessary to deal adequately with individual complaints. Moreover, the most effective way of dealing with some individual complaints would be for the investigator to visit the Authority and inspect all the relevant files. This mode of investigation is difficult for

⁵⁶⁶ Note 562 at xiii.

⁵⁶⁷ Note 562 at 23.

⁵⁶⁸ Parliamentary Joint Committee on the National Crime Authority, *Second Report*, Parliament of the Commonwealth of Australia, AGPS, 1986, Canberra, at 4.

⁵⁶⁹ Note 568 at 5.

⁵⁷⁰ Note 568.

*a Committee.*⁵⁷¹

On the basis that the PJC on the NCA did not think that there would be sufficient numbers of complaints to justify the establishment of a new agency, it finally recommended that the *Inspector-General of Intelligence and Security be given jurisdiction to investigate complaints against the Authority, its staff and those seconded to work for it.*⁵⁷²

Secondly, canvassed in that report were uncertainties as to the proper interpretation of sections 51 and 55 of the Act which had resulted in disagreements between the two bodies as to whether the Authority was obliged to meet Committee requests for particular information.

Section 51 of the Act makes it an offence for a member of the NCA to release confidential information other than in connection with the performance of his duties.

Reference was made to a number of conflicting opinions sought by both the Joint Committee and the NCA in relation to the interpretation of these sections as well as two unsuccessful Private Members Bills which were designed to amend section 55 of the NCA Act. In this regard the Joint Committee recommended that certain amendments be made to both sections.⁵⁷³

These recommendations were subsequently not implemented and in a further report in October 1994 the Joint Committee again drew Parliament's attention to a number of accountability issues, including the lack of an adequate complaints mechanism.

14.6.4.2 Proposed Inspector-General of the NCA

In its most recent report on its review of the NCA, titled *Third Evaluation of the National Crime Authority*, tabled in April 1998, the PJC on the NCA reiterated the problems expressed by the previous PJCs on the NCA in efforts by successive Committees to monitor and review the NCA.

The PJC on the NCA noted:

*Much has been written about the appropriateness of the system of Parliamentary supervision of the NCA over its 13 year history. The PJC notes, more in frustration than despair, that nothing has changed to regularise a situation which has long been recognised as inadequate.*⁵⁷⁴

The PJC on the NCA concluded that a lack of access to information about the operations of the NCA was impeding its ability to provide an appropriate level of supervision, and noted:

*The PJC wants to make it clear that the status quo is unacceptable. It must either go forward to a position of genuine scrutiny of the operations of the NCA or it may as well cease to exist.*⁵⁷⁵

The PJC's report was also critical of the absence of a mechanism for investigating the legality of the NCA's operations.

The PJC on the NCA summarised its position as follows:

⁵⁷¹ Parliamentary Joint Committee on the National Crime Authority, *Who is Guarding the Guards: An evaluation of the National Crime Authority*, Parliament of the Commonwealth of Australia, AGPS, 1991, Canberra, at 131.

⁵⁷² Note 571 at 135.

⁵⁷³ It also worthwhile to note that in relation to that inquiry, the IGC submitted that the Committee should be abolished and replaced by a Judicial Audit Model.

⁵⁷⁴ Parliamentary Joint Committee on the National Crime Authority, *Third Evaluation of the National Crime Authority*, Parliament of the Commonwealth of Australia, AGPS, 1998, Canberra, at 159.

⁵⁷⁵ Note 574 at 168-9.

Despite the best efforts of the current PJC, it has encountered a similar range of problems in its efforts to monitor and review the operations of the Authority as those reported by its predecessors...The PJC also wishes to stress that the current Authority has always cooperated with it to the fullest extent and has never sought to use sections 51 or 55 as grounds for not providing it with requested material. The NCA also provides the PJC with a comprehensive quarterly report of its operations which, because of their sensitivity, the PJC has treated with appropriate secrecy. However, in recognition of the constraints on its role, the PJC has exercised restraint in what respects it has sought advice from the NCA and it remains concerned that there have been issues it has not been able to resolve because of the statutory constraints....As currently structured, the PJC is simply not able to be effective in the watchdog role for which it was intended....The current PJC, like its predecessors, is adamant that there is an important role for a bi-partisan Parliamentary committee to conduct genuine scrutiny over the operations of the NCA, especially in relation to the use of its special coercive powers, to protect the public from their abuse or misuse....

*Information is the life blood of accountability. Accordingly, the PJC must be given the capacity to be able to obtain from the NCA such information of substance as it requires to serve as a basis for the monitoring and review role required of it by the Parliament. Without this capacity the PJC finds itself in the position enunciated in its First Report of November 1985: a charade, having little more oversight authority of the NCA than would a standard Parliamentary standing committee. The PJC wants to make it clear that the status quo is unacceptable. It must either go forward to a position of genuine scrutiny of the operations of the NCA or it may as well cease to exist....*⁵⁷⁶

The PJC's report noted that unlike ASIO, ASIS and the other intelligence and security agencies, there currently was no provision for an Inspector-General of the NCA.

Accordingly, the PJC on the NCA recommended that:

*the Inspector-General of Intelligence and Security be designated as the Inspector-General of the National Crime Authority and be given responsibility for overseeing the operations of the National Crime Authority in respect of complaints made against the actions of all its officers, including seconded police.*⁵⁷⁷

...

*The Inspector-General for the NCA which the PJC is recommending in Chapter 6 be created for the purpose of examining complaints made against the NCA (who will have the authority to look behind the curtain of NCA operational secrecy), would be ideally placed to assist the PJC's efficient functioning by acting as the investigatory arm of the PJC and report to it in generalised terms on its findings.*⁵⁷⁸ (Underlining added.)

The PJC notes that this recommendation was intended to remedy some serious and longstanding flaws in the current system of Parliamentary supervision of the NCA in that:

*For too long the existence of the PJC has given an illusion of scrutiny of the NCA which has been basically unfulfilled in practice, largely as a result of deficiencies in the statutory model initiated by the Senate in 1984. **The PJC wishes to stress its strongly held view that, should its recommendations in this important respect not be accepted by the Government, the PJC should be abolished. It could then be replaced by a joint standing committee on Commonwealth law enforcement arrangements, which would not have direct oversight***

⁵⁷⁶ Note 574 at 168-170.

⁵⁷⁷ Note 574 at 186.

⁵⁷⁸ Note 574 at 170.

*responsibility for the NCA.*⁵⁷⁹

To date, no statutory amendments have been made to implement the PJC's recommendation to create an Inspector-General of the NCA.

14.6.5 The Western Australian Parliamentary Joint Standing Committee on the Anti-Corruption Commission (ACC) and the proposed Parliamentary Inspector of the ACC

14.6.5.1 Background

The WA Anti-Corruption Commission (ACC) was established in 1996⁵⁸⁰, essentially as a name change for the already existing statutory authority, the Official Corruption Commission (OCC) which was revamped and strengthened with new functions.

The ACC has evolved out of a number of reviews of the OCC over a period years. These reviews included the reports of two Legislative Assembly Select Committees established in 1991 and 1992 respectively to inquire into the Official Corruption Commission Act (OCC Act), and the effectiveness of existing anti-corruption mechanisms in Western Australia was also considered in the 1992 Report of the Western Australian Royal Commission into Commercial Activities of Government and other Matters (the WA Royal Commission) and Report No. 2 of the Commission on Government (COG) handed down in 1995.

The outcome of this process has seen the strengthening of provisions in Western Australia for combating corruption within the public sector.

The ACC is a much smaller organisation than some of its counterparts in Queensland and NSW.

14.6.5.2 Parliamentary Joint Standing Committee on the ACC

In line with the recommendations of the Legislative Assembly Select Committee on the OCC Act in particular, but also those made by the WA Royal Commission and COG, a Joint Parliamentary Committee was established in 1997 to oversee the operation of the ACC (the JPC on the ACC).

14.6.5.3 Proposed Parliamentary Inspector of the ACC

The JPC on the ACC examined the ACC's operational accountability in 1998. In its report on its review, the JPC on the ACC acknowledged that 'independence and operational integrity are necessary for the effective functioning of the ACC', but that 'because of the nature of powers it may exercise, the ACC must be accountable for its operations'.⁵⁸¹

The PJC on the ACC concluded that there was a significant gap in the accountability of the ACC:

At present there is no continuing, independent mechanism through which the ACC's operations can be audited. Apart from resort to judicial redress of grievances, there is no mechanism for ensuring that the powers of the ACC are exercised lawfully. Nor is there authority for reviewing the appropriateness of operational procedures, or for addressing complaints against the ACC or its officers.

The lack of independent scrutiny is a significant gap in accountability. If a mechanism is not

⁵⁷⁹ Note 574 at xxi.

⁵⁸⁰ Via 1996 amending legislation to the *Official Corruption Commission Act 1988*.

⁵⁸¹ Parliamentary Joint Standing Committee on the Anti-Corruption Commission, *Report on the Operational Accountability of the Anti-Corruption Commission and the protection of rights under the Anti-Corruption Commission Act 1998*, Report No. 4, Parliament of Western Australia, 1998, Perth, at 3.

established through which the operations of the ACC can be fully and independently scrutinised the ACC will remain vulnerable to criticism that it functions as a ‘star chamber’ and that complaints about the fairness of its procedures or the conduct of its officers cannot be answered.⁵⁸²

After examining similar agencies and oversight mechanisms operating in New South Wales and Queensland, the PJC on the ACC concluded that:

The only mechanism presently existing through which the ACC may be accountable for its operations is the Commission itself.⁵⁸³

The JPC on the ACC recommended that:

...the most appropriate way to provide for the operational accountability of the ACC is to establish an independent office with extensive powers to –

- *audit the operations of the ACC;*
- *investigate complaints against the ACC or its officers; and*
- *evaluate the effectiveness and appropriateness of the ACC’s procedures.⁵⁸⁴*

To achieve these ends, the PJC on the ACC recommended the creation of the Office of Parliamentary Inspector of the Anti-Corruption Commission. It recommended that such an office should have full access to the operational files and the staff of the ACC, and be established in such a way as to protect the operational integrity of the ACC and the confidentiality of witnesses and informants.⁵⁸⁵ The Parliamentary Standing Committee would also be empowered to direct the proposed Parliamentary Inspector of the ACC to undertake an audit or inquiry.⁵⁸⁶

The JPC on the ACC referred with approval to the Queensland model of the Parliamentary Commissioner, in stating, in part that:

... the Inspector of the ACC be an officer of the Parliament appointed by the Governor on the recommendation of the Committee, thereby providing a direct connection to the Committee, and through the Committee to Parliament. Drawing in part on the Queensland model of a Parliamentary Criminal Justice Commissioner, the further recommendations of the Committee regarding the reports of the Inspector and the capacity of the Committee to direct the Inspector to undertake an audit or inquiry, are intended to reflect the overarching supervisory function of the Committee and the principle that the Inspector be responsible to Parliament.⁵⁸⁷

The Committee’s recommendations for the creation of a Parliamentary Inspector have not yet been implemented.

⁵⁸² Note 581.

⁵⁸³ Note 581 at 10.

⁵⁸⁴ Note 581 at 4.

⁵⁸⁵ Note 581.

⁵⁸⁶ Note 581 at 12-13.

⁵⁸⁷ Note 581 at 13.

14.6.6 The NSW Parliamentary Joint Committee on the Independent Commission Against Corruption (ICAC) and the proposed Inspector of the ICAC

14.6.6.1 Parliamentary Joint Committee on the ICAC

The Independent Commission Against Corruption (ICAC) was established by the *Independent Commission Against Corruption Act 1988* (NSW) (the ICAC Act). In addition to investigating 'corrupt conduct', the ICAC is also charged with promoting and implementing corruption prevention strategies. With the establishment of the Police Integrity Commission in 1996 responsibility for investigating corruption in the NSW Police Service was removed from the ICAC.

Under Part 7 of the ICAC Act, a Parliamentary Joint Committee, to be called the Committee on the Independent Commission Against Corruption (the JPC on the ICAC), is established to monitor and review how the ICAC performs its functions.

Provision for an Operations Review Committee (ORC) is made under Part 6 of the Act. The ORC is charged with advising the ICAC on whether to continue or discontinue an investigation and any other matters which may be referred to it by the Commissioner.

The functions of the JPC on the ICAC are set out in section 64(1) of the ICAC Act as follows –

- (a) to monitor and review the exercise by the Commission of its functions,*
- (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,*
- (c) to examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,*
- (d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission,*
- (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.*

Under section 64(2) the JPC on the ICAC is not authorised –

- (a) to investigate a matter relating to particular conduct, or*
- (b) to reconsider a decision to investigate, not to investigate or discontinue investigation of a particular complaint, or*
- (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.*

In taking evidence the JPC on the ICAC is empowered by section 69 to send for persons, papers and records, but evidence must be taken in public, subject to section 70, which allows that evidence may be taken in private where it relates to 'a secret or confidential matter'.

14.6.6.2 Proposed Inspector of the ICAC

The JPC on the ICAC has recently reviewed the accountability of the ICAC. In its report on its review, tabled in May 2000, the JPC on the ICAC concluded that ‘improvements should be made to the ICAC’s accountability regime’.⁵⁸⁸

In its report, the JPC on the ICAC referred with approval to the following comments made by Justice James Wood, in his report, about the need for accountability in recommending the establishment of the PIC to investigate police corruption in New South Wales:

*There is always a risk that an agency which is heavily committed to covert investigations, reliant on informants, and possesses powers which are both coercive and of a kind which might involve substantial infringements of rights of privacy, may overstep the mark. For this reason it is important that there be a ‘watchdog’ which is able to respond quickly and effectively to complaints of misconduct and abuse of power, without risking secrecy of operations, or confidentiality of informants and witnesses.*⁵⁸⁹

The JPC on the ICAC expressed concern that there currently exists no such oversight in the case of the ICAC:

*It is the Committee’s opinion that the extraordinary coercive powers possessed by the Independent Commission Against Corruption necessitate a corresponding exceptional level of accountability. The Committee believes that the Commission’s current accountability regime does not provide an appropriate measure of oversight.*⁵⁹⁰

In its report on its review, the JPC on the ICAC referred to evidence given by the Commissioner of the ICAC, Ms Moss, acknowledging there is a gap in the area of accountability and supporting the creation of an Inspector of the ICAC:

... I believe it is important for an organisation such as the Independent Commission Against Corruption [ICAC], an organisation that has been given such wide and special powers, to be subject to effective and efficient accountability ...

... Quite clearly, at present with just the ORC, there is a gap in the area of accountability, namely the scrutiny of the more detailed operational side of the ICAC - the appropriateness of its systems, how it handles information and assembles it, can the system be abused, etc; and the independent handling of complaints against the Commission or staff. An inspector model would fill that gap.

*...I think having an inspector for an organisation like the ICAC with its fairly special powers is appropriate.*⁵⁹¹

The JPC on the ICAC concluded that having reviewed the various models in operation around the country, it noted that its recommendation to establish an Inspector of the ICAC:

...would bring the ICAC into line with other agencies - such as the Police Integrity Commission, the Commonwealth intelligence and security agencies, the CJC in Queensland, the National Crime Authority and the Western Australian Anti-Corruption Commission - where

⁵⁸⁸ Parliamentary Committee on the Independent Commission Against Corruption, *The ICAC: Accounting for Extraordinary Powers*, Report No. 2/52nd Parliament, Parliament of New South Wales, 2000, Sydney, at 61.

⁵⁸⁹ Royal Commission into the New South Wales Police Service, *Interim Report*, (Commissioner the Hon JRT Wood), 1996, Sydney, at 95.

⁵⁹⁰ Note 588 at 60.

⁵⁹¹ Note 588 at 39.

*a similar level of external oversight is either operational or has been recommended.*⁵⁹²

In recommending the creation of an office of Inspector of the ICAC, the NSW JPC on the ICAC concluded, in part:

*It is the Committee's opinion that the extraordinary coercive powers possessed by the Independent Commission Against Corruption necessitate a corresponding exceptional level of accountability. The Committee believes that the Commission's current accountability regime does not provide an appropriate measure of oversight.*⁵⁹³

The JPC on the ICAC noted in particular that:

*Since its establishment in 1988, the Commission has been entrusted with additional covert powers, such as controlled operations, telecommunications interception and assumed identities. History has shown that it is problematic to authorise an agency to use covert powers without satisfactory accountability.*⁵⁹⁴

The JPC on the ICAC recommended:

the Inspector model which currently applies to the New South Wales Police Integrity Commission and the Inspector-General of Security and Intelligence as the most appropriate and suitable model available for the NSW ICAC.

14.6.7 Conclusions: comparative study

Conclusion 95

Having reviewed the various models in operation around Australia, it is clear that oversight by Parliamentary committees of anti-corruption and law enforcement agencies, of itself, has proved less than optimal. Parliamentary committee oversight of agencies which perform a similar role to that of the CJC is either presently supplemented by the creation of a further external oversight mechanism or such a mechanism has been recommended.

14.7 Abolition of the office of the Parliamentary Commissioner?

14.7.1 Introduction

The Committee has not received any submission, either as part of this review or otherwise, including from the CJC, suggesting that the office of the Parliamentary Commissioner should be abolished.

The Committee notes that the CJC and the Office of the Parliamentary Commissioner are engaged in litigation over their respective rights and responsibilities.

The Courier-Mail newspaper has suggested that the office should be abolished.

This section will examine what the value of the office has been and whether the office should be retained, and if so, what changes to the current model are necessary or desirable.

⁵⁹² Note 588 at 60.

⁵⁹³ Note 588 at 37.

⁵⁹⁴ Note 588 at 37-38.

14.7.2 *The Courier-Mail newspaper - call for abolition of the office of Parliamentary Commissioner*

The Courier-Mail newspaper editorial of 26 February 2000 titled “Ms Dick’s position should be abolished”, stated in part:

Just what she has achieved, the public cannot judge. She is not required to give the public or the Parliament an annual report.

...

In his report, Mr Fitzgerald recognised that journalists need sources of information if the media is properly to do its job of exposing and preventing corruption and maladministration, and suggested it should be more vigilant. He recognised the need for the media to carry out this function and the need for whistleblowers to expose problems. But the media cannot do its job if journalists cannot protect their sources. That is the reason for the ethical rule. The pursuit by officials, police and other authorities of the source of leaks is normally fruitless. But more importantly, it is a misdirected use of resources. In most cases, the authorities ought to direct their investigations at what the leak has exposed, rather than concentrating on who provided it to a particular journalist. For example, the CJC wasted a large sum of money establishing the Operation Wallah inquiry to find out who had leaked material showing the involvement of (then-senator) Graham Richardson with Gold Coast prostitutes and others. It should have concentrated its efforts on following through with its investigations. And it was in the public interest that the fact and substance of the CJC investigation should have been exposed to public gaze. The CJC's leak investigations were misconceived....

Ms Dick is empowered to compel journalists to appear before her to seek their sources. She is also empowered to issue orders preventing journalists from even reporting, or telling anyone, that they have been forced to testify. The Courier-Mail believes the law that gives her such power is a disgrace to a democratic country. ... the media should not be subject to the Parliamentary Commissioner's Star Chamber... (Underlining added.)

14.7.3 *Response by the Australian Council for Civil Liberties*

Mr Terry O’Gorman, the President of the Australian Council for Civil Liberties, and Vice-President of the Queensland Council for Civil Liberties, referred to *The Courier-Mail*’s editorial, in a paper he delivered to a seminar held by the Western Australian Joint Parliamentary Committee on the Anti-Corruption Commission (ACC) in May 2000:

[The Parliamentary Commissioner’s] work had not generated much controversy until ... she published a report, as her legislation required her to do, into a complaint by an ex Queensland police officer, now a Queensland parliamentarian⁵⁹⁵, that the CJC had publicly leaked ... details of what was supposedly being investigated by the CJC against the ex police officer ...

[The Parliamentary Commissioner], as she was obliged by her statute to do, was told by the CJC Parliamentary Committee (on which the complaining ex police officer, now Parliamentarian, sat) to investigate the leak complaint. She committed the cardinal sin of actually doing what her statute obliged her to do. She called in, apparently, some Courier-Mail journalist who had printed stories of what the CJC was doing in investigating the original complaint that the ex police officer, now Parliamentarian, was boasting at Government House about some police assault suspects.

For her sins she was the subject of a Courier-Mail Editorial 2 months ago which self righteously proclaimed that she had no business asking journalists questions. Her statutorily mandated questioning of journalists behind closed doors was described by The Courier-Mail as

⁵⁹⁵ This Parliamentarian referred to is no longer a member of Parliament.

a misdirected use of resources.

The Courier-Mail made the now familiar claim of a number of journalists of ‘one law for them and another for the rest of us’ in pronouncing: -

‘The media should not be subject to the Parliamentary Commissioner’s Star Chamber’.

The Courier-Mail went on to demand the position of Parliamentary Commissioner be abolished!

I tell you this not to rubbish some journalists’ claim to protection from all sorts of scrutiny while they preciously demand scrutiny of everything and everyone else, but rather to point out that a Courier-Mail Editorial, written in self justificatory pique, does not mean the new Queensland Parliamentary Commission/Inspector model is not working.

Rather, in my view, it means the opposite. (Underlining added.)⁵⁹⁶

14.7.4 Analysis and comment

The Committee endorses the comments made by Mr O’Gorman. The Committee concedes that the Fitzgerald Report acknowledged that the media have ‘played a part in exposing corruption’ and indeed, ‘two media organisations contributed to the setting up of [the Fitzgerald] inquiry’. However, Fitzgerald also said:

*Unfortunately it is also true that parts of the media in this State have over the years contributed to a climate in which misconduct flourished. Fitting in with the system and associating with and developing a mutual dependence with those in power have had obvious benefits.*⁵⁹⁷

The Committee notes that *The Courier-Mail’s* ‘special interest’ in its stand against the office of the Parliamentary Commissioner was revealed in subsequent articles in *The Courier-Mail* including:

- “Julie Dick’s Star Chamber is above the law”, on 26 July 2000, written by David Solomon, in which he stated, in part:

*The Courier-Mail has to declare an interest in these proceedings. The inquiry the CJC was attempting to challenge was an investigation by Ms Dick into the source of a report in The Courier-Mail concerning the fact that independent MP Jack Paff had been questioned by the CJC about remarks he had made impugning various police.... If the office of **Parliamentary commissioner** is to be retained and that is itself an important issue it must be made subject to the law and the jurisdiction of the courts.*

- “Call the police. I am a criminal and I am about to confess”, on 29 July 2000, written by Matthew Franklin, in one of a series of articles about government secrecy, in which he referred, in part, to an investigation undertaken by the Parliamentary Commissioner in respect of an alleged leak of confidential information from the CJC:

*I know that at least three reporters who work for The Courier-Mail have been legally compelled to give sworn evidence to Julie Dick, Queensland’s **Parliamentary Commissioner**, about the sources of reports they wrote about the Criminal Justice Commission. This is what we have come to in Queensland, a place of paranoia and foolishness where journalists face increasing impediments to performing their duties*

⁵⁹⁶ Terry O’Gorman, *Submission to the Joint Standing Committee on the Anti-Corruption Commission (WA) – Public Hearing into the Effectiveness of the Anti-Corruption Commission*, 5 May 2000, Perth, at 7.

⁵⁹⁷ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC), 1989, Brisbane, at 185.

*which have proven time and again to be in the public interest. ... **Parliamentary Commissioner** Julie Dick has the unfettered right to order journalists and anyone else to give information in secret, without any rights, including the right to tell anyone about their experience. Dick's position was created so she could act as a kind of investigator assisting the **Parliamentary** criminal justice committee (PCJC) which acts as Parliament's watchdog over the CJC. Her powers are extensive and this week the Supreme Court ruled that they were not subject to judicial review.*

The Courier-Mail acknowledged its ‘special interest’ in its stance on the office of Parliamentary Commissioner in a subsequent Editorial of 19 December 2000 titled “No need for Parliamentary Commissioner”.

The Courier-Mail has a special interest in the office of Parliamentary Commissioner and the way it is conducted. Some of its investigations have been into the sources of information we have published. They were conducted in a way that caused great concern. Attempts to prevent whistleblowing are not in the public interest. That argument may not appeal to the Government. However the review of the office of Parliamentary Commissioner that has been going on for about a year should demonstrate that the office has produced no apparent public benefit to justify its annual cost of more than \$650,000.

Finally, the point is made by *The Courier-Mail* that the establishment of the Parliamentary Commissioner was a continuation of the Connolly / Ryan Inquiry and seen by some as a continuation of the Coalition vendetta against the CJC. Whatever the intention of the government of the day, one critical fact is sometimes forgotten which must not be overlooked. **The creation of the office of Parliamentary Commissioner was a unanimous recommendation of a bipartisan Parliamentary Committee.** The unanimous recommendation by the third PCJC was a response, in part, to community concern calling for greater accountability of the CJC to its Parliamentary watchdog. These concerns were expressed in numerous Editorials and other articles in *The Courier-Mail*, including:

- an editorial of 13 May 1997 titled “How many leashes on the watchdog?” in which *The Courier-Mail* referred to the third PCJC’s plan to increase supervision of the CJC, and stated, in part:

[The PCJC] has told the Parliament that its own supervision of the CJC should continue but that the PCJC needs new powers, and it needs the assistance of a judicial or Parliamentary commissioner to conduct detailed investigations of the CJC. The CJC, in its submission to the Connolly-Ryan inquiry, also floated the idea (though with somewhat less enthusiasm) of an independent person with the power to conduct reviews of the CJC.

The CJC suggested there should be an inspector-general, with a role similar to that of the officer of that name who keeps an eye on the Australian Security Intelligence Organisation, who could supplement the work of the PCJC.

...

Behind both proposals there is recognition of the fact that the Parliamentary accountability model has not been successful.

- an editorial of 5 July 1997 titled “Public money no object at CJC Inquiry” in which *The Courier-Mail* noted that it had ‘long advocated that the CJC's accountability and management need to be improved’;
- an editorial of 9 August 1997 titled “Time for the Government to look ahead” in which *The Courier-Mail* noted that ‘the proper mechanism for regulating the CJC is the Parliamentary

Criminal Justice Committee' and 'if it is unable effectively to fulfil its supervisory function, it is up to the Parliament to redress the situation';

- an editorial of 27 August 1997 titled "State needs to reinforce Crime fighting agencies" in which *The Courier-Mail* conceded that there was a need to 'provide for proper accountability' and that meant 'a strengthened role for bi-partisan Parliamentary committees, possibly assisted by another independent watchdog';
- an article of 17 September 1997 titled "Back to basics for the CJC", written by David Solomon, in which *The Courier-Mail* referring to the creation of the Parliamentary Criminal Justice Commissioner, stated, in part:

He or she will give the present Parliamentary Criminal Justice Committee an effective means of monitoring what the CJC and crime commission do. The Commissioner's ability to penetrate the secrets of the organisation will make them accountable in a way the CJC has never been.

- an Editorial of 9 October 1997 "Major flaws in proposals to control CJC" in which *The Courier-Mail*, in referring to reforms to the CJC stated, in part:

While some of his proposals involve sensible reforms, others would undermine the independence of the CJC and subject it to control by politicians. The more commendable proposals include removal from the CJC of responsibility for the Misconduct Tribunal, which sits in judgment on disciplinary charges brought by the CJC. Another advance is the creation of a new Parliamentary Commissioner to investigate charges against the CJC, with extensive powers to examine CJC files and question its officers. A third advance is the extension of the CJC's powers to investigate complaints in the prison system - although unfortunately it will be limited to public, not privatised, prisons. Less desirable is the Government's intention to make the CJC even more secretive.

Finally, *The Courier-Mail* has not however, reserved all its criticism for the Parliamentary Commissioner. In recent years, *The Courier-Mail* has been vehemently critical of the CJC. More recent examples include:

- An editorial of 26 February 2000 titled "Ms Dick's position should be abolished", in arguing that the pursuit of 'leaks' is fruitless, *The Courier-Mail* suggested that the CJC's Wallah Inquiry to find out who had leaked material concerning (then-Senator) Graham Richardson, was misconceived and wasted a large sum of money.

The pursuit by officials, police and other authorities of the source of leaks is normally fruitless. But more importantly, it is a misdirected use of resources. In most cases, the authorities ought to direct their investigations at what the leak has exposed, rather than concentrating on who provided it to a particular journalist. For example, the CJC wasted a large sum of money establishing the Operation Wallah inquiry to find out who had leaked material showing the involvement of (then-senator) Graham Richardson with Gold Coast prostitutes and others. It should have concentrated its efforts on following through with its investigations. And it was in the public interest that the fact and substance of the CJC investigation should have been exposed to public gaze. The CJC's leak investigations were misconceived.

- Terry Sweetman, in his article of 27 August 2000, titled "Is the watchdog worth feeding" apparently questions whether the CJC itself has served a useful purpose.

...since its early frenzy of travel rort busting, it has tended to go all weak at the knees when politicians are around and has become little more than a nuisance under the foot of public administration. And it seems to spend an inordinate amount of time and resources in schoolyard pushing and shoving matches with the media, its Parliamentary

watchdogs and the Parliamentary Commissioner. The post-Fitzgerald public could understandably wonder whether it really is worth all the money and attention that is lavished on it.

14.8 The case for retention of the office of Parliamentary Commissioner

14.8.1 Submissions on the merit of an additional external oversight mechanism

14.8.1.1 CJC submission to the former Connolly / Ryan Inquiry – April 1997

The CJC, in its 1997 submission to the former Connolly / Ryan Inquiry, acknowledged that an additional external accountability mechanism similar to the Inspector-General of ASIO, which would report to Parliament through the PCJC may be desirable.

Given the criticism that the PCJC lacks the expertise and time to conduct the necessary scrutiny of the CJC, a possible remedy would be to appoint an expert body to conduct detailed audits of the CJC. The Inspector-General model, which applies to ASIO, may provide a useful precedent...

The CJC sees some value in the concept of an Inspector-General, provided that proper safeguards were in place to ensure that a truly independent person was appointed. As is required for the appointment of the CJC's Chairperson under section 11 of the Act, it would be appropriate to require the support of the majority of members of the various political parties represented on the PCJC for the appointment of an Inspector-General.

...

The Inspector-General could have access to sensitive information which is not available to the PCJC, namely information on current operations. The CJC suggests that it would be appropriate for the Inspector-General to report to Parliament through the PCJC, and that there should also be provision for the CJC to report directly to the Inspector-General.⁵⁹⁸

14.8.1.2 CJC submission to the third PCJC's three yearly review – March 1998

The CJC, in its submission to the third PCJC's three yearly review, reiterated that 'an additional accountability mechanism similar to a Inspector-General, who would report to Parliament through the PCJC, may be desirable'.

The CJC is not opposed, in principle, to the concept of a Parliamentary Commissioner. Indeed, we proposed a similar concept by way of an Inspector-General. We have always fully accepted that we must be properly accountable for our activities and operations.⁵⁹⁹

However, The CJC went on to outline a number of concerns about the then proposed changes to the legislation, including the scope of then proposed powers that were to be given to the Parliamentary Commissioner and about the lack of safeguards to ensure the true independence of that office.

⁵⁹⁸ CJC, *Criminal Justice Commission Submission to the Commission of Inquiry into the Effectiveness of the Criminal Justice Commission*, 1997, Brisbane, at 16.

⁵⁹⁹ CJC, *CJC Submission to the Three Yearly PCJC Review of the Criminal Justice Commission*, 1998, Brisbane, at 15-16.

14.8.1.3 CJC submission to the Joint Parliamentary Committee on the NSW ICAC – February 2000

The Joint Parliamentary Committee on the Independent Commission Against Corruption (ICAC), in its Report No.2, titled *The ICAC: Accounting for extraordinary powers*, tabled in May 2000, noted in part:

The Criminal Justice Commission has publicly expressed its support for the concept of the Parliamentary Commissioner. In speaking to the Committee, the Chairperson of the CJC advised:

'I think that any oversight has to be healthy. Obviously, it always concentrates one's attention if you know that there is someone else looking over your shoulder when you are doing something. ... The advantage of a Parliamentary Commissioner is that there is someone who has access to everything - all the holdings - and one knows that nothing is secret from that process'.⁶⁰⁰

Notwithstanding his support for the oversight provided by the Parliamentary Commissioner, Mr Butler SC considered that there were some practical problems with the way the Parliamentary Commissioner model operates.⁶⁰¹

14.8.1.4 CJC submission to this review – August 2000

The CJC, in its submission to this review, has submitted, in part:

Before the Office of the Parliamentary Criminal Justice Commissioner existed, the CJC made it clear that it was not opposed, in principle, to the concept of an 'Inspector-General' role being introduced to facilitate the CJC's accountability. In particular, the CJC supported the concept of an independent officer who could conduct audits of CJC files and scrutinise sensitive information not made available to the PCJC.⁶⁰²

The CJC goes on to outline several concerns about perceived problems with the way in which the office was structured, and which had been made by the CJC in several submissions to the then Attorney-General.

14.8.1.5 Address by the CJC Chairperson to the Brisbane Institute – October 2000

The Chairperson of the CJC, Mr Butler SC, in a paper delivered to the Brisbane Institute on 24 October 2000, has acknowledged his support for the:

...expanded oversight role of the all-party Parliamentary Criminal Justice Committee through the creation of a Parliamentary Commissioner with Commission of Inquiry powers who, at the direction of the Parliamentary Committee, may conduct audits and investigate complaints against the CJC. I consider that implementation of an oversight commissioner or inspector role for the CJC was timely. The CJC must never be afraid of scrutiny. We welcome oversight. The CJC's current legal disagreement with a report by the Parliamentary Commissioner should not be seen as an attack on scrutiny or indeed the role of the Parliamentary Commissioner...⁶⁰³

⁶⁰⁰ Note 588 at 51-52.

⁶⁰¹ Note 600 at 52.

⁶⁰² CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane, at 57.

⁶⁰³ Brendan Butler SC, Chairperson, CJC, 'Re-Shaping the CJC: Promoting integrity in the public sector', address to the Brisbane Institute, 24 October 2000, at 2.

14.8.1.6 Submission from the former Parliamentary Commissioner, Ms Dick SC

The former Parliamentary Commissioner, Ms Dick SC (as she then was), in her submission to this review, outlined what she considered to be the value of the office of Parliamentary Commissioner:

There is no doubt that the Office of the Parliamentary Criminal Justice Commissioner is of value in ensuring the accountability of the CJC.

The number of investigations, which have been forwarded over the past 2½ years, is an indication of the value of the office. If the Committee had been placed in the position of conducting such a large number of investigations, the Committee's workload would have been significantly increased and considerable strain would have been placed on the Committee's resources.

Further, the opportunity to forward investigations to the Commissioner for independent investigation has allowed the Committee to maintain a positive and efficient working relationship with the CJC. There is no doubt that when the Commissioner is tasked to investigate and report in respect of complaints about the CJC, a tension develops between the CJC and the investigator. The Committee has been able to avoid becoming directly involved in such tensions. This must serve to enhance the efficient conduct of other important business which is conducted between the Committee and the CJC.

It is also clear from the reports of the Joint Standing Committee on the Anti-corruption Commission in Western Australia (ACC) and the Parliamentary Committee on the Independent Commission Against Corruption in New South Wales (ICAC), that those committees have recognised that independent scrutiny is a necessary requirement in the accountability process.

Whilst the Committee in Queensland has, unlike its counterparts in those two states, always had the responsibility to investigate complaints, Report No. 38 set out clearly the restrictions on the investigatory ability of the Committee. It should be noted that the investigations conducted by the Office of the Parliamentary Commissioner have included politically sensitive matters. The ability in the Committee to refer those matters to the Parliamentary Commissioner for investigation has avoided any allegation of improper political interference in the process.

Experience has shown that on a number of occasions the Commissioner has been able to conduct a timely investigation of complaints against the CJC and, in the end result to clear the CJC of any adverse findings. This avoids any allegation that the Committee is in league with the CJC and would undoubtedly have allowed the Committee to inform the complainant that an independent investigation had cleared the CJC.

The position of the Parliamentary Commissioner enhances the accountability process by providing a mechanism whereby investigations are not hindered by lack of access to CJC material or by a reluctance to take receipt of sensitive material from the CJC.

...

The present situation provides a mechanism whereby the proposition cannot be mounted that the accountability process has infected bi-partisan political interests. This is because any referral must be made either by unanimously or bi-partisan majority of the Committee for independent investigation.

It is also worth noting that all the investigations conducted to date in relation to alleged unauthorised disclosure of information by the CJC or its officers related to referrals in the first 18 months. The last referral for such an allegation related to an alleged disclosure in August 1999. It should not be assumed from that information that the allegations were proved or disproved. However, it seems that no allegations have been made for over twelve months. One explanation is that the vigorous investigations that have been conducted have caused steps to

*be taken at the CJC to avoid the opportunity for the making of such an allegation. Another possible explanation is that, if such disclosure were occurring, the investigations have deterred further such conduct.*⁶⁰⁴

14.8.1.7 Views of the Queensland Council for Civil Liberties

Mr O’Gorman, has expressed a strong view during his evidence at the public hearings conducted by the Committee as part of this review that the continued existence of the Parliamentary Commissioner is vital and any move to do away with it would be a retrograde step.

My view is that the office [of Parliamentary Commissioner] works very well. I noted with some interest that the Police Integrity Commission, which was set up in New South Wales after Wood, in fact, has a similar supervisory model and, according to Judge Urquhart, works well with absolutely no controversy at all.

*I would see the continued existence of the Office of Parliamentary Commissioner as being absolutely vital to keeping the CJC itself in check or, to put it perhaps more neutrally, to ensure that there is some external oversight over the CJC. Parliamentary committees simply cannot without the assistance of an investigator such as the Parliamentary Commissioner look at complaints against the CJC. Even legally qualified members cannot do it, because of the amount of time and resources that have to go into interviewing people and compiling reports. It is incapable of being done by a legally qualified member. I would see the existence of the Parliamentary Commissioner as being absolutely vital, and any move to do away with it would be retrograde. Indeed, in the Federal sphere the Australian Law Reform Commission, some four years ago, argued that there should be a similar oversight body with a bit of structural difference in respect of the NCA. Years afterwards and two decades after the NCA has been established Federally, there is no external oversight.*⁶⁰⁵

14.8.1.8 Evidence of Dr Tim Prenzler from Griffith University

Dr Tim Prenzler, from the School of Criminology and Criminal Justice Studies at the Griffith University, also supports the need to retain the office of Parliamentary Commissioner:

*I do think a Parliamentary oversight body such as the PCJC does need an investigative arm, or at least one person who can act for it in collecting information and conducting investigations. So in principle I am in favour of that. I think it is extremely unfortunate that it started off so badly. I know the ICAC oversight body is pushing for a similar addition to its powers. You have to have somebody who can go out there and do the leg work for you in investigations, to have some powers.*⁶⁰⁶

14.8.2 Effective accountability and oversight of the CJC

As noted above, Parliamentary committee oversight of anti-corruption and law enforcement agencies is not a novel concept. Parliamentary committees have now been established to oversight equivalent anti-corruption and law enforcement agencies by the Parliaments of the Commonwealth, New South Wales and Western Australia.

The Fitzgerald Report recognised the potential accountability vacuum for the CJC in that there might be matters dealt with by the CJC that, due to operational priorities, or methods or the subject

⁶⁰⁴ Parliamentary Criminal Justice Commissioner, *Submissions on the Three Yearly Review*, dated October 2000, Brisbane, at 2.

⁶⁰⁵ PCJC, Transcript of Public Hearing - Three Yearly Review of the CJC, 14-15 December 2000, Brisbane, at 49.

⁶⁰⁶ Note 605 at 81.

matter of its concern, may need to receive confidentiality and might not be appropriate for scrutiny by the Parliament.⁶⁰⁷

The Committee notes that the various Parliamentary watchdog Committee's have all expressed frustration and criticism, in varying degrees, at perceived gaps in the accountability of the agency they are charged with overseeing. As Mr O'Gorman points out in a recent paper to a seminar held by the Joint Standing Committee on the Anti-Corruption Commission in Western Australia:

*With the exception of [NSW Police Integrity Commission] (and this is probably because it has not been established long enough), each of these Commissions has almost continuously been dogged by what I would regard as justified criticisms of unaccountability.*⁶⁰⁸

The solution to these potential accountability gaps - the establishment of an independent Parliamentary Criminal Justice Commissioner - was a unanimous recommendation of the Parliamentary Criminal Justice Committee, and as noted above, was supported by the CJC, and indeed then by *The Courier-Mail*.

In its Report No. 38, which was tabled in May 1997, the third PCJC was firmly of the view that a Parliamentary Commissioner with special powers '*could provide a greater depth of scrutiny than is possible under the [then] present arrangements*'.⁶⁰⁹ The third PCJC had identified numerous deficiencies in the accountability of the CJC.

The third PCJC's view that such gaps then existed in the accountability of the CJC was however, not a revelation. Concerns regarding the accountability of the CJC to its watchdog Committee had long been expressed by successive PCJCs in reports to the Parliament. The third PCJC considered that the office of the Parliamentary Commissioner would remedy these accountability deficiencies.

The third PCJC noted that the Fitzgerald Report cautioned that the need for the CJC to be independent should not be confused with a desire by such an agency to become autonomous. The third PCJC considered that the creation of the Parliamentary Commissioner, together with the other parts of the reform package it had recommended, struck a careful balance between the independence of the CJC, and the need for the CJC to be more accountable to the people through the Parliament.

As noted above, the Commonwealth Parliamentary Joint Committee on the NCA, in its report on its *Third Evaluation of the National Crime Authority*, which recommended the creation of an office of Inspector-General of the NCA, concluded:

*Despite the best efforts of the current [Parliamentary Joint Committee] it has encountered a similar range of problems in its efforts to monitor and review the operations of the Authority as those reported by its predecessors...As currently structured, the [Parliamentary Joint Committee] is simply not able to be effective in the watchdog role for which it was intended.*⁶¹⁰

Further, as noted above, the Western Australian Joint Parliamentary Committee on the ACC, in its October 1998 report which recommended the creation of an office of Parliamentary Inspector, concluded:

The Committee has concluded that the most appropriate way in which the accountability gap can be filled is through the establishment of an independent office with powers to audit and

⁶⁰⁷ Note 597 at 309.

⁶⁰⁸ Note 596 at 1.

⁶⁰⁹ PCJC, *Report on the Accountability of the CJC to the PCJC*, Report No. 38, Legislative Assembly of Queensland, 1997, Brisbane, at 115.

⁶¹⁰ Note 574 at 168-169.

*review the operations of the ACC.*⁶¹¹

Further, as noted above, the NSW Joint Parliamentary Committee on the ICAC (NSW JPC on the ICAC) in its May 2000 report on its review of the ICAC, has concluded that ‘improvements should be made to the ICAC’s accountability regime’.⁶¹² In recommending the creation of an office of Inspector of the ICAC, the NSW JPC on the ICAC concluded, in part:

*It is the Committee’s opinion that the extraordinary coercive powers possessed by the Independent Commission Against Corruption necessitate a corresponding exceptional level of accountability. The Committee believes that the Commission’s current accountability regime does not provide an appropriate measure of oversight.*⁶¹³

14.8.3 Appropriate access by the Committee to confidential and sensitive information held by the CJC

Many of the functions of anti-corruption and law enforcement agencies are sensitive and do require a high degree of secrecy.

The provision of information to an oversight body lies at the heart of accountability. There is however, an inevitable tension between confidentiality requirements relating to operational and sensitive information held by an agency and the need for Parliamentary oversight committees to be sufficiently well informed to ensure that the agency is properly accountable.

This tension is described by the Parliamentary Joint Standing Committee on the NCA thus:

*... the objective of securing appropriate accountability has to be balanced against the need to meet other objectives, best served by some measure of secrecy. These include the need to ensure that premature publicity does not undermine the effectiveness of Authority investigations, and the need to safeguard individual privacy. The challenge is to achieve the correct balance when these objectives compete.*⁶¹⁴

The other dimension to this tension is summarised by the Parliamentary Joint Standing Committee on the ACC as follows:

*The Committee is, of course, made up of politicians and the perception will be, regardless of whether it is a justified one, that at some time the Committee, or parts of it, may allow a political agenda to become dominant.*⁶¹⁵

Parliamentary committee oversight of anti-corruption and law enforcement agencies has therefore largely been restricted to a process of *after the event* review, with access to the details of investigations once they cease to be operational.

In supporting its recommendation for the creation of the office of Parliamentary Commissioner, the third PCJC, in its Report No. 38, argued:

Effective oversight of the CJC requires the power to examine detailed and sensitive information including, in appropriate circumstances, current operational material. Having the power to appoint a Parliamentary Commissioner would rectify what the Committee sees as a major gap

⁶¹¹ Note 581 at 12.

⁶¹² Note 588 at 61.

⁶¹³ Note 588 at 37.

⁶¹⁴ Note 574 at 108-109.

⁶¹⁵ Parliamentary Standing Committee on the Anti-Corruption Commission, First Report, *Confidentiality and Accountability: Parliamentary Supervision of anti-corruption and/or law enforcement agencies in Australia*, Parliament of Western Australia, 1997, Perth, at 16.

in the current accountability arrangements in that the Committee is restricted in the material it is provided and can otherwise access.

As noted above, the Commonwealth Parliamentary Joint Committee on the NCA, in its April 1998 report which recommended the creation of an office of Inspector-General of the NCA, stated that:

*...the [Joint Parliamentary Committee on the NCA] must be given the capacity to be able to obtain from the NCA such information of substance as it requires to serve as a basis for the monitoring and review role required of it by the Parliament. Without this capacity, the [Committee] finds itself in the position enunciated in its First Report of November 1985: a charade, having little more oversight authority of the NCA than would a standard Parliamentary standing committee. **The [Committee] wants to make it clear that the status quo is unacceptable. It must go forward to a position of genuine scrutiny of the operations of the NCA or it may as well cease to exist.***⁶¹⁶

Further, the Western Australian Joint Parliamentary Committee on the ACC, in its October 1998 report which recommended the creation of an office of Parliamentary Inspector, stated that:

*Such an office should have full access to the operational files of the ACC and its staff, and should be established in such a way as to maintain the operational confidentiality of the ACC and the confidentiality of witnesses and informants....A Parliamentary Inspector could provide an appropriate level of accountability without compromising the operational integrity of the ACC. Such operational accountability would complement the Committee's role of administrative accountability.*⁶¹⁷

Finally, as noted above, the NSW JPC on the ICAC in its May 2000 report on its review of the ICAC stated that:

*The Inspector should perform random audits on Commission records, including current operational matters, to provide a valuable level of scrutiny of the legality of the ICAC's activities. Because of the degree of secrecy required for such a monitoring role, the Committee believes it most appropriate that an independent statutory officer such as the Inspector fulfil this function.*⁶¹⁸

14.8.4 Limited time and resources of the Committee

The reality is that Parliamentary oversight committees have limited powers and resources available to them in performing their statutory responsibilities. The third PCJC referred to the significant time commitment required of members of the Committee.

*Committees charged with the task of ensuring effective on-going scrutiny of the activities of anti-corruption and law enforcement agencies require a considerable commitment of time from their Members; far more so than most other Parliamentary committees. Members are often called on to consider critical issues and to attend urgent Committee meetings. Therefore, the PCJC has traditionally been a particularly busy committee.*⁶¹⁹

The Western Australian Joint Parliamentary Committee on the ACC has referred to these constraints on Parliamentary committee oversight and the potential assistance provided by intermediate bodies such as the Inspector of the PIC and Queensland's then proposed Parliamentary Commissioner, in its October 1997 report:

⁶¹⁶ Note 574 at 169.

⁶¹⁷ Note 611 at 12.

⁶¹⁸ Note 600 at 62.

⁶¹⁹ Note 609 at 104.

There are a number of constraints on Parliamentary oversight committees which can make it difficult for them to fulfil their oversight role. In particular, limited time and resources may inhibit the capacity of a committee to monitor and review the agency it oversees. Committee members necessarily have a number of demands placed on their time and such committees are usually supported by a relatively small staff. The establishment of intermediate bodies, such as the PIC Inspector or the Parliamentary Commissioner proposed by the PCJC, may go some way to overcoming these constraints, and may enhance the work of an oversight committee by providing continuous and detailed scrutiny of an agency.⁶²⁰

14.8.5 Consideration of complaints and the availability of judicial review of the CJC's activities

14.8.5.1 Availability of judicial review of the CJC's activities

The Committee believes that the case for a Parliamentary Commissioner is further strengthened by the fact that the availability of judicial review of the CJC's activities is illusory. The Fitzgerald Report clearly recognised that the activities of the CJC's Official Misconduct Division should be open to review by the judiciary on application. This is reflected in section 34 of the Act.

The second PCJC of the 47th Parliament, in its report on its three yearly review of the CJC, reviewed the coercive powers of the CJC particularly in the context of their exercise being subject to judicial review. In this regard the second PCJC ultimately concluded that the CJC was not sufficiently reviewable by the Supreme Court. Therefore, that Committee recommended certain amendments to the Act to enhance judicial accountability of the use of the CJC's powers and to ensure that the judicial process is not used for mischievous purposes.⁶²¹

The third PCJC, in its three yearly report on the CJC recognised that judicial review of the CJC's coercive powers has been criticised for being illusory in practice for reasons including that:

- the Act does not give the Supreme Court sufficient power to consider how the CJC exercises its powers;
- costs associated with bringing an action in the Supreme Court, including the possibility of a costs order being made against an applicant, are prohibitive; and
- the secrecy provisions of the Act do not provide an applicant with sufficient information concerning an investigation so as to successfully mount an application.⁶²²

The third PCJC also reported that the CJC had attempted to use section 34 of the Act as a means of refusing to agree to one of the objectives proposed by the Committee for its audit, namely that audits are to ensure that the use of the CJC's coercive powers has been justified and is appropriate in the circumstances. The third PCJC further reported that the then Chairperson of the CJC had refused to agree to this objective being a purpose of the Committee's audit on the basis that judicial review was available to address such concerns.

The third PCJC concluded that in order to more fully address the concerns about the effectiveness of judicial review:

it is even more imperative that the Committee's audits of the CJC's registers of powers include reviewing the justification and appropriateness of the use of the coercive powers. Given that in order to make such an assessment, resort will invariably have to be made to current operational material, the only appropriate person to perform such a task would be the

⁶²⁰ Note 615 at 16.

⁶²¹ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, Legislative Assembly of Queensland, 1995, Brisbane, at 207.

⁶²² Note 609 at 116.

*Parliamentary Commissioner.*⁶²³

The Committee notes that section 34 of the Act was enhanced by amending legislation in 1997⁶²⁴ in an attempt to make the procedure for judicial review more accessible. The reasons for these amendments are described in the explanatory notes as follows:

*Clause 21 provides for the amendment of section 34 (Judicial review of division's activities) to ensure that the application for judicial review is brought against the commission. The amendments seek to make the procedure for judicial review more accessible, by imposing a similar costs regime as applies under the Judicial Review Act. It has been suggested that the potential for costs to be awarded against the applicant deters all but the monied or foolish, thereby rendering this provision an illusion rather than an effective procedure for judicial scrutiny of the fairness of investigations.*⁶²⁵

Concerns that judicial review remains an ineffective avenue of redress were highlighted by Mr O'Gorman, in a recent paper delivered to a seminar conducted by the Joint Standing Committee on the Anti-Corruption Commission in Western Australia:

Supporters of these Commissions say that accountability needs are met by Supreme Court Review which is open to those aggrieved by the actions of a Commission.

The grounds available for Supreme Court Review are not particularly generous to those aggrieved, but, more particularly, Supreme Court Review is not open in a practical sense to the aggrieved person of ordinary means as challenges to the Investigative powers of these Commissions is in the civil jurisdiction. Where a loss means the challenger has to carry not only his own very considerable legal costs but also the costs of the Commission being challenged.

This acts as a serious and very real disincentive to everyone other than the John Elliotts or Police Unions, both of whom have well resourced legal fighting funds.

I, therefore, argue that Supreme Court Review is largely an ineffective avenue of redress except for the very well heeled. Legal Aid certainly will not fund such a challenge.

*Attention must therefore be directed to the option of external oversight complaint mechanisms as a means of addressing the often real complaints of excessive power of Crime Commissions.*⁶²⁶

Concerns about the effectiveness of judicial review as a mechanism by which anti-corruption and law enforcement agencies are accountable are not confined to Queensland. The Western Australian Parliamentary Joint Committee on the ACC, in its report on the operational accountability of the ACC noted:

Judicial review, however, is an expensive and technical process and the basis for review is limited. Moreover, the information supplied to applicants by the ACC or otherwise made available to the court may be limited.

*Under the present system the only body which has access to the operational files and staff of the ACC and which can deal with complaints is the Commission itself.*⁶²⁷

⁶²³ Note 609.

⁶²⁴ See the *Criminal Justice Legislation Amendment Act 1997* (Qld)

⁶²⁵ See the Explanatory Notes to the *Criminal Justice Legislation Amendment Bill 1997* at p.5-6.

⁶²⁶ Note 596 at 2.

⁶²⁷ Note 581 at 11.

14.8.5.2 Complaints against the CJC

One of the most significant functions undertaken by the Parliamentary Commissioner is to investigate complaints against, and/or concerns about, officers of the CJC which the Committee has referred to the Parliamentary Commissioner.

The third PCJC, in its Report No. 38, stated that the then protocols and arrangements governing the handling of complaints against the CJC were unacceptable and should be 'revisited'.⁶²⁸ In revisiting these protocols, the third PCJC recommended that the Committee be given the power to appoint a Parliamentary Commissioner, who was to have jurisdiction to undertake a range of activities including the independent investigation of complaints against the CJC including allegations of a possible unauthorised release of confidential information.⁶²⁹

The former Parliamentary Commissioner, Ms Dick SC (as she then was), in her submission to this review, lists as one of the indicia of the value of the office of Parliamentary Commissioner the fact that no complaints alleging an unauthorised release of confidential information from the CJC have been referred to her for investigation since August 1999:

*It is also worth noting that all the investigations conducted to date in relation to alleged unauthorised disclosure of information by the CJC or its officers related to referrals in the first 18 months. The last referral for such an allegation related to an alleged disclosure in August 1999. It should not be assumed from that information that the allegations were proved or disproved. However, it seems that no allegations have been made for over twelve months. One explanation is that the vigorous investigations that have been conducted have caused steps to be taken at the CJC to avoid the opportunity for the making of such an allegation. Another possible explanation is that, if such disclosure were occurring, the investigations have deterred further such conduct.*⁶³⁰

The CJC has responded to the Parliamentary Commissioner's comments under cover of a letter dated 12 December 2000. The CJC states:

The Commissioner expresses the view that one explanation for [the absence of complaints of alleged 'leaks' of confidential information from the CJC since August 1999] is that her vigorous investigations have acted as a deterrent to 'such conduct'. In the Commission's submission, it can only be argued that the Commissioner's investigations have acted as a deterrent if one accepts that unauthorised releases of CJC information were previously occurring with regularity, an allegation which no investigation conducted by the Commissioner has substantiated. (The only matter in which an 'indirect' release was attributed to the CJC was the Paff matter.)

14.8.5.3 Analysis and comment

Whether or not the Parliamentary Commissioner's investigation of alleged leaks from the CJC have in fact 'acted as a deterrent', it remains true that:

- in the first eighteen months of the existence of the Office of Parliamentary Commissioner, six matters involving allegations of leaks of confidential information from the CJC were referred to the Parliamentary Commissioner for investigation;

⁶²⁸ Note 609 at 56 and 58.

⁶²⁹ Note 609 at 117 – 122.

⁶³⁰ Note 604 at 3.

- in five of those six matters, the leak was alleged to have occurred between October 1998 and August 1999; and
- the Committee has not received any allegation of a leak from the CJC since August 1999.

The Committee is of the view that the CJC's submission (that the Parliamentary Commissioner's assertion that her '*investigations have acted as a deterrent only if one accepts that unauthorised releases of CJC information were previously occurring with regularity*') does not, with respect, logically follow. The Parliamentary Commissioner's submission simply proposed a possible explanation for the recent absence of such allegations, whether in fact the source of the alleged leak was from the CJC or elsewhere. The inference the Parliamentary Commissioner seeks to draw is certainly open on the facts that are known, although it is fairly conceded that it is not the only inference one could draw.

As noted above, the Commonwealth Parliamentary Joint Committee on the NCA, in its April 1998 report which recommended the creation of an office of Inspector-General of the NCA, stated that:

*The Inspector-General for the NCA which the PJC is recommending in Chapter 6 be created for the purpose of examining complaints made against the NCA (who will have the authority to look behind the curtain of NCA operational secrecy), would be ideally placed to assist the PJC's efficient functioning by acting as the investigatory arm of the PJC and report to it in generalised terms on its findings. In this respect, the Inspector-General's role could be likened to that of the Australian National Audit Office, whose officers examine the records of Commonwealth agencies, checking the legality and propriety of financial transactions, and reporting its findings to Parliament.*⁶³¹

The PJC on the NCA noted that its predecessor committee had reported in 1991 that it 'lacks the time and the investigative staff necessary to deal adequately with individual complaints'.⁶³² The PJC on the NCA added that 'the most effective way of dealing with some individual complaints would be for the investigator to visit the Authority and inspect all the relevant files, which presents something of a difficulty for a committee'.⁶³³

In support of its recommendation that the Inspector-General of Intelligence and Security be given jurisdiction to investigate complaints against the NCA, its staff and those seconded to work for it, the PJC on the NCA stated:

The PJC envisages that complaints could be taken directly to the Inspector-General. Provision would also be made for the PJC, the Attorney-General, the IGC or Ministers who are members of the IGC to refer complaints to the Inspector-General. Complaints brought to the PJC would only be referred to the Inspector-General where the PJC considered that the PJC itself could not readily resolve them.

*The Inspector-General would have a right of access to all Authority files, and to require persons to attend and answer questions on oath and to produce documents. He would also have the power to refuse to take investigative action on any complaint that he deemed to be frivolous, vexatious or trivial.*⁶³⁴

The PJC's recommendation was accepted by the Government and appropriate provisions were included in the National Crime Authority Amendment Bill (No. 2) 1992 to create the office of Inspector-General of the NCA. The Government stated its intention that the occupant of the office

⁶³¹ Note 574 at 170.

⁶³² Note 571 at 131-132.

⁶³³ In this respect, the PJC on the NCA thought it was arguable that an officer of the committee secretariat or a consultant could not be given delegated authority because of the NCA's recognition only of the Committee.

⁶³⁴ Note 571 at 135.

of Inspector-General of Intelligence and Security would be appointed as Inspector-General of the NCA and, with this in mind, the proposed new Part IIIA was based as closely as practicable on the relevant provisions of the *Inspector-General of Intelligence and Security Act 1986*. The PJC on the NCA noted however, ‘more in frustration than despair’⁶³⁵, that ‘nothing has changed to regularise a situation which has long been recognised as inadequate’⁶³⁶:

*While these aspects of the Bill received the support of all parties, with only minor amendments being proposed, on 16 December 1992 the proposed legislation was laid aside in its entirety after the Government rejected as totally unacceptable amendments made in the Senate on an unrelated matter.*⁶³⁷

*The PJC again raised the issue in its October 1994 report Investigating Complaints Made Against the National Crime Authority. It noted that there had been no progress made on instituting a complaints mechanism, that it considered that the continuing lack of a complaints mechanism was unacceptable and repeated its call for legislation to be introduced as soon as practicable to provide for the establishment of an office of Inspector-General of the National Crime Authority.*⁶³⁸

The PJC on the NCA concluded in strong terms that:

*There is a universal consensus of opinion about the need for an appropriate external complaints mechanism for the NCA. The 1984 experiment with the PJC supposedly performing this task has patently not worked. Parliamentary committees under our system of government do not have executive roles. Instead, this Committee should be a monitoring and review role, which is intended to hold the NCA accountable for its actions. In this context it is important that it still receive and consider complaints in relation to the NCA, about which it can seek advice from the NCA or the external complaints agency as appropriate, and then if seen as necessary even conduct inquisitorial hearings, but it cannot be expected to actually undertake the investigations.*⁶³⁹

Further, the Western Australian Joint Parliamentary Committee on the ACC, in its October 1998 report which recommended the creation of an office of Parliamentary Inspector, stated that:

*... there is no mechanism for ... reviewing the appropriateness of operational procedures, or for addressing complaints against the ACC or its officers. The lack of independent scrutiny is a significant gap in accountability. If a mechanism is not established through which the operations of the ACC can be fully and independently scrutinised the ACC will remain vulnerable to criticism that it functions as a ‘star chamber’ and that complaints about the fairness of its procedures or the conduct of its officers cannot be answered.*⁶⁴⁰

Finally, as noted above, the NSW JPC on the ICAC in its May 2000 report on its review of the ICAC noted the accountability gap in respect of complaints against officers of the ICAC:

The major shortcoming in the ICAC’s accountability regime is the absence of an agency or individual to receive and investigate complaints of impropriety or misuse of power by the ICAC and its officers. The Committee notes that there is no provision for supervision of on-going investigations by the ICAC, a problem which was also identified by the Parliamentary

⁶³⁵ Note 574 at 159.

⁶³⁶ Note 574 at 159.

⁶³⁷ See House of Representatives of the Commonwealth of Australia, *Hansard*, 16 December 1992, pp. 3815-20.

⁶³⁸ Note 574 at 176.

⁶³⁹ Note 574 at 185.

⁶⁴⁰ Note 581 at 3.

*Committee on the NCA in its 1998 Evaluation of the NCA.*⁶⁴¹

The NSW JPC on the ICAC was firmly of the opinion that:

*... should complaints against the Commission arise in the future, a body should exist with the functions and powers to undertake an investigation, to report, and to make recommendations where necessary.*⁶⁴²

14.8.6 Preserving public confidence in the CJC

The Commissioner of the PIC, Judge Urquhart QC, in giving evidence before the NSW PJC on the ICAC on its review of the ICAC, emphasised that the existence of the Inspector of the PIC is beneficial for the operation of the PIC:

*... all of my people, including me, are human and mistakes will be made. It is refreshing to know that, if a mistake is made, the Inspector is more than likely going to find out about it. ... that is a management tool and that is welcomed by us.*⁶⁴³

When asked whether he accepted the criticisms about the PIC expressed by the Inspector from time to time, Commissioner Urquhart QC noted that:

*... there is not one adverse comment about the Commission that he has made that I have not accepted and have not acted on ...*⁶⁴⁴

The PJC on the ICAC reports that ‘overall, Judge Urquhart QC believes that the Inspector has a positive impact on the PIC’:

*... I have told you about the Inspector and the Police Integrity Commission and the way in which that area of accountability, which on my understanding is missing from the ICAC or is not there with the ICAC, is present with the Police Integrity Commission and in my view it works very well.*⁶⁴⁵

The Commissioner of the NSW PIC reiterated this view in a paper delivered to the Western Australian Joint Parliamentary Committee on the ACC, in May 2000, in acknowledging that the existence of an oversight body with wide powers assists in preserving the public confidence in the PIC:

*The [PIC] believes that its success as an independent anti-corruption agency is tied to the perception and reality of the Inspector’s independence and power to effectively oversight the Commission’s work. This clearly demonstrates to the community of New South Wales that the Police Integrity Commission is – and can be held to be – accountable for what it does and how it does it.*⁶⁴⁶

The Commonwealth Inspector-General of Intelligence and Security, Mr Blick PSM, during evidence given before the JPC on the ICAC also commented on the potential advantage of his office to the agencies he oversees:

⁶⁴¹ Note 588 at 37.

⁶⁴² Note 588 at 38.

⁶⁴³ Note 588 at 45-46.

⁶⁴⁴ Note 588 at 45-46.

⁶⁴⁵ Note 588 at 45-46.

⁶⁴⁶ Judge P.D. Urquhart, Commissioner, New South Wales Police Integrity Commission, ‘Address to the Joint Standing Committee’s open hearing on the Anti-Corruption Commission’, 5 May 2000, Parliamentary Joint Standing Committee on the Anti-Corruption Commission, at 11.

*This model I think has peculiar advantages in relation to the intelligence and security community because it enables inquiries to be done in complete confidentiality and secrecy, but also I guess enables them to be done with sufficient informality to permit these agencies to feel that there is not an adversarial relationship between themselves and my office.*⁶⁴⁷

The PJC on the ICAC has also reported that the Commissioner of the ICAC, Ms Moss, had noted, during her evidence before that Committee as part of its review of the ICAC, the advantages to the agency that would flow from the creation of an Inspector in terms of increasing public confidence in the agency:

*If you have a system in place where abuses can be picked up or such powers are monitored, I think it could only add to the credibility of an organisation and add to the confidence that the public would have in an organisation like that.*⁶⁴⁸

The Chairperson of the CJC, Mr Butler SC, in a paper delivered to the Brisbane Institute on 24 October 2000, has also implicitly recognised that the existence of an effective oversight regime including the office of Parliamentary Commissioner with wide powers only serves to increase public confidence in the CJC:

I spoke earlier about oversight of the CJC by its Parliamentary Committee and the Parliamentary Commissioner. ... The CJC should be held publicly accountable in the exercise of its substantial powers. Furthermore, public recognition that the CJC is accountable is ultimately beneficial.

*A standing commission of inquiry such as the CJC is unlikely to survive long if it does not enjoy public confidence. Political support for an oversight body, will wax and wane. Corrupt persons the subject of investigation will sometimes choose to make counter accusations against their investigators. In my view, a commission will weather these attacks best if it can draw on a reservoir of public confidence springing from an appreciation that it is independent, effective and accountable in the performance of its role.*⁶⁴⁹

14.8.7 Analysis and comment

As the Committee has argued above, much of the work of the Parliamentary Commissioner is not the subject of a public report to the Parliament. Nor should it be. Much of the work of the Committee, like other similar oversight Committees, is confidential and is not appropriate for tabling in the Parliament or for public release. For example, the Committee receives comprehensive confidential reports from the CJC on its activities, the Committee meets *in camera* with the CJC to discuss these confidential and often sensitive activities, the Committee examines aspects of the CJC's operations, examines complaints (which are often unsubstantiated) and other specific issues as they arise. The Committee reports on these activities in a statistical and otherwise general sense in its annual reports to Parliament.⁶⁵⁰

Similarly, much of the work undertaken by the Parliamentary Commissioner, at the request of the Committee, and for report back to the Committee, is confidential and sensitive, and is not appropriate for public release. Indeed, the work of the Parliamentary Commissioner, who potentially has access to a greater amount of information than the Committee, should, as a matter of common sense, be less open to public release than the work of the Committee. In its most recent Annual

⁶⁴⁷ Note 588 at 45-46.

⁶⁴⁸ Note 588 at 39.

⁶⁴⁹ Note 603 at 6.

⁶⁵⁰ The Act presently does not provide for the Parliamentary Commissioner to table an annual report of the activities of the office. The Committee has recommended that the Act be amended to require the Parliamentary Commissioner to table such an Annual Report. See paragraph 14.15.2.

Report to the Parliament, the Committee reported that since the creation of the office of the Parliamentary Commissioner, the Committee has received assistance from the Parliamentary Commissioner in some 23 matters.⁶⁵¹

The Committee also reported that during the last financial year, the Committee sought the assistance of the Parliamentary Commissioner in respect of numerous matters including:

- an audit of the records, operational files and accompanying documentary material held by the CJC, including material relating to any current or sensitive operations conducted by the CJC;
- the investigation of certain complaints of alleged misconduct against CJC officers; and
- the supervision of the CJC's investigation of certain complaints against CJC officers.

The Committee notes that the Chairpersons and Commissioners of the various anti-corruption and law enforcement agencies, including CJC Chairperson, Mr Butler, have emphasised that Offices like that of the Parliamentary Commissioner serve to increase the public confidence in agencies they oversee.

The value of the office of Parliamentary Commissioner lies in its very existence. Most importantly, the CJC and its officers are aware that the position exists. The CJC and its officers are aware of the Parliamentary Commissioner's unrestricted access to CJC records, in appropriate cases as directed by the Committee, and of the special powers of investigation which are available to the Parliamentary Commissioner.

The very existence of the position of Parliamentary Commissioner and the special powers that are available means that the CJC and its officers will know that the actions they take may be scrutinised, and that no record of the CJC is beyond the Parliamentary Commissioner's examination.

The PJC on the ICAC, in its report on its review of the ICAC, referred to evidence given before it by the former Parliamentary Commissioner, Ms Dick SC (as she then was)⁶⁵². When asked what she considered to be the impact of the Parliamentary Commissioner on the CJC, Ms Dick responded:

*I think that the CJC is now much more conscious ... of how an independent person might view steps that it has taken or might take.*⁶⁵³

Ms Dick SC (as she then was)⁶⁵⁴ elaborated on this assessment in a paper delivered to the Second Annual Conference of the International Association for the Civilian Oversight of Law Enforcement⁶⁵⁵ in which she stated in part:

One factor should not be overlooked in measuring the need for a position such as the Parliamentary Criminal Justice Commissioner. It is a factor which will not be able to be measured in any review of such a position. It is the value that is inherent in the fact that law enforcement agencies will know that they are the subject of scrutiny. ... Vigorous, thorough but fair investigations conducted by the Office of the Parliamentary Criminal Justice

⁶⁵¹ These matters are in addition to the Parliamentary Commissioner's function under the *Criminal Justice Act* in reviewing the records of the Connolly / Ryan Inquiry and functions under the *Crime Commission Act 1997* (Qld).

⁶⁵² Ms Dick SC was appointed as a judge of the District Court and was therefore unavailable to give evidence during the Committee's public hearings as part of this review.

⁶⁵³ Note 588 at 51.

⁶⁵⁴ Note 652.

⁶⁵⁵ Ms Dick SC, Parliamentary Criminal Justice Commissioner, 'The Parliamentary Commissioner – The Queensland Experience', paper presented to the *International Association of Civilian Oversight of Law Enforcement (IACOLE)*, Sydney, 1999.

*Commissioner will inevitably cause the subjects of such inspection to be careful in their decisions and scrupulous in their behaviour. It should cause them to look at issues not just from the narrow perspective of what they are trying to achieve but from the wider perspective of how their actions might be viewed by the objective observer.*⁶⁵⁶

The Committee notes that it has not received any submission either as part of this review or otherwise advocating the abolition of the office of Parliamentary Commissioner. The Committee notes that the CJC supports the position of Parliamentary Commissioner, albeit with some modification. Further, the Committee notes strong support for the retention of the office of Parliamentary Commissioner from Mr Terry O’Gorman, the President of the Australian Council for Civil Liberties, and Vice-President of the Queensland Council for Civil Liberties. Mr O’Gorman, in delivering a paper to a seminar held by the Western Australian Joint Parliamentary Committee on the Anti-Corruption Commission (ACC) in May 2000, referred with approval to the Parliamentary Commissioner model operating in Queensland:

*An instructive model for oversight of a Crime Commission is that introduced in Queensland in 1997. It is not a perfect model. It can probably be improved on, but it is much better than a stand alone Parliamentary Committee oversight model...The next question, then is, how Queensland’s Parliamentary Commissioner/Inspector has worked. While I strongly support the role of Queensland’s Parliamentary Inspector, and consider that first appointee Julie Dick SC is a good appointment, enabling legislation creating the position does not provide for her to give an Annual Report to Parliament.*⁶⁵⁷

Mr O’Gorman went on to urge the Western Australian Premier to appoint a Parliamentary Inspector over the Western Australian ACC noting that statements from various bodies and the media in Western Australia had also argued for the creation of such a position:

I therefore urge you to consider another Editorial, this time from the West Australian of 17 January 2000, headed ‘Who is to watch the watchdogs’. It thundered in a completely different tone from Queensland’s Courier-Mail. It strongly argued for the creation of a Parliamentary Inspector noting that there have been three separate calls in three years in WA for the establishment of such a body, namely by the Government initiated Commission on Government in 1996, a liberal headed joint Parliamentary standing committee in 1998 and the Government appointed Bauche Inquiry in 1998.

As a committed believer in the role of Parliamentary Committee supervision of Crime Commission watchdogs, I say to the WA Premier (Mr Court) that a Parliamentary Inspector should immediately be appointed over the ACC.

The WA Premier’s quoted ‘Don’t you worry about that’ assertion that a Parliamentary Inspector is not needed flies in the face of continuing controversy in WA over the ACC and the inability of the Joint Standing Committee on the ACC to properly do its job.

*Look at the unhappy relationship, over almost two decades, between the NCA and the NCA Joint Committee, and that Committee’s inability to do its job properly.*⁶⁵⁸

The Committee notes that the Queensland Parliamentary Commissioner model has received some support from the WA Joint Parliamentary Committee on the ACC in its Report No.4. It recommended that it should be assisted in making the ACC properly accountable through the creation of a Parliamentary Inspector of the ACC who is:

⁶⁵⁶ Note 655 at 8.

⁶⁵⁷ Note 596 at 5. [This issue in respect of the Parliamentary Commissioner providing an Annual Report to Parliament is discussed further in paragraph 14.15.2 at page 299. Mr O’Gorman went on to discuss other changes which are referred to below.]

⁶⁵⁸ Note 596 at 8.

...an officer of the Parliament appointed by the Governor on the recommendation of the Committee, thereby providing a direct connection to the Committee, and through the Committee to Parliament. Drawing in part on the Queensland model of a Parliamentary Criminal Justice Commissioner, the further recommendations of the Committee regarding the reports of the Inspector and the capacity of the Committee to direct the Inspector to undertake an audit or inquiry, are intended to reflect the overarching supervisory function of the Committee and the principle that the Inspector be responsible to Parliament.

The Committee also notes that the central tenet of the Queensland Parliamentary Commissioner model has also received some support from the NSW JPC on the ICAC in its recent report on its review of the ICAC. Although ultimately opting to adopt the ‘Inspector of the Police Integrity Commission’ model currently operating in NSW, the NSW JPC on the ICAC considered that the oversight model operating in Queensland had a number of strengths:

In particular, the office of Parliamentary Commissioner supports the Parliamentary Committee’s accountability functions by providing it with the powers, resources and expertise needed to effectively oversee the legality of the CJC’s operations and to ensure the full co-operation of the CJC in its dealings with the Parliamentary Committee. The legislature thus maintains a primary role in the accountability of the CJC, while politicisation of the process is reduced by the requirement that referrals to the Parliamentary Commissioner be made by a bi-partisan majority of PCJC members.⁶⁵⁹

Finally, these views highlight an important part of the Parliamentary Commissioner model – the Parliamentary Commissioner can not investigate any matter or concern or indeed undertake any other function under the *Criminal Justice Act* UNLESS authorised by a bi-partisan majority of the Committee. This is an important and fundamental element of the current scheme.

The introduction of the Parliamentary Commissioner was a unanimous recommendation of the third PCJC.

In summary, the provision of the Parliamentary Commissioner in Queensland to enhance the Committee’s role in seeking to make the CJC accountable is not unique. The oversight role of the NSW Joint Standing Parliamentary Committee on the Police Integrity Commission (PIC) and the Ombudsman is enhanced by provision for an Inspector, with wide powers to:

- audit the operations of the PIC;
- deal with complaints of abuse of power, impropriety and other forms of misconduct on the part of the PIC or officers of the PIC; and
- assess the effectiveness and appropriateness of the procedures of the PIC relating to the legality or propriety of the PIC’s activities.

Further, the oversight of the Commonwealth Australian Security Intelligence Organisation (ASIO) is not limited to a Joint Standing Parliamentary Committee, but rather is strengthened by the office of Inspector-General, with wide powers to access ASIO’s files and to investigate ASIO officers.

Every Parliamentary watchdog committee in Australia which is charged with overseeing a anti-corruption or law enforcement body is either assisted by an Inspector/Parliamentary Commissioner with special powers and unlimited access to records of the agency or has recommended the creation of such an office. It is difficult to envisage a more compelling case for retention of the Parliamentary Commissioner.

⁶⁵⁹ Note 588 at 53.

Finally, the combined cost of the Committee and the office of the Parliamentary Commissioner represents about 3% of the CJC's budget of almost \$30 million.⁶⁶⁰ The Committee considers an outlay of some 3% of the size of the CJC's budget on external accountability is both modest and appropriate.

14.8.8 Conclusions

Conclusion 96

The Committee remains convinced of the value of the office of the Parliamentary Commissioner and the critical need to retain the office.

Conclusion 97

The Committee is of the view that the office of the Parliamentary Commissioner, (like the NSW Inspector of the PIC, the Commonwealth Inspector-General of Intelligence and Security, the proposed Commonwealth Inspector-General of the NCA, the proposed WA Parliamentary Inspector of the ACC, and the proposed NSW Inspector of the ICAC), represents the most effective way in which sensitive information relating to current operational matters and otherwise sensitive information held by the CJC can be examined so as to ensure the proper accountability of the CJC without compromising the confidentiality of such material.

Conclusion 98

The Committee is of the view that the office of Parliamentary Commissioner provides the community with a far greater depth of scrutiny of the CJC's activities than the Committee could appropriately provide by itself.

Conclusion 99

The Committee is of the very strong view that no basis has been put forward for the abolition of the office of Parliamentary Commissioner, and accordingly, the position ought be retained.

Conclusion 100

The Committee concludes that abolition of the position of Parliamentary Commissioner would be a regressive step and result in the Committee not being as effective in the watchdog role intended for it. Such a move would fly in the face of a unanimous recommendation of the previous bi-partisan Committee, which has been unanimously endorsed by this Committee, and would go against the strong recommendations by three Parliamentary committee's in the other jurisdictions all recommending that a similar office be established.

14.8.9 Recommendation

Recommendation 47

The Committee strongly recommends the continued operation of the office of Parliamentary Criminal Justice Commissioner.

⁶⁶⁰ The CJC has confirmed by letter to the Committee dated 19 February 2001, that the CJC's budget for the 1999/2000 financial year is \$29,541,000.

14.9 Selection and appointment of the Parliamentary Commissioner – possible reform

14.9.1 Introduction

The process for the selection and appointment of the Parliamentary Commissioner is set out in Part 4A Division 1 of the Act.

14.9.2 Full-time or part-time position

14.9.2.1 Introduction

Section 118H of the Act provides that the appointment of the Parliamentary Commissioner may be on a part-time basis.

The third PCJC, in recommending the creation of the office of Parliamentary Commissioner, was of the view that the Parliamentary Commissioner should be a part-time appointment.⁶⁶¹ However, in accepting the third PCJC's recommendation, the government of the day gave the Parliamentary Commissioner additional functions under the *Criminal Justice Act* and under the *Crime Commission Act*. One of the most significant functions given to the Parliamentary Commissioner was to review the records of the Connolly / Ryan Inquiry. Those records are voluminous and include some:

- 5,128 pages of transcript;
- 358 exhibits;
- 573 pages of interview transcripts;
- 23 boxes of relevant papers;
- 20 two-ring folders containing Counsel's working papers; and
- 48 related files concerning former CJC 'Operation Wallah'.

As a result, the position was initially filled on a full-time basis. The review of the records of the Connolly / Ryan Inquiry is now complete.

14.9.2.2 The CJC's submission to this review

The CJC, in its submission to this review, has submitted that:

*In our view, it has become clear, especially after the completion of the review of the Connolly - Ryan records, that the amount of work generated by the functions presently allocated to the Parliamentary Commissioner does not require the maintenance of a full-time commissioner. There is no reason to expect that the demands on the Parliamentary Commissioner's time will increase significantly in the future, and the CJC would respectfully submit that consideration should be given to appointing future commissioners on a part-time basis. This would be consistent with oversight functions carried out by similar bodies, for example the Police Integrity Commission in New South Wales.*⁶⁶²

14.9.2.3 Submission from the former Parliamentary Commissioner, Ms Dick SC

The former Parliamentary Commissioner, Ms Dick SC (as she then was)⁶⁶³, in her submission to this review stated that:

⁶⁶¹ Note 609 at 115.

⁶⁶² Note 602 at 58.

⁶⁶³ Note 652.

It has been informally suggested that it would be possible at the expiration of the present Commissioner's term of appointment for the position of the Commissioner to be made part-time. Those discussions have centred on the practical question of whether the flow of referrals for investigations is such that the Commissioner's workload could be conducted by a part-time Commissioner.

This is one important aspect of the matter. However a discussion confined to that aspect ignores a number of other important issues.

One of those aspects is the potential for conflict of interests to arise. If a barrister conducting a private practice is to be appointed part-time Commissioner then there is always potential, sometimes not readily identifiable at the time, that the barrister may become involved in a matter or with a client who subsequently becomes a complainant to the Committee in respect of the CJC and/or its officers.

Secondly, there may well arise a conflict between the duties of the part-time Commissioner and his or her duties as a private barrister. For example, it is conceivable that a part-time Commissioner may become involved in a long and complex court matter which may conflict with an urgent investigation as required by the Committee. The investigation may involve investigative hearings which it may not be possible for the Commissioner to chair during court hours.

The position of part-time Commissioner would necessarily mean that there would be certain duties that the Commissioner would have to avoid performing to avoid any conflict. There is the obvious difficulty with the Commissioner acting, in a private capacity, any matter for a client who had been investigated by the CJC or indeed for acting on behalf of the CJC.⁶⁶⁴

14.9.2.4 Analysis and comment

The Speaker of the Legislative Assembly has recently appointed, at the request of the Committee, an acting Parliamentary Commissioner pending the appointment of a Parliamentary Commissioner on a more permanent basis pursuant to section 118K of the Act. The Committee determined that the acting Parliamentary Commissioner, who commenced duties on 1 February 2001, hold a part-time appointment, at an average of approximately two days per week (subject to workload).

14.9.2.5 Conclusion

Conclusion 101

The Committee considers that the position of Parliamentary Commissioner should more appropriately be a part-time position.

⁶⁶⁴ Note 604 at 5-6.

14.9.2.6 Recommendation

Recommendation 48

The Committee recommends that, notwithstanding that the acting Parliamentary Commissioner has been appointed for two days per week, the next Committee give consideration to inviting submissions from the acting Parliamentary Commissioner as to his experience in the position and his views on whether two days per week is appropriate given the workload of the position.

14.10 Functions of the Parliamentary Commissioner under the *Criminal Justice Act* – possible reform

14.10.1 Introduction

The role and functions of the Parliamentary Commissioner are detailed above in paragraph 14.3.

This section will examine what changes, if any, should be made to the functions of the Parliamentary Commissioner under section 118R of the Act.

14.10.2 An ‘Own motion’ power

14.10.2.1 Introduction

Under the present scheme, the functions of the Parliamentary Commissioner under the *Criminal Justice Act*,⁶⁶⁵ may only be undertaken at the request of the Committee. More specifically, such functions can only be undertaken at the request of a *bi-partisan majority* of the Committee.

14.10.2.2 The CJC’s submission

The CJC, in its submission to this review, has suggested a model for a Parliamentary Commissioner similar to that of the Ombudsman in that:

...although Parliament may refer matters for investigation, the Ombudsman is not subject to direction or control from any person or body. This would seem an appropriate model for the role of Parliamentary Criminal Justice Commissioner. The role would most effectively operate as a ‘go-between’, able to access information from both the PCJC and the CJC, and operate effectively as an impartial and independent inquirer into certain matters.⁶⁶⁶

The CJC, in providing the Committee with comments on various key submissions has submitted, in part, that:

If the present model for the operation of the Parliamentary Commissioner is to continue, the Commission agrees that the referral system is a more appropriate and efficient system than one which allows complaints to be made directly to the Parliamentary Commissioner. Should the present model be substantially amended in the future to allow the Parliamentary Commissioner to operate independently of the PCJC, it is expected that such a review could include appropriate amendments to the complaints procedure.⁶⁶⁷

⁶⁶⁵ Other than in respect of the records of the Connolly/Ryan Inquiry pursuant to s.118U of the Act.

⁶⁶⁶ Note 602 at 58.

⁶⁶⁷ CJC, *CJC Comments on Parliamentary Criminal Justice Commissioner’s submission on the PCJC three year review*, 12 December 2000, Brisbane, at 3-4.

What the CJC is intending to convey by the last sentence of its comments is unclear. The CJC's position was made clearer by the CJC Chairperson in his evidence before the Committee as part of this review. Mr Butler SC, was asked whether the CJC saw any merit in the Parliamentary Commissioner being able to take complaints directly from the public. Mr Butler responded:

This is a difficult issue, because the way in which the Parliamentary Commissioner's position has been structured in Queensland seems to be quite unique. So we do not really have any guidance elsewhere on that. Models from elsewhere, such as the inspector of the PIC in New South Wales, involve a person who is more independent of the Parliamentary Committee and perhaps has a closer relationship with the particular agency in terms of constant monitoring and involvement with the agency. This is made somewhat difficult because the exact legal position with the Queensland Parliamentary Commissioner's position is still the subject of litigation. I would prefer to see the outcome of that litigation before forming a final view on how the Queensland position might be best dealt with. The CJC's position is really this: while the present relationship exists between the Parliamentary Commissioner and the Committee—in other words, the Parliamentary Commissioner is cloaked with Parliamentary privilege and may not be the subject of any judicial review or any court oversight at all—the present process is the preferable one. In other words, the Committee refers matters to the Parliamentary Commissioner and it is only on referral that the commissioner should deal with them. On the other hand, if there were to be a comprehensive rethink of the structure of the commissioner's role to align it more with similar roles elsewhere, then it may well be that a very different relationship with both the CJC and the Committee would be appropriate. If the present court action were to result in the position being submitted by the CJC before the court—namely, that judicial review is available in respect of the Parliamentary Commissioner—there would seem to be no great need to be completely rethinking the position.⁶⁶⁸ (Underlining added.)

14.10.2.3 Submission from the former Parliamentary Commissioner, Ms Dick SC

The former Parliamentary Commissioner, Ms Dick SC (as she then was)⁶⁶⁹, in her submission to this review stated that:

At the present time, the Act does not allow for direct receipt of complaints by the Commissioner and does not allow for investigation to be commenced at the initiative of the Commissioner. This arrangement reflects the fact that in Queensland the primary role of accountability is for the Committee in accordance with the recommendation made by Mr Fitzgerald in his report. Mr Fitzgerald envisaged accountability to the Committee as an arrangement whereby the CJC is answerable to the people through the Parliament. The referral process provides the tool whereby it is more difficult to mount the proposition that the accountability process can be [affected by partisan] political interests or that investigations are anything other than independent. ... It should be noted that the reports of the Committees in New South Wales and Western Australia allow for the proposed incumbent to take complaints directly.

...In the present Queensland legislative arrangements, it is appropriate that the Commissioner's investigations be commenced by referral and that the Commissioner not be enabled to take complaints directly or to self-motivate investigations.⁶⁷⁰

14.10.2.4 Submission from the Queensland Law Society

The Queensland Law Society, in its submission to this review argued for an 'own motion power' for the Parliamentary Commissioner:

The Parliamentary Commissioner's jurisdiction should not be limited only to references made

⁶⁶⁸ Note 605 at 7-8.

⁶⁶⁹ Note 652.

⁶⁷⁰ Note 604 at 11.

*to it by the Parliamentary Committee. Situations may arise where the Parliamentary Criminal Justice Commissioner considers it appropriate to conduct investigations which the Parliamentary Committee may not, for political or other reasons, wish to see investigated. In such circumstances, it would seem highly desirable that the Parliamentary Criminal Justice Commissioner has both the power and authority to conduct such investigations independently and without the need for the authority of the Committee.*⁶⁷¹

14.10.2.5 Views of the Queensland Council for Civil Liberties

Mr O’Gorman, has expressed the view during evidence before the Western Australian Joint Standing Committee on the Anti-Corruption Commission, that an important innovation with the Parliamentary Commissioner model is that the Parliamentary Commissioner only acts ‘as effectively required and directed by the Parliamentary committee’.⁶⁷² Mr O’Gorman went on to state that this ‘important innovation’:

*...protects and preserves the very important oversight role of the supervising Parliamentary Committee. It goes a long way to make the Committee’s oversight role quite real in practical sense.*⁶⁷³

Mr O’Gorman, has expressed another view during his evidence before the Committee as part of this review, that the Parliamentary Commissioner should have an ‘own motion power’:

*...If there is to be proper external oversight, then anyone who has a complaint against the CJC should be able to go directly to the Parliamentary Commissioner. If the CJC considers that the Parliamentary Commissioner is acting unfairly, to use its own language, as to remedies that are available against it, the CJC can go to court or the CJC can bring their complaints to this Committee.*⁶⁷⁴

Mr O’Gorman was asked to comment on the proposition that one of the advantages that the Committee has in primarily taking responsibility for assessing complaints against the CJC is that it provides the Committee with a very useful window to understand the operations of the CJC, regardless of whether or not the complaints are ultimately justified. Mr O’Gorman responded that this window could be preserved if the Parliamentary Commissioner could be subject to ‘a directive, whether in law or otherwise, that the [Parliamentary Commissioner] effectively copies all complaints to the Committee’.⁶⁷⁵

14.10.2.6 Comparisons with other jurisdictions

The Commonwealth Inspector-General of Intelligence and Security and the NSW Inspector of the Police Integrity Commission both have an own motion power to investigate a matter on their own initiative.

The proposed Inspector of the NCA recommended by the Joint Parliamentary Committee on the NCA is to have a own motion power. Similarly, the proposed Parliamentary Inspector of the ACC recommended by the Parliamentary Joint Committee on the ACC and the proposed Inspector of the ICAC recommended by the Parliamentary Joint Committee on the ICAC is to have an own motion power.

⁶⁷¹ Queensland Law Society, submission, *Three Yearly Review of the Criminal Justice Commission*, dated 9 October 2000, Brisbane at 4.

⁶⁷² Note 596 at 62.

⁶⁷³ Note 672.

⁶⁷⁴ Note 605 at 49.

⁶⁷⁵ Note 674.

14.10.2.7 Analysis and comment

The view expressed by the Chairperson of the CJC, Mr Butler SC, during evidence before the public hearings conducted by the Committee that he would '*prefer to see the outcome of [current] litigation before forming a final view on how the Queensland position might be best dealt with*' has much to commend it.

However, the Committee offers the following analysis.

The Committee considers that the blueprint advanced by its predecessor Committee, the third PCJC, in outlining its role for the Parliamentary Commissioner in reform of the accountability of the CJC, has some attraction:

*...most importantly, in exercising these powers the Parliamentary Commissioner should not be precluded by any other law or by any privileges of the Legislative Assembly, and his/her conduct and right to inquire into any matter should not be justiciable in any court. For these reasons, the proceedings of the Parliamentary Commissioner should be 'proceedings in Parliament'. The activities of the Parliamentary Commissioner should be seen as merely an extension of the PCJC.*⁶⁷⁶

The Committee also considers that the view proffered by the former Parliamentary Commissioner, Ms Dick SC, that the Parliamentary Commissioner effectively undertakes investigations and performs other functions which would otherwise be, and previously would have been, conducted by the Committee itself, has some merit.⁶⁷⁷

The CJC's concern with the present scheme appears to relate to the fact that the Parliamentary Commissioner is the investigative arm of the Committee and that in investigating a matter at the request of the Committee the Parliamentary Commissioner is 'cloaked with Parliamentary privilege'. Even if a scheme was devised by which the Parliamentary Commissioner was 'more independent of the direction of the Committee' and which provided the Parliamentary Commissioner with an 'own motion power', if the Committee requested the Parliamentary Commissioner to investigate and report to it in respect of a complaint or concern it had, the Parliamentary Commissioner's investigation and report to the Committee would apparently remain 'cloaked with Parliamentary privilege'.

The Committee notes that all other Parliamentary Commissioner / Inspector models either presently in existence or proposed by other Parliamentary oversight committees, quite appropriately, permit the Parliamentary oversight committee to refer matters to the Parliamentary Commissioner / Inspector for investigation and report back to the Committee.

The present scheme under which the Committee is the primarily accountability mechanism with the Parliamentary Commissioner acting as an investigatory arm of the Committee (and indeed only acting at the direction of the Committee) reflects the fundamental principle that the CJC is accountable to the Parliament through a Committee of members of Parliament. The Committee is appropriately the primary accountability mechanism. This principle is reflected in the intent of the Fitzgerald Report that Parliament is the institution ultimately accountable to the electorate and that the CJC should be accountable to the Parliament through a Committee of the Parliament.

This fundamental principle is also endorsed by the Western Australian Parliamentary Joint Committee on the ACC and the NSW Parliamentary Joint Committee on the ICAC in their recent

⁶⁷⁶ Note 609 at 118.

⁶⁷⁷ Note 604 at 7.

reports on their reviews of the ACC and the ICAC respectively. The Western Australian Parliamentary Joint Committee on the ACC, in its report tabled in October 1998, stated:

...Drawing in part on the Queensland model of a Parliamentary Criminal Justice Commissioner, the further recommendations of the Committee regarding the reports of the Inspector and the capacity of the Committee to direct the Inspector to undertake an audit or inquiry, are intended to reflect the overarching supervisory function of the Committee and the principle that the Inspector be responsible to Parliament. (Underlining added.)⁶⁷⁸

The NSW Parliamentary Joint Committee on the ICAC in its report tabled in May 2000, stated:

The Committee considers the oversight model operating in Queensland to have a number of strengths. In particular, the office of Parliamentary Commissioner supports the Parliamentary Committee's accountability functions by providing it with the powers, resources and expertise needed to effectively oversee the legality of the CJC's operations and to ensure the full co-operation of the CJC in its dealings with the Parliamentary Committee. The legislature thus maintains a primary role in the accountability of the CJC. (Underlining added.)⁶⁷⁹

Further, the Committee is of the view that any reform of the present scheme to provide the Parliamentary Commissioner with an 'own motion power' including the power to receive complaints directly from the public has certain disadvantages, including:

- the potential for 'forum' shopping by complainants between the Committee and the Parliamentary Commissioner;
- the potential for duplication of oversight in that the Parliamentary Commissioner may be investigating or examining an issue which the Committee is also investigating or vice versa; and
- the potential for the Committee to lose a vital 'monitor and review' window into the activities of the CJC and therefore to be less effective.

14.10.2.8 Conclusions

Conclusion 102

The Committee believes that the present scheme under which the Committee is the primary accountability mechanism of the CJC with the Parliamentary Commissioner acting as an investigatory arm of the Committee (and indeed only acting at the direction of the Committee) is the most appropriate model and should be retained.

Conclusion 103

The Committee endorses the views of its predecessor Committee, the third PCJC, that the activities of the Parliamentary Commissioner should be seen as merely an extension of the PCJC.

Conclusion 104

The Committee further believes that the Parliamentary Commissioner should not have an own motion power to investigate matters on his/her own initiative.

⁶⁷⁸ Note 581 at 13.

⁶⁷⁹ Note 588 at 53.

14.10.2.9 Recommendations

Recommendation 49

The Committee recommends that the present scheme under which the Committee is the primarily accountability mechanism of the CJC with the Parliamentary Commissioner acting as an investigatory arm of the Committee is the most appropriate model and should be retained.

Recommendation 50

The Committee further recommends that the Parliamentary Commissioner should not have an own motion power to investigate complaints and concerns on his/her own initiative.

14.10.3 ‘Direct line of communication’ between the CJC and the Parliamentary Commissioner

14.10.3.1 The CJC’s submission

The Chairperson of the CJC, Mr Butler SC, in evidence given at public hearings conducted by the Parliamentary Joint Committee on the ICAC on its review of the ICAC, raised the concern that the current Parliamentary Commissioner model does not provide for a ‘direct line of communication between the CJC and the Parliamentary Commissioner’:

I suppose it would be fair to say that my experience over the last year has led me to feel that the way the system is working in Queensland tends to be very formalistic and legalistic. ... I suspect it is because the Parliamentary Criminal Justice Commissioner may only act at the direction of the Parliamentary Criminal Justice Committee, and, consequently, acts on a complaint-by-complaint or reference-by-reference process. That prevents an ongoing relationship of oversight between the Commissioner and the Commission. If, for example, I have a matter which arises in an undercover operation ... I cannot pick up the phone and ring the Parliamentary Commissioner and get some advice from that source, because there is no statutory direct line of communication there.⁶⁸⁰

14.10.3.2 Submission from the former Parliamentary Commissioner, Ms Dick SC

The former Parliamentary Commissioner, Ms Dick SC (as she then was)⁶⁸¹, in her submission to this review, acknowledged Mr Butler’s submission that there is no statutory line of communication between the CJC and the Parliamentary Commissioner for an approach by the Chairperson of the CJC to the Parliamentary Commissioner. She noted however that ‘neither is there any legislative bar’.⁶⁸²

14.10.3.3 Analysis and comment

The Committee concedes that there is no statutory line of communication between the CJC and the Parliamentary Commissioner. As discussed above, the Committee is of the view that the Committee itself is the primary accountability mechanism. If the query from the CJC of the Parliamentary Commissioner concerns a matter under investigation by the Parliamentary Commissioner, such a ‘line of communication’ clearly exists.

⁶⁸⁰ Note 588 at 52.

⁶⁸¹ Note 652.

⁶⁸² Note 604 at 15.

The Committee accepts the CJC's submission that a 'line of communication' between the CJC and the Parliamentary Commissioner may have benefits for the accountability process. However, the Committee does not accept that such a 'line of communication' need be statutory. The Committee is of the view that such a 'line of communication' can be appropriately achieved through a standing reference by the Committee to the Parliamentary Commissioner. Any query the CJC has of the Parliamentary Commissioner which does not fall within an existing reference from the Committee will fall within a 'line of communication' created by a standing reference which the Committee has recommended the next Committee issue to the Parliamentary Commissioner to effectively undertake an on-going operational audit of current operations conducted by the CJC.

The purpose of this 'on-going operational audit', in broad terms, is to ensure that the CJC is complying with the terms of the Act, that its policies and procedures are being followed, and that the rights of persons affected by the CJC are not infringed. The purpose of this 'on-going operational audit' is consistent with, and in the spirit of, section 118R(2)(a) of the Act which permits the Committee to request the Parliamentary Commissioner to conduct an audit of the records and operational files held by the CJC. The audits conducted to date have traditionally been an '*after the event*' review in circumstances where any finding that the CJC has acted wrongly or inappropriately is, in a practical sense, of little assistance or comfort to a wronged party.

14.10.3.4 Conclusions

Conclusion 105

The Committee accepts the need for a 'line of communication' between the CJC and the Parliamentary Commissioner to permit the CJC to obtain advice from the Parliamentary Commissioner in respect of a matter.

Conclusion 106

The Committee does not accept that such a 'line of communication' need have a statutory basis. The Committee considers that such a 'line of communication' may be achieved through a standing reference from the Committee to the Parliamentary Commissioner.

14.10.3.5 Recommendation

Recommendation 51

The Committee recommends that the next Parliamentary Committee issue a standing reference to the Parliamentary Commissioner to conduct an ongoing operational audit of current operations of the CJC to ensure, in broad terms, that the CJC is complying with the terms of the Act, that the CJC's policies and procedures are being followed, and that the rights of persons affected by the CJC are not infringed.

14.10.4 On-going operational audits of the records of the CJC

14.10.4.1 Introduction

Audits of the internal registers of powers maintained by the CJC detailing the use by the CJC of its coercive powers⁶⁸³ had traditionally been audited by the Parliamentary Criminal Justice Committee itself.

⁶⁸³ These registers are discussed in greater detail in paragraph 13.3.1.4.

The first⁶⁸⁴ and second⁶⁸⁵ PCJCs reported that the single audits conducted by each of those Committees of the registers of powers and files held by the Official Misconduct Division were generally satisfactory.

14.10.4.2 Audit by the third PCJC

The third PCJC reported difficulties it had experienced in unsuccessfully attempting to conduct its audit largely due to a difference of opinion between the Committee and the CJC in relation to both the purpose and extent of the Committee's proposed audit.⁶⁸⁶

The third PCJC reported that the CJC had imposed restrictions on its access to 'current' operational files. The Committee had made a note of these files with the intention that it would conduct a further audit of these 'current' operational files at a later time following the finalisation of any relevant investigation. However, the third PCJC believed that '*such a disjointed audit process was not an example of best practice, nor was it efficient or effective*'.⁶⁸⁷ In conducting such a disjointed audit, the third PCJC accepted that there was a real potential that possible breaches of the law or the CJC's guidelines may be missed.⁶⁸⁸

The third PCJC also reported a further restriction in conducting a complete audit of the use by the CJC of its powers, in relation to the use of listening devices by the CJC, by the terms of the then section 123(2) of the Act, which effectively precluded the PCJC from searching listening device application material without first obtaining approval in each case from the Supreme Court.⁶⁸⁹

The third PCJC made several recommendations to overcome the perceived deficiencies it had identified in the audit process. One of these recommendations was the creation of the office of Parliamentary Commissioner, one of the functions of which was to conduct audits of the records of the CJC, and to report back to the Committee.⁶⁹⁰

The third PCJC concluded:

*The conduct of audits by the PCJC is primarily designed to ensure that there is an effective monitoring of the CJC's use of its coercive powers. Given that a number of considerations concerning the currency and security classification of matters handled by the CJC come into play in the conduct of such audits, the Committee believes that it should have the power to formulate necessary audit guidelines in consultation with the CJC. Again the Committee believes that certain procedural requirements ensuring the bipartisan support of such guidelines should also be implemented.*⁶⁹¹

14.10.4.3 The current audit

On 22 November 1999, the Committee unanimously resolved, in accordance with section 118R(3) of the Act, to request the Parliamentary Commissioner to conduct, other priorities permitting, an audit of the records kept by the CJC and to report to the Committee on the results.

⁶⁸⁴ PCJC, *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission*, Report No. 13, December 1991, at 166-168.

⁶⁸⁵ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, Legislative Assembly of Queensland, 1995, Brisbane, at 20.

⁶⁸⁶ Note 519 at 60-61.

⁶⁸⁷ Note 519 at 62.

⁶⁸⁸ Note 687.

⁶⁸⁹ Note 519 at 63.

⁶⁹⁰ Note 519 at 120 (Recommendation 15).

⁶⁹¹ Note 519 at 63. (Conclusion 13)

The Committee made no specific request of the Parliamentary Commissioner in respect of the timing of this audit.⁶⁹² The Committee asked the Parliamentary Commissioner to liaise with the Chairperson of the CJC, Mr Butler SC, so that the audit could be conducted at a time of mutual convenience, particularly given the CJC had by then foreshadowed a move to new premises in the city.

At the time of this report, the audit had not been finalised.

14.10.4.4 The need for an on-going 'Operational audit'

In conducting previous audits, successive Committees have traditionally not sought access to current operational material. The third PCJC had recognised the potential risk in the Committee accessing such operational material, noting:

*...there is a real risk in such cases that any disclosure of information may jeopardise the safety of persons involved in an operation, or the success of an operation.*⁶⁹³

Therefore, audits had been limited to an 'after the event' review in circumstances where any finding that the CJC had acted wrongly or inappropriately would, in a practical sense, be of little assistance or comfort to a wronged party.

The Committee considers that the audit of the CJC's records should be an on-going one. The Committee firmly believes that the audits by the Parliamentary Commissioner, on the Committee's behalf, should include an audit of current operations presently being conducted by the CJC.

The purposes of this 'on-going operational audit', in broad terms, would be to ensure that in conducting its current investigations, the CJC is complying with the terms of the Act, that its policies and procedures are being followed, and that the rights of affected persons are not infringed and if so, appropriate remedial action can be taken.

14.10.4.5 Conclusions

Conclusion 107

The Committee concludes that auditing the records of the CJC is a vital tool in ensuring the CJC's accountability.

Conclusion 108

The Committee endorses the views expressed by the previous Committee that the Committee, by itself, without the assistance of the Parliamentary Commissioner, cannot conduct an effective audit of the records of the CJC.

Conclusion 109

The Committee is of the view that an audit of the CJC's records and files which is limited to an 'after the event' review, is, in a practical sense, of little assistance or comfort to a wronged party where there is a finding that the CJC has acted wrongly or inappropriately.

⁶⁹² The Committee was conscious that several investigations had been referred to her, some of which had not then been finalised. The Committee advised the Parliamentary Commissioner that it expected that such investigations would continue to be given priority status over the proposed audit.

⁶⁹³ Note 519 at 62.

Conclusion 110

The Committee concludes that the audit of the CJC's records should be on-going one. The Committee firmly believes that the audits by the Parliamentary Commissioner, on the Committee's behalf, should include an audit of current operations presently being conducted by the CJC.

14.10.4.6 Recommendations

Recommendation 52

The Committee recommends that the next Parliamentary Committee request the Acting Parliamentary Commissioner to expedite the finalisation of the current audit of the records of the CJC.

Recommendation 53

The Committee recommends that the next Parliamentary Committee issue a standing reference to the Parliamentary Commissioner to conduct an ongoing operational audit of current operations of the CJC to ensure, in broad terms, that the CJC is complying with the terms of the Act, that the CJC's policies and procedures are being followed, and that the rights of persons affected by the CJC are not infringed.

14.11 Role of the Parliamentary Commissioner under other legislation – possible reform

14.11.1 The Parliamentary Commissioner's intelligence audit role

14.11.1.1 Introduction

The Parliamentary Commissioner, is required, by section 61 of the *Crime Commission Act 1997* (Qld) to conduct an annual review of intelligence data in the possession of the QCC, the police service and the CJC, to consider:

- whether the intelligence data held by each agency is appropriate having regard to the agency's functions;
- whether there is any unnecessary duplication of intelligence data;
- whether the agencies are working cooperatively in the collection, management, and use of intelligence data; and
- whether an agency is placing inappropriate restrictions on access to intelligence data by other agencies.

The Committee has had cause to consider the issue of cooperation between the CJC and the other agencies (and more specifically the sharing of intelligence by the CJC with other agencies).

More specifically, the Committee has considered whether the Parliamentary Commissioner (in relation to her intelligence and audit role), in addition to reporting to the Management Committee of the QCC, should also report to each agency whose intelligence material is audited and to report to the PCJC.

14.11.1.2 The CJC's submission

The CJC has previously submitted that an 'unfortunate' situation has been created by the present provisions of section 60(c) and 61(3) of the *Crime Commission Act* in that the Chairperson of the CJC (as a member of the Management Committee of the QCC), was privy to the Parliamentary Commissioner's first annual report but arguably could not disclose the contents of the report or take any action in relation to it in his role as Chairperson of the CJC.

The CJC further submits that 'there is no practical or logical reason why the Parliamentary Commissioner should report on a review of the intelligence data of the other agencies to the Management Committee of the QCC'.⁶⁹⁴

The CJC further suggests that a more simple and logical arrangement is for the Parliamentary Commissioner to provide a separate report to each of the agencies whose intelligence is audited. The CJC suggests that the problem may be corrected by:

- amending section 60(c) of the *Crime Commission Act* to delete the reference to 'paragraph (a)'; and
- amending section 61(3)(b) of the *Crime Commission Act* to delete the phrase 'give to the management Committee' and substituting 'give the advice to the management committee of the QCC, the commissioner of police and the CJC'.⁶⁹⁵

14.11.1.3 Conclusion

Conclusion 111

The Committee supports the logical approach suggested by the CJC.

The Committee is of the view, however, that as part of the Committee's role to 'monitor and review' the activities of the CJC, the Committee should be provided with a copy of any report by the Parliamentary Commissioner on the results of the intelligence review, at least in so far as the report concerns the CJC.

Accordingly, the Committee supports the CJC's suggested change. The Committee also recommends a further change, namely to include the Committee in the list of agencies which are advised by the Parliamentary Commissioner as to the results of the review. If accepted, such a reform could be achieved by amending:

- *section 60(c) of the Crime Commission Act to insert after the words 'management committee' the words, 'the Commissioner of Police, the Chairperson of the CJC, and the Parliamentary Committee'; and*
- *section 61(3)(b) of the Crime Commission Act to delete the phrase 'give to the management committee' and substituting 'give the advice to the management committee, the Commissioner of Police, the Chairperson of the CJC and the Parliamentary Committee'.*

⁶⁹⁴ Note 599 at 59.

⁶⁹⁵ Note 599.

14.11.1.4 Recommendation

Recommendation 54

The Committee recommends that the scheme for the annual review by the Parliamentary Commissioner of intelligence data in the possession of the QCC, the police service and the CJC, be changed by amending:

- (i) section 60(c) of the *Crime Commission Act* to insert after the words ‘management committee’ the words, ‘, the Commissioner of Police, the Chairperson of the CJC, and the Parliamentary Committee’; and**
 - (ii) section 61(3)(b) of the *Crime Commission Act* to delete the phrase ‘give to the management committee’ and substituting ‘give the advice to the management committee, the Commissioner of Police, the Chairperson of the CJC and the Parliamentary Committee’.**
-

14.12 Powers of the Parliamentary Commissioner – possible reform

14.12.1 Introduction

The powers of the Parliamentary Commissioner are detailed in paragraph 14.4 above.

This sub-chapter will examine what changes, if any, should be made to the powers of the Parliamentary Commissioner.

14.12.2 Use by the Parliamentary Commissioner of the hearing power

14.12.2.1 Introduction

This paragraph will examine the issue whether the legislation should be amended ‘*to make it clear that the Parliamentary Commissioner is not obliged to operate at all times as a standing Commission of inquiry*’.

14.12.2.2 The CJC’s submissions

The CJC, in its submission to this review has relevantly submitted that:

It would be helpful if the legislation made it clear that the Parliamentary Commissioner was not obliged to operate at all times as a standing Commission of Inquiry. The Ombudsman and other similar bodies have such powers, but rarely, if ever, use them. Instead, they adopt a cooperative approach consisting of staff interviews, and reviews of files and materials on a voluntary basis. The Ombudsman's legislation⁶⁹⁶ specifically provides that he or she may proceed to investigate, in the following terms:

‘The commissioner is not required to hold any hearing for the purposes of an investigation, and the commissioner may obtain information from such persons and in such manner, and make such inquiries, as the commissioner thinks fit and may determine whether any persons may be represented, by counsel or otherwise, in the investigation’.

It may be useful to specify in the legislation governing the Parliamentary Commissioner's office that hearings need not be held for every matter. It would certainly save time and a good deal of

⁶⁹⁶ See section 18 of the *Parliamentary Commissioner Act 1974* (Qld).

*public expense if such an approach was adopted.*⁶⁹⁷

14.12.2.3 Submission from the former Parliamentary Commissioner, Ms Dick SC

The former Parliamentary Commissioner, Ms Dick SC, in her submission to this review has responded to the CJC's submission, stating that '*in the early days of the investigations, the hearing process proved to be necessary in some circumstances to obtain information*'⁶⁹⁸ but that:

*...the experience in more recent investigations has shown that it has been possible to substitute the interview process for the formal hearing process more frequently than in the past. This is partly because witnesses, particularly witnesses other than witnesses from the CJC, were not well informed about the office, its functions or its powers.*⁶⁹⁹

Ms Dick SC has emphasised that the interview process has a number of limitations in that:

*...the interview process is not compulsory and, on at least one occasion, a potential witness has declined an invitation to take part in an interview. On other occasions, it has become apparent that, although a potential witness might attend an interview, the witness has been less than cooperative during the course of the interview because it does not entail any compulsory process. On other occasions potential witnesses have attended and cooperated with the interview process.*⁷⁰⁰

Ms Dick SC has also submitted that in some investigations the informal interview process was 'not appropriate':

*For example, the CJC submitted in respect of one investigation, that the evidence obtained from a witness through the interview process could not be given the same weight as evidence given on oath in the formal hearing process.*⁷⁰¹ *In fact, in that investigation the witness was called, in a formal hearing, to confirm what he had said in the interview. However, particularly in investigations where credit is an issue, it is preferable that evidence be obtained on oath in order that there cannot be an argument about the weight to be attached to the respective evidence.*⁷⁰²

Finally, Ms Dick SC has responded to claims by the CJC that the hearing process is an expensive method of obtaining information, by arguing that despite the CJC having an internal office of General Counsel, in every investigative hearing conducted by the Parliamentary Commissioner, the CJC has opted to brief independent senior legal counsel:⁷⁰³

...in every investigation conducted by the Commissioner to date which has involved investigative hearings, the CJC has briefed independent senior legal counsel to appear on

⁶⁹⁷ Note 602 at 58.

⁶⁹⁸ Note 604 at 4.

⁶⁹⁹ Note 604 at 4.

⁷⁰⁰ Note 604 at 4.

⁷⁰¹ The CJC has responded to the Parliamentary Commissioner's submission commenting that, '*In the case mentioned, all of the CJC witnesses had been required to give evidence on oath, and it appeared from the Commissioner's report that another witness had merely been interviewed. The point made was that, if findings of credit were to be made, all witnesses should be treated equally*'.

⁷⁰² Note 604 at 5.

⁷⁰³ The CJC has responded to the Parliamentary Commissioner's submission arguing that the briefing of external counsel to represent officers cannot fairly be criticised as it '*ignores the fact that QPS officers and lay witnesses are not the subject of allegations of wrongdoing in the Parliamentary Commissioner's investigations, as indeed they could not be in view of the limits of her jurisdiction*', that '*QPS officers who have been the subject of such allegations at CJC hearings or other inquiries in the past have regularly been represented by senior external counsel*' and that '*matters investigated by [the Parliamentary Commissioner] have sometimes involved staff of the Office of General Counsel as witnesses*'.

behalf of the CJC and/or its officers. By contrast, when QPS officers have been called to appear at hearings, an in-house solicitor routinely represents them. Most lay witnesses have appeared unrepresented.

Further, it should be noted the records of the former CJC inquiry reveal that when CJC officers were interviewed by the Inquiry, they were routinely accompanied by legal advisers or representatives.

The CJC has an Office of General Counsel which has objectives which include providing legal advice and legal representation for the CJC. However, in the investigative hearings conducted by the Commissioner, the Office of General Counsel instructs counsel on behalf of the Commission.⁷⁰⁴

14.12.2.4 Analysis and comment

The Committee considers that both the CJC and the Parliamentary Commissioner have raised compelling submissions.

The Committee accepts the CJC's submission that hearings should not be held in every matter. The Committee notes that the former Parliamentary Commissioner has advised that in more recent investigations, the less formal interview process has been used. The Committee notes that the last hearing held by the Parliamentary Commissioner was 30 March 2000. The Committee will continue to monitor this issue.

The Committee also accepts the Parliamentary Commissioner's submission that whilst it is of course a matter for the CJC if it chooses to brief external senior counsel to give advice and representation rather than utilise the services of its own internal General Counsel, it is also a relevant matter to take into account in assessing the merits of the CJC's submission that the hearing process is an expensive one.

Further, the Committee notes that the Parliamentary Commissioner submitted:

The Act provides that the Parliamentary Commissioner will independently investigate and that the Parliamentary Commissioner has, and may exercise, all the powers, rights and privileges under the Commission's of Inquiry Act 1950, of a Commission and the Chairperson of the Commission within the meaning of the Act. In those circumstances, it is clearly a matter for the Parliamentary Commissioner to decide whether or not a hearing is required on a case by case basis⁷⁰⁵.

Finally, the Committee notes that the NSW Legal Representation Office provides, in appropriate circumstances, free legal advice and assistance to witnesses who are appearing or about to appear for a hearing held by the Inspector of the Police Integrity Commission.⁷⁰⁶ The Committee notes that the Queensland equivalent of this agency, the Independent Legal Representation Office (ILRO) was disbanded on 31 August 1998.

14.12.2.5 Conclusion

Conclusion 112

⁷⁰⁴ Note 604 at 4.

⁷⁰⁵ Note 604 at 2.

⁷⁰⁶ Note 557 at 19.

The Committee sees little merit in amending the Act to insert, as suggested by the CJC, a provision in similar terms to section 18 of the Parliamentary Commissioner Act 1974 (Qld) to specifically provide that the Parliamentary Commissioner not be required to hold a hearing in every matter.

14.12.2.6 Recommendation

Recommendation 55

The Committee recommends that the Act not be amended to insert a provision in similar terms to section 18 of the *Parliamentary Commissioner Act 1974 (Qld)* to specifically provide that the Parliamentary Commissioner not be required to hold a hearing in every matter.

14.12.3 ‘Direct’ and ‘discreet’ access by the Parliamentary Commissioner to the records of the CJC

14.12.3.1 Introduction

The *Criminal Justice Act* provides that the Parliamentary Commissioner has ‘power to do all things necessary or convenient for the performance of his or her functions’.⁷⁰⁷

Broadly speaking, the Parliamentary Commissioner is entitled to access all records and other information held by the CJC.⁷⁰⁸

In practical terms, the Parliamentary Commissioner invariably requests information from the CJC by way of Notice to Produce information addressed to the CJC. Until recently,⁷⁰⁹ the process for servicing the requests from the Parliamentary Commissioner (i.e. formal Notices issued) was as follows:

- *Pre-Notice and strictly confidential liaison is conducted between the Parliamentary Commissioner’s Office and the Principal Information Officer, who currently reports directly to the Information Manager. This liaison frequently involves assessment of the holdings likely to be relevant to the matter to allow refinement of the requirements of the Parliamentary Commissioner.*
- *Upon receipt of the formal Notice, the Principal Information Officer identifies and extracts the relevant material, seeks any necessary clarifications from the Parliamentary Commissioner’s Office, and prepares necessary transmission documentation.*
- *General Counsel provides a review of the transmission documentation and associated material.*⁷¹⁰

The CJC does not elaborate on the precise nature of the ‘review’ of the material conducted by the Office of General Counsel.

In December 1999, the SIG Report made the following recommendation:⁷¹¹

Recommendation 8.23 — Responses to requests of the Parliamentary Commissioner

That the primary responsibility for coordinating responses to requests for information from the Office of the Parliamentary Commissioner be moved from the Principal Information Officer in

⁷⁰⁷ See section 118T of the *Criminal Justice Act 1989*.

⁷⁰⁸ As discussed in greater detail below in paragraphs 14.12.4 and 14.12.3 (and Part D), some issues have arisen in respect of the provision of information by the CJC and the correct interpretation of section 118Y of the Act.

⁷⁰⁹ CJC, *Continuing the reform process: The report of the Strategic Implementation Group*, December 1999.

⁷¹⁰ Note 709 at 91-92.

⁷¹¹ This issue is discussed in greater detail in Chapter 11 (Office of General Counsel.)

*Information Management Branch to the Office of General Counsel, with associated records searching and extraction services to be provided by the Information Retrieval Section of the Intelligence and Information Divisions.*⁷¹²

By comparison, the NSW Inspector of the Police Integrity Commission (PIC) reports in his *Annual Report for the year ended 30 June 2000*, that in fulfilling his functions he has been provided with ‘direct’ and ‘discreet’ electronic access to all the files of the PIC including the records of the PIC’s current operations.⁷¹³ The access by the Inspector of the PIC is ‘direct’ in the sense that he can access the records of the PIC by himself without the need for an officer of the PIC to retrieve the documents for him. His access is ‘discreet’ in the sense that he can access the records of the PIC without anyone in the PIC knowing what he has examined. The Inspector is provided with a separate room at the PIC premises to facilitate his covert examination of the PIC’s records.

The Inspector’s ‘direct’ and ‘discreet’ electronic access to all the files of the PIC is described by the Commissioner of the PIC, Judge P D Urquhart, as follows:

*...from day one, I saw the desirability of [the Inspector of the PIC] having the opportunity of working covertly if he wished to do so. Therefore, he does not need to ask me for records relating to a matter. He can access them instantly on our electronic network and no-one will know about it, save and except, of course, that with information technology being what it is today, and with the very real need for audit trails to always be available, I could, if I wanted to, get somebody in my information technology area to breach a direction that I had previously given him, but I would not do that...*⁷¹⁴

14.12.3.2 Submission from the former Parliamentary Commissioner, Ms Dick SC

The former Parliamentary Commissioner, Ms Dick SC (as she then was)⁷¹⁵, in a paper delivered in November 1999 to the Second Annual Conference of the International Association for the Civilian Oversight of Law Enforcement⁷¹⁶ identified an emerging issue concerning access to relevant information held by the CJC. Ms Dick SC described this emerging issue as follows:

*Some of the problems identified to date relate to unfamiliarity with the information management methods idiosyncratic to the complex structure of the Criminal Justice Commission. Notices to produce documents if framed too narrowly can miss important material. Notices framed too widely draw the complaint that the activities of this office stretch the resources of the Criminal Justice Commission. Attempts have been made to reach a compromise which will satisfy the need for accountability and take into account the concerns of the Criminal Justice Commission.*⁷¹⁷

Ms Dick SC went on to suggest that direct and discreet access to the CJC’s databases, similar to that access provided to the Inspector of the PIC ‘would improve the situation’.⁷¹⁸

Ms Dick SC, in her submission to this review, reports that this vexed question about appropriate access to the records of the CJC continues to be an issue:

⁷¹² Note 710 at 92.

⁷¹³ With the passage of the *Telecommunications (Interception) Legislation Amendment Act 2000* (Cth) the records available to the Inspector have been expanded to now include Telecommunications Interception product.

⁷¹⁴ Judge P.D. Urquhart, Commissioner, New South Wales Police Integrity Commission, ‘Address to the Joint Standing Committee’s open hearing on the Anti-Corruption Commission’, 5 May 2000, Parliamentary Joint Standing Committee on the Anti-Corruption Commission, at 30.

⁷¹⁵ Note 652.

⁷¹⁶ Note 655.

⁷¹⁷ Note 655 at 6.

⁷¹⁸ Note 655 at 6.

One issue which has emerged is that, on occasion, the Commissioner has experienced delay in obtaining information from the CJC. It should be noted that this does not involve any allegation of deliberate delay on the part of the CJC or its officers.

...

The situation develops when a Notice to Produce is forwarded to the CJC in relation to an investigation. If the Notice is drawn too narrowly, it may miss an important or sought after document. If the Notice is drawn too widely, it will require the CJC to retrieve unnecessary documents and strain the CJC resources. On some occasions the CJC has forwarded an index of documents relating to a particular topic or person. Unfortunately, the index may be worded in such a way that the nature of documents is not readily identifiable by this office. One option is for the relevant officer to attend at the CJC in order to inspect the documents and to isolate the relevant documents. This would put a great strain on the resources of this office which is presently composed of the Commissioner and two full time officers.⁷¹⁹

Ms Dick SC went on to repeat her suggestion that the office of Parliamentary Commissioner be provided with direct computer access to the records of the CJC, but correctly noted that the present system employed by the CJC does not enable such access:

The obvious solution would be for the Commissioner to have direct computer access to the CJC system. However, the Commissioner has been informed that the present system employed by the CJC does not involve the scanning of all documents onto the system so that they can be electronically retrieved. The system which allows for the index to be electronically retrieved is simply a document registration system. Investigations should be undertaken to ascertain whether a system of direct access is affordable and practicable. It is clearly an important tool in the accountability process for the oversight body to have direct, discreet access to the records at any given time.⁷²⁰

14.12.3.3 The CJC's submissions

The CJC, in its submission to this review, has raised some practical problems with implementing the suggestion of direct and discreet access:

For any suggested direct access by the Parliamentary Commissioner's Office to be successful and efficient, there would need to be considerable expertise available in the Commissioner's Office in searching of CJC databases/applications, and detailed knowledge of the types of holdings held. These attributes are required to ensure relevant and complete holdings are located.

Such searching/collation activities within the CJC are typically undertaken by officers who have extensive experience and knowledge of the holdings and application, and who are working in those areas on a regular basis. Acknowledging the limited resources of the Parliamentary Commissioner's Office, introduction of such searching without such skills would be counterproductive, and such a proposal underestimates the complexity of the CJC holdings and environment, and the additional resources which the Parliamentary Commissioner's office would require to undertake such a role.

Scanning of All Documents

It was suggested that direct access could be facilitated by the scanning of all documents. The CJC is preparing to review its information management facilities and practices for the next three to five years and may consider scanning in some form. However, it is worth noting in this regard:

⁷¹⁹ Note 655 at 3-4.

⁷²⁰ Note 604 at 3.

- *Full introduction of scanning remains cost-prohibitive and, with the CJC's budget limitations, it is difficult to see any likelihood of such expenditure being entertained in the medium term.*
- *Even with scanning, location of relevant material remains dependent upon similar searching activities to those which are now utilised within the CJC - scanning of documents will not assist with such activities other than by enabling documents to be viewed electronically, without accessing the physical file. Hence, the issue of efficiency in respect of searching/collation would remain as a substantial deterrent to direct access.*

Accountability and discreet Access

*Apart from the access issues raised previously, as mentioned above, the CJC has put in place a liaison role with the Parliamentary Commissioner's Office to ensure that confidentiality is observed in respect of Notices to Produce and other requests for information, at the discretion of the Parliamentary Commissioner.*⁷²¹

The former Parliamentary Commissioner, Ms Dick, has responded to the practical problems identified by the CJC stating that the problem could be addressed by making available to her office, a CJC staff member who has the experience and knowledge of the detailed CJC databases and applications.⁷²²

14.12.3.4 Views of the Queensland Council for Civil Liberties

Mr O'Gorman⁷²³, has endorsed the direct and discreet access which the NSW Inspector of the PIC is provided in respect of the records of the PIC.

*[The Commissioner of the PIC] has made the relevant point that the Inspector of the PIC is permitted to work covertly against the PIC. By that, it is meant that the Inspector is allowed to access the PIC computer system without having to give notice to the PIC.*⁷²⁴

Mr O'Gorman went on to submit that:

*... there is absolutely no reason why the model which Judge Urquhart has described in respect of his Inspector could not fully operate in respect of the Queensland Parliamentary Commissioner in respect of the CJC.*⁷²⁵

14.12.3.5 Analysis and comment

The Committee considers that the CJC, the Parliamentary Commissioner, and Mr O'Gorman have made meritorious submissions.

The Committee notes that the CJC is 'preparing to review its information management facilities and practices for the next three to five years and may consider scanning in some form'.

Finally, as the Committee notes in Chapter 11 above, the 'liaison role with the Parliamentary Commissioner's Office to ensure that confidentiality is observed in respect of Notices to Produce and other requests for information' is now performed by the Office of General Counsel. The

⁷²¹ Note 602 at 1-2.

⁷²² Letter to the Committee dated 14 December 2000.

⁷²³ In a letter to the then Attorney-General dated 22 May 2000, a copy of which had been forwarded to the Committee, at 1.

⁷²⁴ Letter from the Parliamentary Commissioner dated 08/02/00 attaching a letter from [Lawyers representing the CJC officer] dated 03/02/00.

⁷²⁵ Note 723 at 2.

Committee accepts, on the one hand, that the CJC may consider it has sound reasons for delegating this task to the Office of General Counsel. However, the Committee is concerned that there is the potential for the Office of General Counsel to be compromised in ‘maintaining confidentiality in respect of Notices to Produce information from the Parliamentary Commissioner’ whilst at the same time performing its role of providing advice to the CJC, including advice in respect of any issue which may arise out of the notice and/or the information provided.

14.12.3.6 Conclusions

Conclusion 113

The Committee accepts that the full introduction of scanning by the CJC remains cost-prohibitive.

Conclusion 114

The Committee is of the view, however, that the CJC should give serious consideration to implementing a system whereby a copy of all CJC records received or generated by the CJC as at a set future date be stored electronically (and perhaps the scanning of all records as at a set past date, for example, the year 2001), with a view to providing in the long-term, the Parliamentary Commissioner with direct and discreet computer access to CJC records.

Conclusion 115

In the interim, the Committee has some concerns about the CJC’s move to engage the Office of General Counsel to perform the co-ordinating and liaison role with the Parliamentary Commissioner. The Committee also accepts, (on one view), that the CJC may consider it has good reasons to require its Office of General Counsel to vet or review this information provided to the Parliamentary Commissioner. However, the CJC should also be acutely aware of the ‘forensic advantage’ to an investigator in not disclosing, at least in the early stages of an investigation, the precise nature of the matter under investigation.

Conclusion 116

The Committee is of the view that ‘confidentiality’ of the Parliamentary Commissioner’s Notices must be strictly observed by officers of the CJC responsible for providing the relevant documents in response to any Notice to Produce, if that ‘confidentiality’ is to be something other than in name only.

Conclusion 117

Accordingly, the Committee is of the view that the officer within the Office of General Counsel who performs the ‘strictly confidential liaison’ role with the Parliamentary Commissioner must maintain that confidentiality including to other officers in the Office of General Counsel, particularly General Counsel, or an individual officer who may be required and indeed may feel obligated to give advice to the Commission in respect of any issue which may arise out of the Notice and/or the information provided.

Conclusion 118

The Committee is of the view that the next Parliamentary Committee should consult with the CJC and the Parliamentary Commissioner with a view to considering the issue of an appropriate protocol or guideline governing the provision of information from the CJC to the Parliamentary Commissioner.

Conclusion 119

The Committee is of the view that any such protocol or guideline should include an appropriate mechanism to safeguard the confidentiality of such requests for information from the Parliamentary Commissioner and the appropriate role for the CJC's Office of General Counsel and Principal Information Officer.

14.12.3.7 Recommendations

Recommendation 56

The Committee recommends that 'confidentiality' of the Parliamentary Commissioner's Notices must be strictly observed by the officers of the CJC responsible for providing the relevant documents in response to any Notice to Produce.

Recommendation 57

The Committee further recommends that the next Parliamentary Committee give consideration to issuing an appropriate protocol or guideline governing the provision of information from the CJC to the Parliamentary Commissioner.

Recommendation 58

The Committee further recommends that any such protocol or guideline include an appropriate mechanism to safeguard the confidentiality of such requests for information from the Parliamentary Commissioner and the appropriate role for the CJC's Office of General Counsel and Principal Information Officer.

14.12.4 Commission not entitled to privilege

14.12.4.1 Introduction

Section 118Y of the Act provides:

Commission not entitled to privilege

118Y. The Commission is not entitled, in relation to a investigation under this Part [ie an investigation by the Parliamentary Commissioner], to any privilege in relation to the production of documents or the giving of evidence allowed by law in legal proceedings.

Legal professional privilege is a substantive principle of the common law which can be abrogated by statute by express words or necessary intendment: *Baker v Campbell* (1983) 153 CLR 52, 96-97, 116.

This paragraph will examine the terms and intent of section 118Y of the Act and more specifically whether the section ought be clarified to make it clear that it applies to individual officers of the CJC in addition to the Commission as a whole.

The CJC has submitted that the section prevents the 'Commission' claiming privilege but does not prevent an individual officer of the CJC claiming such privilege.

On another view, the intent of the section is effectively defeated by an individual officer or officers claiming privilege which the Commission is clearly statutorily prevented from claiming.

14.12.4.2 The approach of the CJC

The issue is more than a mere academic one. In one investigation conducted by the former Parliamentary Commissioner, the Parliamentary Commissioner (has recently) advised the Committee that she had issued a Notice to Produce to the CJC, requiring production of documents in respect of which a claim of legal professional privilege had been made by both the CJC and an officer of the CJC. The CJC agreed that it did not have legal professional privilege in respect of the documents but claimed that it could not produce the said documents as an *individual officer* of the CJC had claimed privilege in respect of the documents. Ultimately the CJC produced the documents in question to the Parliamentary Commissioner on the basis that the individual officer of the CJC agreed to provide the Parliamentary Commissioner limited access to the documents only for the purpose of reading the said documents and:

on the condition that the Parliamentary Commissioner undertakes:

- *not to divulge their contents to any other person without first giving [the officer of the CJC] the opportunity to test [his/her] construction of section 118Y of the Act; and*
- *not to contend that [the officer of the CJC]’s agreement to the Parliamentary Commissioner looking at them has defeated [his/her] pre-existing claim to privilege (as viewing it exists despite section 118Y).*

14.12.4.3 Analysis and comment

Section 14A of the *Acts Interpretation Act 1954* provides, in essence, that the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation. Section 14B of the *Acts Interpretation Act* permits consideration to be given to extrinsic material capable of assisting in the interpretation of section 118Y, either because there is ambiguity in section 118Y or because a literal interpretation of section 118Y that it did not apply to documents the subject of joint privilege results in a manifestly absurd or unreasonable application of section 118Y.

Extrinsic material which can be used includes the Explanatory Notes to the relevant Bill.⁷²⁶ The Explanatory Notes provide that the primary purpose of the Bill was ‘*to introduce new measures to heighten existing processes of accountability of the Criminal Justice Commission*’. The Notes comment on the provisions relating to the Parliamentary Commissioner in the following terms:

In relation to investigations by the Parliamentary Commissioner, the Commission will not be able to claim privilege, such as legal professional privilege. It is considered that in order to achieve scrutiny of the Commission the Parliamentary Commissioner must have as much access as is possible to the information held by the Commission. (Underlining added.)⁷²⁷

The comment in the Notes on section 118Y is:

*This provides that in relation to an investigation under Part 4A, the Commission is not entitled to claim privilege.*⁷²⁸

14.12.4.4 Conclusions

Conclusion 120

The Committee is of the view that the clear intention of the Parliament is that the CJC and its officers not be entitled to claim legal professional privilege in relation to an investigation by the

⁷²⁶ Criminal Justice Legislation Amendment Bill (1997).

⁷²⁷ Criminal Justice Legislation Amendment Bill (1997), Explanatory Notes at p2.

⁷²⁸ Note 727 at 11.

Parliamentary Commissioner. It is arguable that by the express provisions of Part 4A of the Act, the Parliament has made it clear that in relation to an investigation by the Parliamentary Commissioner, the policy of improving the accountability of the CJC must override the policy behind legal professional privilege.

Conclusion 121

The Committee is of the view that it would defeat the purpose and intent of enacting section 118Y, if an individual officer or officers could successfully claim privilege which the CJC is statutorily prevented from claiming, resulting in the Parliamentary Commissioner being refused access to relevant documents.

Conclusion 122

Irrespective of the perceived present state of the law (being an issue upon which legal minds will no doubt differ) the Committee considers that effective scrutiny of the CJC requires that section 118Y of the Act be clarified to make it clear that an individual officer or officers of the CJC is not permitted to claim privilege which the CJC is statutorily prevented from claiming.

14.12.4.5 Recommendation

Recommendation 59

The Committee recommends that section 118Y of the Act be clarified to make it clear that an individual officer or officers of the CJC is not permitted to claim privilege which the CJC is statutorily prevented from claiming.

14.12.5 Power to recommend disciplinary action or criminal prosecutions against officers of the CJC

14.12.5.1 Introduction

This paragraph will examine whether the Parliamentary Commissioner ought be permitted to recommend disciplinary action or criminal prosecutions against officers of the CJC where appropriate.

Section 118R of the Act details the functions of the Parliamentary Commissioner which includes a function to ‘report back to the Committee on the results of carrying out [investigations requested by the Committee]’ (Underlining added.)

14.12.5.2 Submission from the former Parliamentary Commissioner, Ms Dick SC

The issue of the powers of the Parliamentary Commissioner in reporting back to the Committee was addressed by the former Parliamentary Commissioner, Ms Julie Dick SC, (as she then was) in her submission to this review. Ms Dick SC stated:

... it is not advisable that the reports [of the Parliamentary Commissioner] contain recommendations in relation to criminal or disciplinary charges.... One of the difficulties with the proposition that disciplinary charges could be recommended directly from a Commissioner’s investigation is that much of the evidence obtained during the investigation would be obtained by compulsory process and may not necessarily be admissible in a court. ... However, it would be permissible, in appropriate circumstances, for the Commissioner’s report to advise the Committee that the allegations and evidence raise a reasonable suspicion of misconduct, official misconduct or criminal offences. The Committee could then, if it is

*considered appropriate, take any one of the steps available to it under s.118F. (Underlining added.).*⁷²⁹

14.12.5.3 The CJC's submissions

The CJC has commented on Ms Dick's submission under cover of a letter dated 12 December 2000.⁷³⁰ The CJC did not comment specifically on the Parliamentary Commissioner's view that *'it would be permissible, in appropriate circumstances, for the Commissioner's report to advise the Committee that the allegations and evidence raise a reasonable suspicion of misconduct, official misconduct or criminal offences'*. The CJC did however question the utility of the Commissioner's investigation of allegations of misconduct, in that any investigation by the Parliamentary Commissioner could *'never result in any positive outcome in relation to criminal or disciplinary matters'* if:

- the only action the Committee could take on receipt of the Parliamentary Commissioner's report is to refer the report to another agency; and
- the other agency would not be able to use any of the product of the Commissioner's investigation (either because it was obtained under compulsion or is privileged) but would presumably have to start an investigation afresh.⁷³¹

14.12.5.4 Analysis and comment

The Committee notes that the Inspector of the NSW Police Integrity Commission has the power to recommend disciplinary action or criminal prosecutions against officers of the PIC where appropriate.⁷³²

Further, the NSW Joint Parliamentary Committee on the ICAC has recommended that its proposed Inspector of the ICAC should have the power to:

*recommend disciplinary action or criminal prosecutions against Commission officers where appropriate.*⁷³³

Similarly, the Western Australian Joint Standing Committee on the ACC has recommended that its proposed Parliamentary Inspector of the ACC should have the power to:

*recommend disciplinary action or criminal prosecutions against officers of the ACC where appropriate.*⁷³⁴

14.12.5.5 Conclusions

Conclusion 123

The Committee is firmly of the view that the Parliamentary Commissioner's role should not be limited to simply conducting investigations, compiling the available evidence and presenting it to the Committee without the benefit of any conclusions.

Conclusion 124

⁷²⁹ Note 604 at 13.

⁷³⁰ Note 667.

⁷³¹ Note 667 at 13.

⁷³² See section 90(1)(g) of the *Police Integrity Commission Act 1996* (NSW).

⁷³³ Note 588 at 66.

⁷³⁴ Note 581 at 30.

The Committee is of the view that section 118R of the Act should be clarified to confirm that in reporting back to the Committee in relation to 'the results' of carrying out investigations referred by the Committee, the Parliamentary Commissioner be permitted to advise the Committee, in appropriate cases, that the allegations and evidence raise a reasonable suspicion of misconduct, official misconduct or criminal offences.

14.12.5.6 Recommendation

Recommendation 60

The Committee recommends that section 118R of the Act should be clarified to confirm that in reporting back to the Committee in relation to the results of carrying out investigations referred by the Committee, the Parliamentary Commissioner be permitted to advise the Committee, in appropriate cases, that the allegations and evidence raise a reasonable suspicion of misconduct, official misconduct or criminal offences.

14.13 Procedural fairness, investigations by the Parliamentary Commissioner, and reports of the Parliamentary Commissioner to the Committee – possible reform

14.13.1 Introduction

This paragraph will examine the issue of procedural fairness to the CJC and its officers.

More specifically, this paragraph will examine the extent to which the Parliamentary Commissioner in investigating and reporting to the Committee owes a duty of procedural fairness to the CJC and its officers.

This paragraph will also examine the extent to which the Committee, having received a report from the Parliamentary Commissioner in respect of an investigation, owes a duty of procedural fairness to the CJC, individual CJC officers, or others, and what steps the Committee needs to take in relation to such reports (as a matter of general procedure) to discharge any such duty of procedural fairness.

14.13.2 Procedural fairness

The former Parliamentary Commissioner, Ms Dick SC, in her submission to this review has quite correctly emphasised that the detail of the requirements of procedural fairness will differ from case to case and it is not possible to provide a defined set of rules in relation to the matter.

Ms Dick SC has referred to a brief summary of the rules of procedural fairness as outlined by Hallett in *Royal Commissions and Boards of Inquiry: some legal and procedural aspects*:

'Basically there are two rules of natural justice. The first is that no man should be condemned or deprived of his rights without being given the opportunity of a hearing, and secondly, that those who conduct the hearing (or inquiry) must be partial, or to be more exact, they must be above any reasonable suspicion of bias. Whilst there are two basic rules, the 'hearing rule' is not an easy one to define because what it demands fluctuates according to the circumstances, indeed it has to be 'moulded to the particular circumstances of the case'. For example, in some situations a body required to observe the rules of natural justice might be required to allow legal representation, whereas other situations the rule may be satisfied if the person to be affected by decision is given the opportunity to make a written submission. The rule of natural justice have been described as 'in a broad sense of procedural matter' which is in fact nothing

*more than 'fair play and action'.*⁷³⁵

14.13.3 *The standard practice adopted regarding a referral to the Parliamentary Commissioner*

The following standard practice is adopted to ensure, as far as is possible, procedural fairness is afforded to the CJC and its officers:

- A bi-partisan majority of the Committee is required to refer an investigation to the Parliamentary Commissioner.
- The Committee refers the investigation to the Parliamentary Commissioner by way of clear terms of reference setting out the matters to be investigated.
- If the Parliamentary Commissioner considers it is possible that the report may include an adverse comment in respect of the CJC or one of its officers, the Parliamentary Commissioner will provide the CJC with an opportunity to comment.
- The Parliamentary Commissioner will report to the Committee by way of a draft confidential report.
- The Committee provides the CJC with a copy of the proposed draft report inviting submissions from the CJC, including:
 - the appropriateness or otherwise of tabling in the Parliament a public or non-confidential version of the Parliamentary Commissioner's report;
 - any alterations to or deletions from the draft confidential report the CJC sees as necessary in order to preserve the integrity of the CJC's operations and procedures or to otherwise ensure confidentiality;
 - any response the CJC would like the Committee to consider attaching to any report the Committee might determine to table; and
 - any other response the CJC would like to make in respect of the draft confidential report.
- The Committee provides the Parliamentary Commissioner with an opportunity to comment on the CJC's submissions.
- Depending on the Parliamentary Commissioner's comments, the Committee may provide the CJC with an opportunity to comment upon the Parliamentary Commissioner's comments.
- The Committee may also seek, in appropriate cases, legal advice from independent legal counsel as whether procedural fairness has been given to the CJC, to its officers, and to others.

Finally, in many cases, notwithstanding that a report from the Parliamentary Commissioner may contain adverse findings or opinions critical of the operations or procedures of the CJC (as opposed to findings of misconduct), in determining whether to publicly table a report of the Parliamentary Commissioner, the Committee gives consideration to a number of factors, including;

- whether the report has been prepared in accordance with procedural fairness;
- whether the allegation has been previously made public in any way;
- whether the investigation involves sensitive current operational matters;

⁷³⁵ Hallett, L., *Royal Commissions and Boards of Inquiry: some legal and procedural aspects*, LBC, 1982, Sydney, at 182- 183.

- whether the exposure of the report publicly might identify operational procedures adopted by the CJC which are better kept confidential;
- whether the investigation involves the Witness Protection Program of the CJC;
- whether the report relates to information given by a confidential witness;
- whether the matter involves a politically sensitive investigation; and
- whether ultimately the public interest is best served by (not) tabling such a report.

14.13.4 *The CJC's submissions*

The CJC has submitted to the Committee that, as a matter of general principle, reports by the Parliamentary Commissioner which contain adverse findings or opinions critical of the operations or procedures of the CJC (as opposed to findings of misconduct) should not be published.⁷³⁶

14.13.5 *Submission from the former Parliamentary Commissioner, Ms Dick SC*

The former Parliamentary Commissioner, Ms Dick SC (as she then was)⁷³⁷, in a paper delivered to the Second Annual Conference of the International Association for the Civilian Oversight of Law Enforcement⁷³⁸, raised a concern that the function of hearing, investigating and reporting could easily become effectively stultified if there was a supposed requirement to repeatedly afford the opportunity to be heard:

*... Further consideration needs to be given to the question of tabling reports. Not all reports emanating from the Parliamentary Criminal Justice Commissioner will be tabled. Some reports will deal with matters of concern to the Parliamentary Committee in its functions, some will involve sensitive operational material which should not be made public, prematurely or at all. However, in accordance with the rules of procedural fairness, notice of adverse findings must be given, together with an opportunity to be heard. At the moment, that notice and opportunity is given in relation to my reports and the question is yet to be resolved whether the Parliamentary Committee is required to repeat the process before tabling. This is of course a matter for the Parliamentary Committee. However, I must say I am of the view that if the Parliamentary Committee is going to table my report, sufficient notice has been given. The function of hearing, investigating and reporting could easily become effectively stultified if nothing in the least degree adverse could legitimately be said without first affording the opportunity to be heard to anyone who supposed himself or herself to be in some way detrimentally affected by it. In the same way the function can be stultified if there is a supposed requirement to repeatedly afford the opportunity to be heard.*⁷³⁹

Ms Dick, in her submission to this review, emphasised that the reports made by the Parliamentary Commissioner are made to the Committee alone and the question of whether or not such a report is further published in any way is a matter for the Committee. The Parliamentary Commissioner also submitted that the Committee should publish the guidelines it follows in determining whether a report of the Parliamentary Commissioner should be tabled or not tabled.

14.13.6 *Analysis and comment*

The Committee has been most careful to provide the CJC and its officers, and others, with procedural fairness. The Committee acknowledges that it plays an important role in this process.

⁷³⁶ This submission is contained in a letter from the CJC to the Committee dated 16 July 1999.

⁷³⁷ Note 652.

⁷³⁸ Note 655.

⁷³⁹ Note 655 at 6.

In many cases, the Committee has, for a variety of reasons, determined that on balance the public interest was not served by publication of a report of the Parliamentary Commissioner, notwithstanding that the report contained adverse findings or opinions critical of the operations or procedures of the CJC (as opposed to findings of misconduct). In such cases, the Committee has resolved to seek appropriate correction of these matters through the usual oversight processes of the Committee on the basis that the CJC undertook to 'address each of these issues specifically to ensure current procedures will prevent any repetition of the concerns and to report to the Committee on the steps it takes'.

14.13.7 Conclusions

Conclusion 125

The Committee accepts that both the Parliamentary Commissioner and the Committee owe a duty of procedural fairness to the CJC, its officers, and others that might arguably be affected by their findings or reports. The Committee accepts that this duty arises because actions of both the Committee and the Parliamentary Commissioner, and in particular the publication of a report, can affect the reputation of the CJC and its officers.

Conclusion 126

The Committee is of the view, confirmed by independent legal advice, that the standard practice adopted by the Committee, as detailed above, is more than adequate to discharge the Committee's duty to provide procedural fairness to the CJC, its officers, and others.

Conclusion 127

The Committee does not accept the CJC's submission, as a matter of general principle, that reports by the Parliamentary Commissioner which contain adverse findings or opinions critical of the operations or procedures of the CJC (as opposed to findings of misconduct) should not be published.

14.13.8 Recommendation

Recommendation 61

The Committee recommends that the next Parliamentary Committee give consideration to finalising, in consultation with the Parliamentary Commissioner and the CJC, a set of protocols or guidelines governing:

- (a) the issue of procedural fairness to the CJC, its officers and others;**
 - (b) reports by the Parliamentary Commissioner to the Committee; and**
 - (c) the tabling of reports of the Parliamentary Commissioner in the Parliament.**
-

14.14 Judicial review and protection of the Parliamentary Commissioner – possible reform

14.14.1 Introduction

This sub-chapter will examine the statutory protection afforded to the Parliamentary Commissioner by section 118ZA of the Act and whether the Parliamentary Commissioner is subject to judicial review and what reforms, if any, should be made.

The effect of section 118ZA of the Act may relevantly be summarised as follows:

- the Parliamentary Commissioner and Parliamentary Commissioner officers are afforded protection for things done in ‘good faith and without negligence’;⁷⁴⁰
- no civil or criminal proceedings may be brought against the Parliamentary Commissioner without the leave of the Supreme Court (which must be satisfied that there is a substantial ground for claiming lack of good faith or negligence);⁷⁴¹ and
- the Parliamentary Commissioner can not be called to give evidence or produce documents in any court or judicial proceedings.⁷⁴²

Section 118W of the *Criminal Justice Act* provides that the *Commissions of Inquiry Act* 1950 applies to the Parliamentary Commissioner:

118W. *For an investigation under this part-*

(a) the Parliamentary commissioner has and may exercise all the powers, rights and privileges under the Commissions of Inquiry Act 1950, of a commission and the chairperson of a commission within the meaning of the Act; and

(b) the Commissions of Inquiry Act 1950 applies to the Parliamentary commissioner, the investigation and the subject matter of the investigation as if the matter were one into which a commission constituted by the Parliamentary commissioner was appointed to make an inquiry under that Act.

Further, section 132A of the Act provides that the *Commissions of Inquiry Act* prevails over the *Criminal Justice Act*.

Article 9 of the *Bill of Rights* provides that ‘the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament’.

Section 3(1)(a) of the *Parliamentary Papers Act* 1992 (Qld) provides that section 3 ‘applies for the purposes of ...Article 9 of the Bill of Rights (1688) as applying to the Queensland Parliament’. Section 3 of the *Parliamentary Papers Act* defines ‘proceedings in Parliament’ as follows:

...

(2) All words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the House or a committee’ are ‘proceedings in Parliament’.

(3) Without limiting subsection (2), ‘proceedings in Parliament’ include –

(a) giving evidence before the House, a committee or an inquiry; and

⁷⁴⁰ See s. 118ZA(1) of the *Criminal Justice Act*.

⁷⁴¹ See s. 118ZA(2) and (3) of the *Criminal Justice Act*.

⁷⁴² See s. 118ZA(4) of the *Criminal Justice Act*.

- (b) evidence given before the House, a committee or an inquiry; and
- (c) presenting or submitting a document to the House, a committee or an inquiry; and
- (d) a document laid before, or presented or submitted to, the House, a committee or an inquiry; and
- (e) preparing a document for the purposes of, or incidental to, transacting business mentioned in paragraph (a) or (c); and
- (f) preparing, making or publishing a document (including a report) under the authority of the House or a committee; and
- (g) a document (including a report) prepared, made or published under the authority of the House or a committee.

14.14.2 Prior PCJC views

In considering the necessary powers for the then proposed Parliamentary Commissioner, given the role and functions recommended for the position⁷⁴³, the third PCJC determined that:

*...most importantly, in exercising these powers the Parliamentary Commissioner should not be precluded by any other law or by any privileges of the Legislative Assembly, and his/her conduct and right to inquire into any matter should not be justiciable in any court. For these reasons, the proceedings of the Parliamentary Commissioner should be 'proceedings in Parliament'. The activities of the Parliamentary Commissioner should be seen as merely an extension of the PCJC.*⁷⁴⁴

In expressing those views, the Committee was no doubt conscious of the terms of the *Parliamentary Papers Act* and the fact that the Parliamentary Commissioner was to act only at the request of the Committee.

14.14.3 The CJC's submission

The CJC, in its submission to this review, refers to the original draft of the amending Bill⁷⁴⁵ which sought to exempt the Parliamentary Commissioner from judicial review. The CJC submits that 'although the provision was removed from the final amendments after debate, a recent court case has given rise to an argument about whether the Parliamentary Commissioner is immune to judicial review because of Parliamentary privilege'.⁷⁴⁶ The CJC further submits that this argument 'results in part from the requirement that the Parliamentary Commissioner must act under direction from the PCJC'.⁷⁴⁷

14.14.4 Submission from the former Parliamentary Commissioner, Ms Dick SC

The former Parliamentary Commissioner, Ms Dick SC (as she then was)⁷⁴⁸, in her submission to this review, states, in part, that the Parliamentary Commissioner's protection from judicial review:

...reflects the Commissioner's status, functions, powers, privileges and immunities consistent

⁷⁴³ These functions included investigating alleged 'leaks' of confidential information in respect of which members and staff of the Committee may be suspects.

⁷⁴⁴ Note 609 at 118.

⁷⁴⁵ See Criminal Justice Legislation Amendment Bill 1997

⁷⁴⁶ Note 599 at 58.

⁷⁴⁷ Note 746. This issue is discussed in more detail above in paragraph 14.14.

⁷⁴⁸ Note 652.

*with those of the PCJC, were that Committee itself discharging the Commissioner's duties.*⁷⁴⁹

Ms Dick SC emphasises that the Parliamentary Commissioner effectively undertakes investigations and performs other functions which would otherwise be, and previously would have been conducted by the Committee itself.

*It should be remembered that prior to the appointment of the Commissioner, it fell to the Committee to conduct the type of investigations now conducted by the Commissioner. There is no doubt that an investigation conducted by the Committee and any resultant report would be protected by Parliamentary privilege.*⁷⁵⁰

The former Parliamentary Commissioner goes on to argue that the statutory protection afforded to the Queensland Parliamentary Commissioner for Administrative Investigations (the Ombudsman) under the *Parliamentary Commissioner Act 1974 (Qld)*⁷⁵¹ is wider than that conferred on the Parliamentary Commissioner by section 118ZA of the Act.

Section 29 of the *Parliamentary Commissioner Act 1974 (Qld)* provides:

Protection of commissioner and officers

29.(1) Neither the commissioner, the acting commissioner nor any of the officers of the commissioner shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he or she would have been liable apart from this section in respect of any act done or purporting to be done, in pursuance of this Act or of an authority given under this Act, unless the act was done in bad faith.

(2) No civil or criminal proceedings shall be brought against the commissioner, the acting commissioner or any of the officers of the commissioner in respect of any such act as is referred to in subsection (1) without the leave of the Supreme Court, and the Supreme Court shall not give leave under this section unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith.

(3) Notwithstanding anything in subsections (1) and (2), no prerogative writ shall be issued restraining the commissioner or acting commissioner from carrying out, or compelling the commissioner or acting commissioner to carry out any investigation, and no proceedings shall be brought against the commissioner whereby the issue of such a writ is sought.

(4) Neither the commissioner, the acting commissioner nor any of the officers of the commissioner shall be called to give evidence or produce any document in any court, or in any judicial proceedings, in respect of any matter coming to his or her knowledge in the exercise of his or her functions under this Act.

Ms Dick SC notes, in particular, that:

...no action for damages grounded solely for negligence, as opposed to bad faith, would lie against the Ombudsman ... On the other hand, an action founded in negligence might lie against a Parliamentary commissioner officer. The 'bad faith' test is higher than mere negligence.

The former Parliamentary Commissioner also notes that the position of the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act (1986)* has similar protection to the Ombudsman in that the Inspector-General is not liable to actions for negligence.

⁷⁴⁹ Note 604 at 10.

⁷⁵⁰ Note 604 at 7.

⁷⁵¹ See s. 29 of the *Parliamentary Commissioner Act 1974 (Qld)*.

Further, the former Parliamentary Commissioner further submits that:

Another curious feature of the legislation is that s.118W gives the [Parliamentary Commissioner] by its reference to the Commissions of Inquiry Act, ‘such powers rights and privileges as are vested in the Supreme Court or any judge thereof’.

A Supreme Court judge cannot be sued for negligence in relation to the discharge of the duties of his or her office. Yet s.118ZA seems to envisage such an action in respect of the Commissioner.

The legislation as it presently stands promotes a confusion of concepts with respect to the Commissioner’s powers, privileges and immunities. Mixed signals are sent by the protection of the Commissioner’s reports under the authority of the Committee on the one hand, and the commissioner’s rights, in relation to the investigations, to the immunities of a Supreme Court Judge and the apparent ability to be sued for negligence (S.11ZA) on the other.⁷⁵²

Finally, the Parliamentary Commissioner argues that the prospect that the Parliamentary Commissioner, like the Committee, is not subject to judicial review, is counterbalanced by:

The fact that it is a question for the Committee and the Committee alone whether a report [of the Parliamentary Commissioner] be tabled or otherwise, provides a layer of protection for the CJC should the Committee feel that the Commissioner has failed to accord procedural fairness in any particular investigation.⁷⁵³

14.14.5 The CJC’s comments on the Parliamentary Commissioner’s submission

The CJC has responded to the Parliamentary Commissioner’s submission stating:

In the Commission’s submission, the Commissioner’s position is similar to that of CJC Commissioners. When discharging their duties as Commissioners or constituting the commission to conduct a hearing under section 25, they have the protection and immunity of a judge of the Supreme Court under section 100. When otherwise carrying out functions and responsibilities, they are protected as long as they act in good faith and without negligence under section 101. In the Commission’s submission, it is appropriate that the protection afforded the Parliamentary Commissioner under the Act accords in general terms with the protection afforded to CJC Commissioners.⁷⁵⁴

14.14.6 The Parliamentary Commissioner’s response to the CJC’s comments

The Parliamentary Commissioner, in a response to the CJC’s comments, has rejected the comparison sought to be made by the CJC between the position of the Parliamentary Commissioner and that of the CJC Commissioners. Ms Dick SC submits that the important distinction between the Parliamentary Commissioner and the CJC Commissioners is that there is no opportunity for self-motivated investigations on the part of the Parliamentary Commissioner nor is there any capacity in the Parliamentary Commissioner to refuse to carry out the functions required by the Committee:

The CJC’s comments in relation to the proposition that the Commissioner’s position is similar to that of the CJC Commissioners overlooks two facts:

- *The Parliamentary Criminal Justice Committee is the oversight body of the CJC. Clearly what was intended when the system was put in place, was that the CJC would be accountable to the people through the Parliament. The Parliamentary Criminal Justice*

⁷⁵² Note 604 at 10-11.

⁷⁵³ Note 604 at 8.

⁷⁵⁴ Note 667 at 3.

Commissioner is a particular assistant to the Parliamentary Criminal Justice Committee in providing assistance in investigations to enable the Committee to do its important work of ensuring that the CJC is accountable to the people through the Parliament.

- *Under s.118R of the Criminal Justice Act 1989 the Parliamentary Commissioner has the functions, as required by the Parliamentary Committee, to do those things as set out in s.118R(2) including reporting to the Parliamentary Committee on the results of carrying out the functions as mentioned in paragraphs (a) to (e). Therein lies an important distinction between the Parliamentary Commissioner and the CJC Commissioners. There is no opportunity for self-motivated investigations on the part of the Parliamentary Commissioner nor is there any capacity in the Parliamentary Commissioner to refuse to carry out the functions required by the Committee. Accordingly, it is not appropriate that the protection afforded the Parliamentary Commissioner under the Act accord in general terms with the protection forwarded to CJC Commissioners.⁷⁵⁵*

14.14.7 Views of the Queensland Council for Civil Liberties

Mr O’Gorman, representing the Queensland Council for Civil Liberties⁷⁵⁶, in a recent paper delivered to a seminar held by the Joint Standing Committee on the Anti-Corruption Commission in Western Australia stated:

The Inspector cannot be civilly or criminally sued unless a Supreme Court first decides that there is substantial ground for claiming that the Inspector has not acted in good faith, or has acted negligently. This, in my view, strikes a reasonable compromise.⁷⁵⁷

14.14.8 Analysis and comment

This issue has proved to be a most perplexing one for the Committee.

In considering this issue, the Committee has felt constrained by the fact that the extent to which the Parliamentary Commissioner is amenable to the courts is presently the subject of an appeal before the courts.⁷⁵⁸

The Chairperson of the CJC, Mr Butler SC, referred to this difficulty in his evidence before the Committee as part of this review:

If the present court action were to result in the position being submitted by the CJC before the court—namely, that judicial review is available in respect of the Parliamentary Commissioner—there would seem to be no great need to be completely rethinking the position [of the Parliamentary Commissioner].⁷⁵⁹

The Committee notes the CJC’s submission that:

- the Parliamentary Commissioner exercises special coercive powers of a Commission of Inquiry;

⁷⁵⁵ Letter from the Parliamentary Commissioner to the Committee dated 14 December 2000.

⁷⁵⁶ Mr O’Gorman is also Vice-President of the Queensland Council for Civil Liberties.

⁷⁵⁷ Mr O’Gorman went on to express regret that there is a total prohibition on the Parliamentary Commissioner being called to give evidence or produce any document in court.

⁷⁵⁸ On 23 December 1999, the CJC commenced legal proceedings against the Parliamentary Commissioner seeking, in essence, a declaration, amongst others, that the Parliamentary Commissioner failed to observe the requirements of procedural fairness. This matter was heard on 17 and 18 July 2000 and a decision by Helman J. was handed down on 25 July 2000. Helman J. declined to make the declarations sought by the CJC. On 18 August 2000 the CJC filed a notice of appeal. This matter has not yet been determined.

⁷⁵⁹ Note 605 at 8.

- the Ombudsman is an officer of the Parliament, but in the CJC's view, is not granted exemption from judicial review; and
- the Commonwealth Inspector-General of Intelligence and Security is not exempt from all forms of review.

The Committee also notes that:

- the Parliamentary Commissioner is described in section 118G of the Act as 'an officer of the Parliament';
- the Parliamentary Commissioner, in undertaking an investigation requested by the Committee, is effectively acting as an 'arm' of the Committee;
- the Parliamentary Commissioner can only investigate if a bi-partisan majority of the Committee agree and there is no opportunity for self-initiated investigations on the part of the Parliamentary Commissioner;
- the Parliamentary Commissioner only acts at the direction of the Committee and can not refuse to carry out the functions of the Committee.
- the Parliamentary Commissioner undertakes investigations and performs other functions which would otherwise be, and previously would have been conducted by the Committee itself;
- if the Committee itself was conducting the investigation, the investigation would be protected by Parliamentary privilege and the decision of the Committee would be immune from judicial review;
- protections similar to those conferred on the Parliamentary Commissioner by section 118ZA are currently enjoyed by the Ombudsman under section 29 of the *Parliamentary Commissioner Act 1974*;
- section 118W of the *Criminal Justice Act* provides that in conducting an investigation, the Parliamentary Commissioner has and may exercise all the powers, rights and privileges under the *Commissions of Inquiry Act 1950* of a commissioner and the chairperson of a commission within the meaning in the Act;
- section 20 of the *Commission of Inquiry Act 1950* (COI Act) provides that protection is given to persons who act in 'good faith', without any further requirement that a person act 'without negligence'; and
- section 132A of the *Criminal Justice Act* provides that the *Commissions of Inquiry Act* prevails over the *Criminal Justice Act*.

Finally, the Committee also notes the former Parliamentary Commissioner's submission to the Committee which summarises the system of checks and balances provided by the legislation:

- A qualification for appointment as Parliamentary Criminal Justice Commissioner is that the appointee must be a person who has served as or is qualified for appointment as a judge of the Supreme Court of Queensland or the Supreme Court of another State.
- Those investigations which are protected by Parliamentary privilege can only be commenced by a referral from the Committee unanimously or by a bi-partisan majority.
- The referral is by way of defined Terms of Reference, which are routinely given to the CJC and recited in the report.
- The Committee is not obliged to act on or table any report prepared by the Commissioner.

- The Commissioner can be removed from office by the Speaker on a recommendation of the Committee supported by all or a bi-partisan majority of the Committee.⁷⁶⁰

14.14.9 Conclusions

Conclusion 128

The Committee does not accept the CJC's submission that the Parliamentary Commissioner's position 'is similar to that of CJC Commissioners'.

Conclusion 129

The Committee is of the view, however, on balance, that given that the issue of the extent to which the Parliamentary Commissioner is amenable to the courts is presently the subject of an appeal before the courts,⁷⁶¹ the Committee should appropriately await the outcome of that appeal before forming a concluded view in respect of these issues.

14.14.10 Recommendation

Recommendation 62

The Committee recommends that the next Parliamentary Committee give further consideration to the issues of the appropriate amenability of the Parliamentary Commissioner to judicial review and the appropriate protections for the Parliamentary Commissioner following the outcome of the current court action by the CJC.

14.15 Accountability of the office of the Parliamentary Commissioner – possible reform

14.15.1 Review of the office of Parliamentary Commissioner

14.15.1.1 Introduction

The Parliamentary Commissioner is required to report back to the Committee in relation to investigations referred by the Committee, pursuant to sections 118F and 118R of the Act. In addition, the Committee has established a practice by which the Parliamentary Commissioner reports on a bi-monthly basis to the Committee in respect of her activities for the previous two month period.

14.15.1.2 Analysis and comment

The Committee notes that the Act as it is presently drafted contains no provision which formally makes the Parliamentary Commissioner accountable to the Committee.

14.15.1.3 Conclusions

Conclusion 130

The Committee is of the view that section 118 of the Act should be amended to clarify that in conducting its three year review of the CJC, the Committee may conduct a review of the office of the Parliamentary Commissioner.

⁷⁶⁰ Note 604 at 9.

⁷⁶¹ Note 758.

Conclusion 131

The Committee is of the view that such an amendment may be achieved by the insertion of a provision in similar terms to section 38 of the Misconduct Tribunals Act 1997.

14.15.1.4 Recommendation**Recommendation 63**

The Committee recommends that section 118 of the Act should be amended to clarify that in conducting its three year review of the CJC, the Committee may conduct a review of the office of the Parliamentary Commissioner.

*14.15.2 Annual Report by the Parliamentary Commissioner*14.15.2.1 Introduction

As the Act is currently drafted, the Parliamentary Commissioner is not required to provide an annual report to the Parliament.

The third PCJC had envisaged that the Parliamentary Commissioner ‘would report directly to Parliament on an annual basis’.⁷⁶²

14.15.2.2 Views of the Queensland Council for Civil Liberties

The perceived gap in the legislation which does not provide for the Parliamentary Commissioner to give an annual report to Parliament was highlighted by Mr O’Gorman, in a recent paper delivered to a seminar conducted by the Joint Standing Committee on the Anti-Corruption Commission in Western Australia. Mr O’Gorman opined that:

*Presumably this is because her position is an adjunct to the operations of the supervising Parliamentary Committee for the CJC.*⁷⁶³

14.15.2.3 Submission from the former Parliamentary Commissioner, Ms Dick SC

The former Parliamentary Commissioner, Ms Dick SC, in her submission to this review has relevantly emphasised that when the Parliamentary Commissioner reports on the results of an investigation, the report is made to the Committee alone and it is then a matter for the Committee as to what, if anything, it will do with the report. Ms Dick has submitted that:

*In those circumstances, on one view of the matter the Commissioner should not provide an annual report directly to Parliament and should only do so through the Committee. However, there would appear to be no difficulty if the Committee included in its annual report, a report on the investigations forwarded to the Commissioner and the results thereof. There would be no difficulty in the Committee requesting the Commissioner under Section 118R(2)(h) to assist in the preparation of the Committee’s annual report in that regard.*⁷⁶⁴

⁷⁶² Note 609 at 118.

⁷⁶³ Note 596 at 7.

⁷⁶⁴ Note 604 at 13.

14.15.2.4 The CJC's submission

The CJC has endorsed the submission made by the former Parliamentary Commissioner that the Parliamentary Commissioner should not provide an annual report directly to Parliament but that relevant matters concerning the office of Parliamentary Commissioner be referred to in the Committee's Annual Report.⁷⁶⁵

14.15.2.5 Analysis and comment

The Committee notes that oversight agencies which perform a similar role to the Parliamentary Commissioner are required to table an annual report of their activities in the Parliament. Both the Commonwealth Inspector-General of Intelligence and Security and the Inspector of the NSW Police Integrity Commission are required to provide an annual report to the Parliament.

Further, the NSW Joint Parliamentary Committee on the ICAC has recommended that its proposed Inspector of the ICAC:

*should be required to publish an Annual Report, to place on the public record the details of the activities undertaken over the past year. The Annual Report should include reference to the complaints investigated in the reporting period.*⁷⁶⁶

Similarly, the Western Australian Joint Standing Committee on the ACC has recommended that its proposed Parliamentary Inspector of the ACC should table an annual report detailing the activities of the Inspector.

However, the Committee notes that the Parliamentary Commissioner, unlike other similar oversight agencies (either existing or proposed), can not act autonomously. The Parliamentary Commissioner acts only at the request of the Committee and reports only to the Committee.

The Parliamentary Commissioner provides a confidential report to the Committee on a bi-monthly basis prior to the bi-monthly meeting with the Committee. The Committee considers that the Parliament and indeed the community may nevertheless benefit from a *public report* detailing the activities of the office over the prior 12 month period.

14.15.2.6 Conclusions

Conclusion 132

The Committee accepts, in principle, the submissions of the Parliamentary Commissioner and the CJC that the Parliamentary Commissioner should not provide an annual report directly to Parliament.

Conclusion 133

The Committee is of the view however, that the Parliamentary Commissioner should provide the Committee with an annual report detailing the activities of the office which the Committee will table as part of the Committee's annual report to the Parliament.

⁷⁶⁵ Note 667 at 4.

⁷⁶⁶ Note 588 at 66.

14.15.2.7 Recommendation

Recommendation 64

The Committee recommends that the Act be amended to provide that the Parliamentary Commissioner be required to provide the Committee with an annual report of the activities of the office which the Committee will table with the Committee's annual report to the Parliament.

PART D: LEGISLATIVE CHANGES REQUIRED

15. AMENDMENTS TO THE CRIMINAL JUSTICE ACT 1989

15.1 Section 2 [Objects of Act] – [prevention of official misconduct]

15.1.1 Analysis and comment

The Criminal Justice Commission (CJC), in its submission to this review states:

The role of the prevention of official misconduct, which the Commission considers one of its core functions, is presently not referred to in the objects section of the Act... the Commission respectfully submits that the objects would be more appropriately amended by inserting the following object:

‘to take measures directed to the prevention of official misconduct in units of public administration’.⁷⁶⁷

The Committee notes, however, that the role of the prevention of official misconduct is mentioned in section 29(3)(e) of the Act which sets out the role and functions of the Official Misconduct Division within the CJC as follows:

(e) to offer and render advice or assistance, by way of education or liaison, to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerning the detection and prevention of official misconduct;

The Committee endorses the CJC’s submission that the prevention of official misconduct is one of the core functions of the CJC and accepts that the objects of the Act ought be amended to reflect the importance of the role of corruption prevention.

15.1.2 Recommendation

Recommendation 65

The Committee recommends that section 2 of the Act be amended by inserting the following object:

(vi) *to take measures directed to the prevention of official misconduct in units of public administration.*

15.2 Section 3A [Meaning of ‘unit of public administration’]

15.2.1 Analysis and comment – paragraph (da): Privately managed correctional centres

An anomaly currently exists as a result of the 1997 amendments to the Act. Those amendments had the effect of bringing Government operated correctional facilities within the jurisdiction of the CJC, while excluding privately managed prisons.

The CJC, in its submission to this review, stated:

⁷⁶⁷ CJC, *CJC Submission to PCJC Three Yearly Review*, August 2000, Brisbane, at 44.

*the Commission has previously proposed that the definition of 'unit of public administration' should be amended to include privately managed corrective services facilities within the definition. The Commission continues to urge such an amendment.*⁷⁶⁸

The Committee notes that this submission is consistent with a recommendation made by a predecessor Committee, the third PCJC of the 48th Parliament, in its Report No. 45⁷⁶⁹ and the recommendations of the review of the Queensland Corrective Services Commission as detailed in a report titled *Corrections in the Balance - A Review of Corrective Services in Queensland*.

The Committee endorses the recommendation of the third PCJC and the CJC that the CJC's jurisdiction should be extended to cover privately managed correctional facilities.

In considering this recommendation, issues which should be considered by government include:

- the impact of the CJC's jurisdiction on contracts between private prison operators and the Queensland Corrective Services Commission (QCSC);
- access to, and ownership of, records that may be required for investigations and the associated issue of commercial confidentiality; and
- the extent of the CJC's jurisdiction to investigate the activities of the private operator (for example off-site services and contract negotiations).

15.2.2 Recommendation

Recommendation 66

The Committee recommends that section 3A of the Act be amended by including in the definition of 'unit of public administration' privately managed correctional services.

15.2.3 Analysis and comment – paragraphs (f) & (g): entities spending public funds or performing public purposes

The CJC's jurisdiction under the Act relates, in general terms, to the conduct of persons holding appointments in a 'unit of public administration'. The term 'unit of public administration' was designed to ensure that the CJC's jurisdiction is broader than public service departments and will include statutory authorities and similar entities established by the State.

The CJC, in its submission to this review, submits that there is some uncertainty surrounding the interpretation which should be given to paragraphs (f) and (g) of section 3A(1) of the Act.⁷⁷⁰

The CJC submits it is clear from paragraphs (f) and (g) that it was intended that the ability to collect revenues or raise funds under the authority of an Act would bring corporate entities constituted by an Act within the definition of a 'unit of public administration', whereas non-corporate entities established or maintained pursuant to an Act come within the definition only if they are funded with moneys of the Crown or assisted in any financial respect by the Crown.

The CJC seeks an amendment which clarifies the intended scope of paragraphs (f) and (g) of section 3A(1) of the Act, as the scope of the section has been the subject of considerable question and debate over the past 10 years. The CJC further submits that this debate has resulted, in part, from an

⁷⁶⁸ Note 767 at 44.

⁷⁶⁹ PCJC, *A report on a review of the activities of the CJC pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 45, Legislative Assembly of Queensland, 1998, Brisbane, at 76.

⁷⁷⁰ Note 767 at 45.

ongoing process of privatisation of certain basic government services, such that there is now a large range of entities with varying degrees of connection to the public sector and to public funding which might be intended to be subject to the jurisdiction of the CJC.

The CJC, in a submission to the former Connolly / Ryan Inquiry, had submitted that:

Problems have arisen in interpreting paragraphs (f) and (g). In a case relating to the Toowoomba Turf Club considered by the Supreme Court in 1996 (An Application by Gary Turkington and Neville Steward for the Determination of the Construction of Sections 3 and 74 of the Criminal Justice Act 1989 OS2926, Supreme Court of Queensland, 19 July 1996), the Court found that the Club was not within the jurisdiction of the CJC. The judgment did not assist in clarifying how the provisions should be interpreted generally.⁷⁷¹

The range of entities now in existence and their rate of growth have made it a difficult drafting exercise to devise a definition capable of covering all appropriate bodies. The problem has been partly avoided by use of a device enabling bodies to be included or excluded from the definition by way of regulation. Thus the *Public Service Act 1996*, in section 20, defines 'public sector unit' to include:

- (a) a department or part of a department; or
- (b) a public service office or part of a public service office; or
- (c) another government entity declared under a regulation to be a public sector unit. (Underlining added.)

The Committee notes that the CJC has previously submitted that:

... to simply allow bodies to be included in its jurisdiction by regulation would engender significant capacity for abuse. It would enable a government facing the prospect of an embarrassing investigation into one of its entities to avoid that investigation simply by not granting the jurisdiction, or at least to delay and defer the investigation while jurisdiction was obtained. The public interest would be better served by certainty and openness in the jurisdiction of the CJC.⁷⁷²

The Committee notes however, that the CJC now supports an amendment which would allow bodies to be declared by regulation to be 'units of public administration', and indeed suggests that the section could also be widened so that a class of entities may be declared 'units of public administration' by regulation. (Underlining added.)

Both the CJC and the previous Committee considered the issue, but a workable solution has proved elusive.

The Committee agrees that the definition of 'unit of public administration' should be amended to focus the CJC's jurisdiction on entities which 'collect revenues or raise funds under the authority of an Act or are funded or assisted by the State' or declared by regulation to be a unit of public administration.

The Committee accepts that such a recommendation may be far reaching and care must be taken to ensure that the definition is not unduly extended. The Committee suggests that the drafting of any amendment should be carefully considered so as to ensure that the extended definition:

⁷⁷¹ CJC, *Criminal Justice Commission Submission to the Commission of Inquiry into the Effectiveness of the Criminal Justice Commission*, 1997, Brisbane, at 220.

⁷⁷² Note 771 at 241.

- does not encompass, for example, a local club that receives a grant from, for example, the Gaming Machine Community Benefit Fund, in that such a result is clearly undesirable from a policy standpoint and may lead to the CJC being embroiled in internal club disputes; and
- does not make the CJC a ‘unit of public administration’, as such a result would be contrary to the present statutory oversight regime, which involves investigation of such matters by the Committee and/or in appropriate cases, as directed by the Committee, the Parliamentary Commissioner.

Finally, the Committee notes that a general amendment in the terms suggested would not result in any extension of the CJC’s jurisdiction in respect of statutory Government Owned Corporations as the *Government Owned Corporations Act 1993* (sections 181 and 186) presently provides that a statutory GOC is a unit of public administration and that a company GOC is not a unit of public administration.

15.2.4 Recommendations

Recommendation 67

The Committee recommends that section 3A(f) and (g) of the Act be amended to focus the CJC’s jurisdiction on entities which ‘collect revenues or raise funds under the authority of an Act or are funded or assisted by the State’ or declared by regulation to be a unit of public administration.

Recommendation 68

The Committee further recommends that the drafting of any amendment should be carefully considered so as to ensure that the extended definition:

- (i) is not too widely drafted; and
 - (ii) does not make the CJC a ‘unit of public administration’.
-

15.3 Section 21 [Functions (of CJC)]

15.3.1 Analysis and comment

Under section 21(1)(a) of the Act, the CJC is required to ‘continually’ monitor and review the administration of criminal justice.

The CJC, in its submission to this review, submitted that section 21 should be amended by removing the word ‘continually’.

The rationale for the change suggested by the CJC is summarised as follows:

*... the use of the word ‘continually’ seems to require the Commission to carry out certain functions on an ongoing continual basis, which could lead to allegations of a failure by the Commission to perform a statutory function, as occurred in the case of Boe v. Criminal Justice Commission. The Commission has finite resources, and believes that it must be able to prioritise the extent to which any of its functions are actively pursued during any particular period.*⁷⁷³

⁷⁷³ Note 767 at 45.

By way of background, the decision of *Boe v Criminal Justice Commission* (Application No. 319 of 1993, 10 June 1993 unreported), followed a request by Andrew Boe, a solicitor with a predominantly criminal law practice, that the CJC ‘properly discharge its statutory responsibility’ under section 2.15 [section 23(c)] of the Act. The CJC refused his request. The CJC advised Mr Boe that it had been conducting research into a number of subjects relevant to criminal justice but had not, and in the immediate future could not, research the sufficiency of funding for criminal justice agencies. The reasons given for not having done so were insufficient funding and the deferral of this matter on the CJC’s list of research priorities.

Mr Boe brought an application before the Supreme Court seeking judicial review of the CJC’s decision, seeking in effect to compel the CJC to discharge its responsibility under section 23(c). Mr Boe was successful. Mr Justice De Jersey, as he then was, found that the CJC had improperly exercised its decision not to hold a hearing because it had incorrectly proceeded on the basis that the responsibility could be deferred.

During the course of his decision His Honour found the following facts to be proved:

1. That affidavit material filed by Boe provided a ‘*comprehensive and compelling basis for the conclusion that the Government does not adequately fund the legal Aid Office on the criminal side or the Office of the Director of Prosecutions*’. His Honour pointed out that the CJC never advanced any contrary evidence.

His Honour at p.7 said:

On the uncontradicted material before me, the deficiency in the proper funding of the prosecution and defence in Queensland is so marked that I would, on this material, conclude that were there a hearing into the matter, it is highly likely that increases would be recommended which no responsible Government could ignore.

2. That the CJC had never monitored the sufficiency of funding for criminal justice agencies. In particular that a seminar held by the CJC in 1992 was not a commencement of the discharge of its duties under section 23(c). His Honour also noted that there was no suggestion it would happen in the next three years.

His Honour said at p.11:

One obviously does not monitor a situation of a continuing character like this by doing virtually nothing with respect to it for more than three and a half years and offering no great hope of doing anything about it for the best part of the ensuing three years.

His Honour made a number of other important findings of more general application during the course of his decision including:

1. The responsibility of the CJC under section 23(c) is a duty rather than a mere matter of authority.
2. The term ‘monitor’ as used in section 23(c) means that the CJC must:
 - (i) keep the matter under review, measuring its adequacy from time to time.
 - (ii) ascertain the amount being spent on those agencies.
 - (iii) inquire as to the manner in which the agencies apply that money.

- (iv) determine whether the amounts provided are adequate to run the offices properly.
- (v) consider what if any services cannot be properly provided because of shortage of money etc.

3. The Commission is not obliged to discharge all of its functions concurrently, and to do so would be impractical.

4. The refusal of the Commission to hold a hearing pursuant to section 25 was within the CJC's power. In other words, the CJC did not have to hold a hearing to discharge its obligations under section 23(c).

5. The nature of the obligation in section 23(c) required it being 'discharged on a more or less continual or regular or recurrent basis'. However, some of the Commission's responsibilities do not necessitate continual or regular discharge, that is, some do not have a 'continuing character'.

His Honour felt that section 23(e), (f) and (h) fell into this later category.

Although the decision of *Boe v Criminal Justice Commission* concerned section 23 of the Act, it is also relevant to consideration of appropriate reforms which may be necessary in respect of section 21 of the Act.

The CJC submitted to the second PCJC that the *Boe* decision had created difficulties for its Research Division because of the large number of continuing responsibilities allocated to it under the Act.

The second PCJC, in its Report No. 26, on its three yearly review of the CJC, noted that whilst the CJC had claimed the sufficiency of funding of criminal justice agencies had been deferred on the CJC's list of research priorities, the Research Division had undertaken other projects that the Committee did not consider were of a high priority.⁷⁷⁴

The second PCJC concluded that:

*The Committee, after careful consideration, is not convinced that the [court] decision has created insurmountable problems for the Research Division.*⁷⁷⁵

The second PCJC also expressed the view that the 'continuing' responsibilities of the Commission and the Research Division provided in the Act are based upon the recommendations contained within the Fitzgerald Report and that that Report obviously considered those matters to be of importance and of some priority.⁷⁷⁶

The second PCJC also noted, quite correctly, that:

The decision of Boe v. the CJC does not require the Research Division to undertake all of its responsibilities simultaneously. The decision does not prevent the Commission from prioritising its work. What the decision does is to make it clear that important continuing responsibilities not be ignored for three years whilst other less important projects are

⁷⁷⁴ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, Legislative Assembly of Queensland, 1995, Brisbane, at 106.

⁷⁷⁵ Note 774 at 108.

⁷⁷⁶ Note 774 at 109.

*pursued.*⁷⁷⁷

The CJC made a similar submission to the 3rd PCJC of the 48th Parliament, suggesting that the Act should be amended to provide the CJC with a discretion to undertake the stated responsibilities by adding the words ‘*where the Commission considers it appropriate (having regard to its other functions)*’.

The third PCJC were not persuaded by the CJC’s submission and accordingly did not recommend the change suggested by the CJC.

This Committee has given the issue careful and extensive consideration.

It is clear that the Fitzgerald Report envisaged a need for continual monitoring, review and appropriate reform of the administration of criminal justice.

The report stated:

*There is need for continual review of the suitability of criminal law, the exercise of investigative powers, and the effective use of resources. Research is required into the changing nature and incidence of crime, the roles and methods of various agencies and how their efforts are best coordinated.*⁷⁷⁸ (Underlining added.)

And later:

*...the establishment of an independent agency to continually address matters relevant to the criminal law is vital.*⁷⁷⁹ (Underlining added.)

The report concluded that:

*Criminal justice law reform should be ... reassessed on a continual basis as social conditions alter.*⁷⁸⁰ (Underlining added.)

In outlining the blueprint for reforms in criminal justice, the Fitzgerald report stated that the CJC will comprise a Research and Co-ordination Division, which will:

*continually review the suitability of the criminal law, the exercise of investigative powers and the effective use of resources*⁷⁸¹. (Underlining added.)

In conclusion, the Committee is not convinced, on balance, that the word ‘continually’ should be removed from section 21 of the Act.

15.3.2 Recommendation

Recommendation 69

The Committee endorses the views of its two predecessor Committees and recommends that the functions of the CJC should not be amended by removing from section 21 of the Act, the word ‘continually’.

⁷⁷⁷ Note 774 at 108-109.

⁷⁷⁸ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC), 1989, Brisbane, at 316.

⁷⁷⁹ Note 778 at 316.

⁷⁸⁰ Note 778 at 361.

⁷⁸¹ Note 778 at 367.

15.4 Section 22 [Commission to act independently etc]

15.4.1 Analysis and comment

Section 22 of the Act provides that:

22. The Commission must at all times act independently, impartially, fairly and in the public interest.

The *Protocols for dealing with misconduct complaints against personnel of the Criminal Justice Commission*, which were settled last year by the Committee, in consultation with the CJC, define ‘misconduct’ to include conduct that is in breach of section 22 of the Act, in that it covers:

conduct that does not meet the standard of conduct the community reasonably expects of an officer (including any failure by an officer of the CJC to act independently, impartially, fairly and in the public interest). (Underlining added.)

These Protocols record the manner in which complaints of misconduct against the CJC and its officers will be notified to the Parliamentary Committee, assessed, investigated and recorded.

During the consultation process for the Protocols, the CJC suggested that the definition of ‘misconduct’ not include a breach of section 22 of the Act. The CJC suggested that legally a breach of section 22 can not be committed by an individual officer of the CJC, but rather what was contemplated by section 22 was a requirement imposed upon the Criminal Justice Commission as an entity to act independently, impartially, fairly, and in the public interest.

The Committee ultimately concluded that the Commission operates only through the actions and inaction of individual officers of the Commission and therefore it was reasonable that individual officers of the Commission should, in accordance with the Committee’s reading of section 22, strive at all times act independently, impartially, fairly, and in the public interest.

The Committee found the following highly persuasive in determining the intent of section 22.

The term ‘Commission’ is defined in section 3 of the Act to mean ‘the Criminal Justice Commission constituted by this Act’. Section 6 of the Act provides that a corporation called the Criminal Justice Commission is constituted having perpetual succession and an official seal.

The Committee noted that section 8 of the Act provides that the ‘Commission’ consists of ‘the Chairperson and the 4 other members’. It is arguable therefore that the word ‘Commission’ in section 22 may mean the business conducted and decisions made by the Commission at a properly quorate meeting of the Commission pursuant to section 16 of the Act and on that view section 22 would not therefore cover all officers of the Commission.

The word ‘Commission’ in the Act appears to have more than one meaning. This dichotomy is obvious in section 19 of the Act which provides:

19(4) Each division of the commission shall be under the control and direction of a director who shall be directly responsible to the commission.

The first use of the term Commission is obviously a reference to the Commission as the agency/corporation. The second use of the word Commission could refer to the Commission as the agency but the better meaning is that of the Commission as the Chairperson and the four other part-time members who are charged with the governance role of directing the activities of the Criminal Justice Commission.

The Committee notes that the establishment and membership of the Commission is set out in Division 1 of Part 2 of the Act. Division 1 includes section 19 (Meetings and other proceedings of Commission). Section 22 does not appear in Division 1.

Division 2 sets out the organisational structure of the Commission.

Division 3 sets out the functions and responsibilities of the Commission. Those functions and responsibilities do not appear to be directed at the Commission in terms of the Chairperson and the four other part-time members but rather the Commission as the agency or corporate entity. This view is supported by the fact that section 22 appears in Division 3 of the Act, which deals with the general functions and responsibilities of the CJC as a body, rather than the earlier division dealing with membership of the Commission.

Finally, in a practical sense the Committee considered that the CJC as a corporate entity operates through the actions and inaction of its officers.

The issue of the correct interpretation of section 22 is more than an academic one. The Committee has referred a number of investigations to the Parliamentary Commissioner which have included as a term of reference 'whether the CJC has in this matter, at all times, acted independently, impartially, fairly and in the public interest according to Section 22 of the Act'.

The former Parliamentary Commissioner, Ms Dick SC, in a letter to the Committee dated 4 October 2000, has advised that:

On more than one occasion when the question of whether section 22 has been breached has arisen, the CJC have submitted that section 22 seems to be directed at ensuring that decisions taken at Commission level or by a person constituting the Commission for the purposes of a hearing are made in accordance with that section.

For example, in investigation [named investigation] ... the following submission was made by the CJC:

...

In the Commission's submission, the general provisions of section 22 of the act do not apply to mere inefficiencies, administrative oversights or negligence by individual staff of the Commission. Section 22 obliges 'the Commission' to act at all times independently, impartially, fairly and in the public interest. Pursuant to section 8 of the act, 'the Commission' consists of the Chairperson and 4 part-time members or a person constituting the Commission for the purposes of a hearing under section 25. Section 22 seems to be directed at ensuring decisions taken at Commission level or by a person constituting the Commission for the purposes of a hearing are made in accordance with the precepts outlined in the section. This view is supported by the fact that section 22 appears in Division 3 of the Act, which deals with the general functions and responsibilities of the CJC as a body, rather than related divisions which relate to the specific role and functions of individual divisions.'

In investigation [named investigation] ... the following submission was made:

'Application of Section 22

...

The provisions of section 22 of the Criminal Justice Act 1989 cannot, as a matter of law, have application to individual officers of the CJC.'

In *Ainsworth and Another v Criminal Justice Commission* (1991-1992) 175 CLR 564, the High Court, in considering the provisions of section 3.21(2)(a), (which was in almost identical terms to section 22), decided that the requirements of that section applied to ‘any step no matter how informal, taken in the course of or in relation to its (the CJC’s) functions and responsibilities rather than to the formal or public steps which will sometimes attend the discharge of those functions and responsibilities’.

That authority suggests that section 22 does not apply only to the decisions of the formally constituted Commission but to all activities conducted by the Commission and the organisational units in the course of or in relation to discharge of the functions and responsibilities of the Commission. Further, as a matter of reality, the formally constituted commission relies on reports from the organisational units of the Criminal Justice Commission in coming to its decisions.

The issue of the intent of section 22 of the Act was the subject of some discussion at the public hearings conducted by the Committee as part of this review. The Chairperson of the CJC, Mr Butler SC, stated that:

No-one would cavil with the requirement that the commission and its staff should be aiming to be independent, impartial, fair and in the public interest in terms of what it does. However, each of those might be contradictory in terms of the other. What might be in the public interest may not be fair to an individual. Ultimately, one is talking there about a judgment on the balance between those various requirements. One can act independently and unfairly and so on. The difficulty that the CJC has pointed to is that, in terms of making findings of culpability in respect of individuals, the section is not of a great deal of assistance. In terms of indicating the standards that the organisation should be striving to, of course they are precisely the standards it should be striving to. Ultimately, if we are talking about the oversight role of the Committee, it is quite appropriate for the Committee to be expressing views to the CJC as to the balance of those competing considerations. In terms of broaching them as something that might be the subject of a charge or specific culpability, then different considerations apply⁷⁸².

Mr Butler later gave the following further evidence:

We view the section as basically referring to the commission, but we address the issue of the staff having the commensurate responsibility through the code of conduct, which, of course, makes any breach the subject of disciplinary action. Principle 1 in Part 3 of our Code of Conduct states that it is the obligation of all members of the CJC, that is, staff and commissioners, to carry out the obligations of their position independently, impartially and fairly, as prescribed by section 22 of the Criminal Justice Act. So we linked the obligations of the staff in terms of the Commission's obligations under section 22 into the code of conduct.⁷⁸³

Accordingly, the Committee considers that, consistent with the CJC’s Code of Conduct which seeks to require officers of the CJC to act independently, impartially and fairly in the public interest, any breach of which may subject the officer to disciplinary action, section 22 of the Act should be amended to clarify that it applies to individual officers of the Commission as those officers are described in section 67 of the Act.

⁷⁸² PCJC, Transcript of Public Hearing - Three Yearly Review of the CJC, 14-15 December 2000, Brisbane at 8.

⁷⁸³ Note 782 at 119.

15.4.2 Recommendation

Recommendation 70

The Committee recommends that section 22 of the Act be amended to clarify that it applies to individual officers of the Commission as those officers are described in section 67 of the Act.

15.5 Section 23 [Responsibilities (of the CJC)]

15.5.1 Analysis and comment – section 23(b)

The current wording of sub-section (b) is as follows:

‘(b) monitoring and reporting on the use and effectiveness of investigative powers in relation to the administration of criminal justice generally’.

The CJC has submitted that sub-section (b) be reworded as follows:

‘(b) where the Commission considers it appropriate (having regard to its other functions) monitoring and reporting on the use and appropriateness of investigative powers of Queensland agencies within the criminal justice system and, where relevant, of agencies outside the criminal justice system;’ (Underlining added.)

The CJC’s suggested amendment has two main implications. Firstly, it gives the CJC greater discretion about whether to monitor and report on the use of investigative powers. Secondly, it utilises the changes in terminology from ‘administration of criminal justice’ to the ‘criminal justice system’.

The Committee was initially inclined to support the amendment as submitted by the CJC, subject to one further amendment. The Committee was concerned however, that the CJC may:

- consider that either the responsibility in general or a specific issue falling within the responsibility is of such a low priority in terms of other issues being examined by the CJC given its finite budget; or
- feel reluctant to pursue its responsibility for fear of the sometimes expressed criticism that the CJC is ‘setting itself up as an alternative government’.

The Committee had considered that this concern may be addressed by the insertion of a paragraph to provide the Committee with the power, in appropriate cases, to request the CJC to undertake the functions notwithstanding that the CJC had determined that ‘*having regard to its other functions*’, that in its view the responsibility was not a priority. The Committee had considered that in those circumstances, in appropriate cases, if a bi-partisan majority of the Committee considered that an issue deserved such urgent attention, the CJC could be asked to examine the issue and to report. The Committee had considered that such an amendment may be achieved by insertion of the words ‘or if requested by a bi-partisan majority of the Parliamentary Committee.’

The Committee had considered that a requirement for a bi-partisan majority of the Committee would prevent the potential for partisan political to interfere with the CJC’s research agenda.

The Committee has given the issue further detailed consideration.

In its preliminary consideration of this issue, the Committee had concentrated on the requirement to report. However, it is sometimes forgotten that effective and informed reporting requires continual ‘monitoring’. The expression ‘monitoring’, which in addition to section 23(c) also appears in section 23(b) and 23(g).

The expression ‘monitoring’ was considered by Mr Justice de Jersey (as he then was) in *Boe v Criminal Justice Commission*, referred to above, which although concerned the interpretation of section 23(c) is equally relevant, with a few exceptions, to the other responsibilities of the CJC under section 23. His Honour observed:

The Commission could not, however, be seen as having ‘monitored’ funding by means of that isolated involvement [ie. The June 1992 seminar], nor by its expressions of willingness to consider Mr Boe’s material from time to time or comments made by interested parties in the public forum. To monitor such funding or the sufficiency of that funding, the commission must keep it under review, measuring its adequacy from time to time. It should take steps to ascertain the amount being spent by the Government on these agencies; enquire as to the manner in which the agencies apply that money; determine whether the amounts provided are adequate to run the offices properly, to provide efficient service to the public; consider what, if any, necessary services cannot be provided, or provided properly, because of shortage of money, and so on.

At a later point, His Honour remarked that:

... the nature of the obligation under section 2.15(c) necessitates it being discharged on a more or less continual or regular or recurrent basis. One obviously does not monitor a situation of a continuing character like this by doing virtually nothing with respect to it for more than three and a half years and offering no great hope of doing anything about it for the best part of the ensuing three years. Some of the Commission’s responsibilities do not necessitate that continual or regular or recurrent application. Examples are those set out in paragraphs (3), (f) and (h) of section 2.15 [now section 23]. But the nature of this particular obligation under paragraph (c) does, to my mind, preclude its being deferred in that way. The Commission has therefore been influenced by an irrelevant consideration (the view that it might legitimately defer the obligation) or, conversely, has failed to take account of a relevant consideration, being the need for continual or regular or recurrent application of the discharge of this particular obligation.

Amendment of the Act to effectively override the decision in *Boe* by providing the CJC with a discretion to undertake a specific responsibility is contrary to the cornerstone of the Fitzgerald blueprint for reform of the Criminal justice system. The Fitzgerald Report clearly envisaged a ‘continual’ review of the administration of criminal justice.

The failure to give sufficient consideration to the limited resources of the criminal justice system is one manifestation of the deficiencies in the approach to criminal law reform discussed earlier.

There are a number of issues to be considered, for example:

- *The resources needed and the financial cost of doing so;*
- *The cost effectiveness of using the Police Force as the law enforcement agency;*
- *The effect on other law enforcement activities caused by the diversion of law enforcement resources;*
- *Alternatives to enforcement by the Police Force, including the possibility of specialised,*

*self-funding law enforcement in relation to some prohibited activities.*⁷⁸⁴

And later:

With all this in mind, laws must be designed to meet only those matters of legitimate major concern. Funds and resources must be allocated to the enforcement of those laws, and not dissipated on less important matters.

*It is futile to continue to forbid more and more conduct by laws which cannot be enforced either because of their nature or because of cost/resource considerations.*⁷⁸⁵

The fact that these matters require continual review was emphasised later in the Report:

*There is need for continual review of the suitability of criminal law, the exercise of investigative powers, and the effective use of resources. Research is required into the changing nature and incidence of crime, the roles and methods of various agencies and how their efforts are best coordinated.*⁷⁸⁶

The Report summarised the role of the then Research and Co-ordination Division as follows:

*The Research and Co-ordination Division, which will continually review the suitability of the criminal law, the exercise of investigative powers and the effective use of resources.*⁷⁸⁷

Finally, it should be emphasised that section 23 as it is presently drafted does not attempt to lay down the precise methods or procedures required to be undertaken by the CJC in discharging its statutory responsibility. That is a matter plainly within the general responsibility of the Commission members, and specifically of the Commission Chairperson.

The decision of Mr Justice de Jersey (as he then was) in *Boe* clearly accepts that it is a matter for the CJC itself to determine the particular way in which it will discharge its responsibility under section 23 (c). His Honour was content to ‘*leave to the Commission the manner by which it sets about now to discharge that obligation.*’

One of the range of approaches available to the CJC in the discharge of its statutory functions and responsibilities is to conduct a formal inquiry or ‘investigative hearing’ pursuant to Part 3 Division 2 of the Act. But that is by no means the only – or even, necessarily, the best – approach to the task of monitoring and reporting on the matters referred to in section 23 (c). As Mr Justice de Jersey (as he then was) observed.

Although it was obliged under section 2.15 (c) to monitor and report on the sufficiency of funding, it was not obliged to hold a hearing for that purpose. Though authorised under section 2.17 to hold a hearing, it was not obliged to hold a hearing. It therefore had jurisdiction or power to decline a hearing, though still bound to its obligation to monitor and report. A hearing, in short, was not the only way by which it might discharge that obligation.

The Committee accepts that the Commission members have the onerous responsibility of determining the best use of the finite resources which are made available to the CJC by the Government and, ultimately, the taxpayers of this State. In doing so, the Commission must necessarily determine an order of priorities. Indeed, it is specifically required by section 21(4) of the Act to ‘prepare a program of priorities’.

⁷⁸⁴ Note 778 at 185.

⁷⁸⁵ Note 778 at 187.

⁷⁸⁶ Note 778 at 316.

⁷⁸⁷ Note 778 at 367.

The Committee is of the view, however, that the CJC's need to prioritise the use and application of its own resources cannot justify its failure to fulfil any one of its statutory responsibilities. Limited funding affords no excuse for the CJC's failing to discharge its responsibility of 'monitoring and reporting on' the matters mentioned in section 23; but it is plainly a very relevant consideration both as to the extent of the 'monitoring and reporting' which the Commission undertakes, and as to the procedure by which the Commission undertakes those functions.

It is clear, from *Boe* that the CJC's duty to 'monitor' the matters mentioned in section 23 is not of a continuous nature, in the sense that the 'monitoring' must take place on a daily basis. Mr Justice de Jersey accepted that it is sufficient that the monitoring be 'on a more or less continual or regular or recurrent basis'. It remains within the CJC's general discretion to determine the frequency with which the regular or recurrent monitoring of the matters mentioned in section 23 takes place – whether daily, weekly, monthly, quarterly, biannually, annually, biennially, or at some other appropriate intervals. And, no doubt, the extent of the resources available to the Commission, and the Commission's priorities for the application of those resources, will play a large role in determining the frequency with which such monitoring (and reporting) takes place.

The Committee accepts that it remains a matter for the Commission to determine:

- the methods or procedures which it adopts in discharging those responsibilities;
- the extent to which the finite financial resources of the Commission are devoted to monitoring and reporting on those matters; and
- the timing of the Commission's monitoring and reporting on those matters, subject (however) to the consideration that, consistently with the Reasons for Judgement of de Jersey J in *Boe v Criminal Justice Commission*, it is not permissible for the Commission to defer indefinitely its responsibility to monitor and report on those matters.

At the time when the case of *Boe v Criminal Justice Commission* was decided, the Commission had been in operation for more than three years. Mr Justice de Jersey observed, in relation to the Commission's responsibility under section 23(c) to monitor and report on the sufficiency of funding for the Office of the Director of Public Prosecutions and the Legal Aid Office, that:

One obviously does not monitor a situation of a continuing character like this by doing virtually nothing with respect to it for more than three and a half years and offering no great hope of doing anything about it for the best part of the ensuing three years.

The CJC has now been in operation for over 10 years. The Committee notes that the CJC has commenced the process of preparing a follow-up report on the sufficiency of funding for the Office of the Director of Public Prosecutions and the Legal Aid Office. The Committee looks forward to that report to determine what 'monitoring' of the issue the CJC has undertaken since *Boe*.

In summary, in the Committee's opinion, the responsibilities given to the CJC by section 23, and section 23(b) in particular, are of central significance to the role of the Research and Prevention Division of the CJC. They are responsibilities which were highlighted by the Fitzgerald report. They are not ancillary responsibilities which should be potentially continually deferred or given a low priority. The Committee considers that such an amendment to the Act as suggested by the CJC, would not be consistent with the recommendations of the Fitzgerald Report nor in the public interest.

The Committee considers that given the nature of the issues likely to arise under the functions listed in section 23(b) it is critical that an independent agency, like the CJC, which is able to bring a 'cross-departmental' examination of an issue, continually monitor such issues.

The Committee is of the view that effective and informed reporting requires continual monitoring. The Committee is not persuaded that the CJC's responsibility in section 23(b) should be amended to provide the CJC with a discretion to undertake such a responsibility.

15.5.2 Recommendation

Recommendation 71

The Committee recommends that the responsibilities of the CJC as detailed in subsection (b) of section 23 of the Act should NOT be amended to alter the current obligation upon the CJC, to one of merely exercising a discretion to decide to undertake those responsibilities or not.

15.5.3 Analysis and comment – section 23(c)

The current wording of sub-section (c) is as follows:

'(c) monitoring and reporting on the suitability, sufficiency and use of law enforcement resources and the sufficiency of funding for law enforcement and criminal justice agencies including the office of the Director of Public Prosecutions and the Legal Aid Commission (so far as its functions relate to prescribed criminal proceedings within the meaning of the Legal Aid Act 1978);'

The CJC has submitted that sub-section (c) be reworded as follows:

'(c) if having regard to its functions and other responsibilities, the Commission considers it appropriate, monitoring and reporting on-

(i) the use and appropriateness of investigative powers of agencies concerned with the administration of criminal justice; and

(ii) the funding, workload and performance of agencies concerned with the administration of criminal justice'

The responsibilities listed in section 23(c) are presently 'mandatory' responsibilities of the CJC in the sense that the CJC is required to undertake the respective responsibilities. The suggestion made by the CJC to insert the words 'if having regard to its functions and other responsibilities, the Commission considers it appropriate' gives the CJC a discretion whether it will undertake the stated responsibilities.

Consistent with the analysis and recommendations detailed above in respect of section 23(b) of the Act, the Committee considers that the responsibilities given to the CJC by section 23 are not ancillary responsibilities which should be potentially continually deferred or given a low priority. The Committee considers that an amendment to section 23(c) of the Act, as suggested by the CJC would not be consistent with the recommendations of the Fitzgerald Report nor in the public interest.

The Committee is of the view that effective and informed reporting requires continual monitoring. The Committee is not persuaded that the CJC's responsibility in section 23(c) should be amended to provide the CJC with a discretion to undertake such a responsibility.

15.5.4 Recommendation

Recommendation 72

The Committee recommends that the responsibilities of the CJC as detailed in section 23(c) of the Act should NOT be amended to alter the current obligation upon the CJC, to one of merely exercising a discretion to decide to undertake those responsibilities or not.

15.5.5 Analysis and comment – section 23(e)

The current wording of sub-section (e) is as follows:

‘(e) researching, generating and reporting on proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice, including assessment of relevant initiatives and systems outside the State;

The CJC has submitted that sub-section (e) be reworded as follows:

‘(e) if the Commission considers it appropriate reviewing proposals for the reform of the criminal law and practices relating to the enforcement of, or administration of, justice;

Consistent with the analysis and recommendations detailed above in respect of section 23(b) of the Act, the Committee considers that the responsibilities given to the CJC by section 23 are not ancillary responsibilities which should be potentially continually deferred or given a low priority. The Committee considers that an amendment to section 23(e) of the Act, as suggested by the CJC would not be consistent with the recommendations of the Fitzgerald Report nor in the public interest.

The Committee is of the view that effective and informed reporting requires continual monitoring. The Committee is not persuaded that the CJC’s responsibility in section 23(e) should be amended to provide the CJC with a discretion to undertake such a responsibility.

15.5.6 Recommendation

Recommendation 73

The Committee recommends that the responsibilities of the CJC as detailed in section 23(e) of the Act should NOT be amended to alter the current obligation upon the CJC, to one of merely exercising a discretion to decide to undertake those responsibilities or not.

15.5.7 Analysis and comment - section 23(g)

The current wording of sub-section (g) is as follows:

‘(g) monitoring the performance of the police service with a view to ensuring that the most appropriate policing methods are being used, consistently with trends in the nature and incidence of crime, and to ensuring the ability of the police service to respond to those trends;’

The CJC has submitted that sub-section (g) be reworded as follows:

‘(g) undertaking research into, monitoring, and reporting on, matters relating to: the incidence and prevention of crime; the methods of operation of the police service; the powers available to police and the use of those powers; the recruitment, training and career

progression of police officers and staff members of the Police Service; and reform of the Police Service;

The Committee supports the CJC's suggested amendment subject to retaining the *spirit* of the purpose of the 'research, monitoring, and reporting' function, namely, to ensuring that the most appropriate and effective policing methods are being used. The Committee is of the view that the current wording provides for a clear focus and purpose which should be retained.

15.5.8 Recommendation

Recommendation 74

The Committee recommends that the responsibilities of the CJC as detailed in section 23(g) of the Act be reworded as follows:

'(g) undertaking research into, monitoring, and reporting on, matters relating to the incidence and prevention of crime; the methods of operation of the police service; the powers available to police and the use of those powers the recruitment, training and career progression of police officers and staff members of the Police Service; and reform of the Police Service; to ensure that the most appropriate and effective policing methods are being used'

15.5.9 Analysis and comment – section 23(h)

The current wording of sub-section (h) is as follows:

'(h) providing the commissioner of the police service with policy directives based on the commission's research, investigation and analysis, including with respect to law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources;'

The previous PCJC, the third PCJC of the 48th Parliament, in its Report No. 45, endorsed various recommendations of the QPSRC, including that:

- both the *Police Service Administration Act* and the *Criminal Justice Act* be amended to provide that the CJC should not exercise its power under section 23(h) of the *Criminal Justice Act* without first consulting with the Minister for Police, and the Minister should not issue directions under section 4.6(2) of the *Police Service Administration Act*, without first consulting with the CJC;⁷⁸⁸ and
- all directions from both the Minister and the CJC should be reduced to writing and included in the register required by section 4.7 of the *Police Service Administration Act*.⁷⁸⁹

The Committee notes that these recommendations have not been implemented.

15.5.10 Recommendation

Recommendation 75

The Committee endorses Recommendation 2 made by the Queensland Police Service Review Committee and the previous PCJC and recommends that section 23(h) of the *Criminal Justice*

⁷⁸⁸ Note 774 at 103. (Recommendation 22)

⁷⁸⁹ Note 774 at 104. (Recommendation 23)

Act be amended to provide that the CJC should not exercise its power under that section without first consulting with the Minister for Police.

15.5.11 Analysis and comment – NEW responsibility (Corruption prevention)

The responsibilities of the CJC, as detailed in section 23 of the Act make no mention of any role in corruption prevention.

Division 4 of Part 2 of the Act governing the OMD makes some reference to a corruption prevention function. Section 29(3)(e) of the Act relevantly provides that one of the roles and functions of the CJC is:

(e) to offer and render advice or assistance, by way of education or liaison, to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerning the detection and prevention of official misconduct; (Underlining added.)

Where matters investigated by the CJC fall short of ‘official misconduct’ but reveal non-compliance with established policies and procedures or perhaps a failure to observe best practice or even create a potential future integrity risk, there is some doubt as to whether the CJC has jurisdiction to render any advice or assistance in respect of corruption prevention matters to an agency.

Apart from section 29(3)(e), the role of corruption prevention is not otherwise mentioned in the Act.

The CJC has previously submitted that the responsibilities of the CJC as set out in section 23 of the Act should be amended to give explicit recognition to the CJC’s corruption prevention function and that section 29(3)(e) of the Act could then be deleted.⁷⁹⁰ An appropriate amendment for insertion could be *‘taking measures to assist in the prevention of official misconduct in the public sector and raising the standards of integrity and conduct in units of public administration’*.

The Committee endorses a previous submission made by the CJC that the responsibilities of the CJC as set out in section 23 of the Act should be amended to give explicit recognition to the CJC’s corruption prevention function.

The Committee does not accept the CJC’s submission that if an amendment is made to section 23 in the terms suggested above, that section 29(3)(e) of the Act could then be deleted. Section 29(3)(e) provides the CJC with a role in providing advice to *‘companies and institutions’*. Such advice may extend to the issue of ethical issues including gifts by companies to the public sector.

15.5.12 Recommendations

Recommendation 76

The Committee recommends that the responsibilities of the CJC as set out in section 23 of the Act should be amended to give explicit recognition to the CJC’s corruption prevention function.

Recommendation 77

The Committee further recommends that an appropriate amendment for insertion into section 23 of the Act could be *‘taking measures to assist in the prevention of official misconduct*

⁷⁹⁰ CJC, *CJC Submission to Three Yearly PCJC review*, dated March 1998, Brisbane, at 64.

in the public sector and raising the standards of integrity and conduct in units of public administration.

15.6 Section 26 [Commission's reports]

15.6.1 *Analysis and comment - tabling of Commission reports when the Legislative Assembly is dissolved*

When Parliament is dissolved for the holding of a State election, there is no Parliament and, in the absence of any express statutory authority, all Parliamentary Committees are also dissolved. The new Parliament must then appoint new Committees. For example from the calling of the State election on 20 June 1995 until the appointment of the Legal, Constitutional and Administrative Review Committee on 15 September 1995 (a three month period), the CJC was not accountable to any Committee.

That deficiency was corrected by the *Criminal Justice Legislation Amendment Act 1997*, which provided that the Committee continue in existence until a new Committee is appointed by the new Legislative Assembly. The *Standing Rules and Orders of the Legislative Assembly* were amended to enable the Committee to table, during any period the Legislative Assembly is dissolved, reports of the Committee and indeed reports of the CJC which are not reports under section 26 of the Act.

Standing Order 202 provides:

Presentation of Committee reports or other documents after dissolution of the House by Committees which continue in existence

202. If a Committee which has been specifically authorised by statute to continue in existence after the dissolution of the House, has prepared a report for presentation or has authorised for release any other documents (including issues papers prepared by the Committee, submissions received by the Committee or the Hansard transcripts of any hearings conducted by the Committee), the Committee may provide the report or any other documents authorised for release by the Committee to the Clerk, and, in that event:

(a) the report or any such documents shall be deemed to have been presented to the Legislative Assembly;

(b) the publication and printing of the report or the publication of any such documents is deemed to be ordered by the Legislative Assembly;

(c) shall be tabled and recorded in the Votes and Proceedings on the first sitting day after receipt by the Clerk.

Section 26 of the Act provides that a 'report of the Commission' (as defined) shall be presented to the Chairman of the Committee, to the Speaker of the Legislative Assembly and to the Minister. 'Report of the Commission' is defined to mean a report of a hearing conducted by the Commission under section 25 of the Act, other than a report under section 33 of the Act or a research or other report of the Commission which the Committee directs the CJC to table.

Section 26(3) of the Act provides a mechanism to enable reports of the Commission to be tabled 'when the Legislative Assembly is not sitting'. (Underlining added.) The section provides that such a report shall be delivered by the Speaker to the Clerk of the Parliament and is deemed to have been tabled in and printed by order of the Legislative Assembly and such a report is granted all the immunities and privileges of a report so tabled and printed. However, the Act is deficient in that the CJC is not able to table a 'report of the Commission' under section 26 of the Act during the period the Legislative Assembly is dissolved.

The Committee is of the view that the work of the CJC, particularly in investigating public sector corruption and misconduct in the police service, is vital to the effective public administration of Queensland. The Committee is also of the view that the CJC should not be hampered in undertaking its functions and responsibilities by the fact that it can not table a 'report of the Commission' during the period the Parliament is dissolved, which may be several months.

The Committee is of the view that the Act should be amended to provide for a mechanism to permit the CJC to table a 'report of the Commission' under section 26 of the Act during the period the Legislative Assembly is dissolved. The Committee is of the view that such a provision could be in similar terms to Standing Order 202.

15.6.2 Recommendations

Recommendation 78

The Committee recommends that the Act be amended to provide for a mechanism to enable the CJC to table a 'report of the Commission' pursuant to section 26 of the Act during the period the Legislative Assembly is dissolved.

Recommendation 79

The Committee further recommends that the provision be in similar terms to Standing Order 202 of the Standing Rules and Orders of the Legislative Assembly.

15.6.3 Analysis and comment - definition of 'report of the Commission'

The CJC has previously expressed concern about the definition of 'report of the Commission' under section 26(9) of the Act. The CJC, in a letter dated 23 November 1999, has submitted that section 26(9), as it is presently drafted, 'arguably limits the Commission to tabling reports only where there has been an investigative hearing, or where the PCJC has directed that a report be tabled'. The CJC has further submitted that it is inappropriate that it cannot table a report in Parliament (other than a report relating to a matter where investigative hearings were held) without a direction from the Committee.

The CJC has further submitted that:

It is not difficult to envisage that the Commission might wish to table a report in circumstances where both sides of politics might have some interest in declining to give such a direction.

The CJC has suggested the following amendments to subsections (9)(a) and (9)(b) of section 26 to define 'report of the Commission' as:

(a) a report authorised by the Commission to be furnished in accordance with subsection (1) other than a report under section 33;

(b) a report prepared by the Commission that the Parliamentary Committee directs the Commission to furnish in accordance with subsection (1).

The CJC had submitted that its suggested amendment:

- to section 26(9)(a) would allow the Commission to table any report which it considered should be made public, including reports on matters where investigative hearings had been held (except reports under section 33);

- to section 26(9)(b) would allow the Committee to direct that a report prepared by the Commission should be tabled, where it considered it appropriate and where the Commission had not already determined to table the report under subsection (a). Section 27 would still allow the Commission to report separately on confidential matters in the case of such a direction.

The Committee gave the CJC's submission careful consideration. The Committee was prepared, in principle, to support the CJC's suggestion, but on one proviso only. The Committee considered that prior to tabling of a report (falling under the redefined section 26(9)(a)), the Committee should be provided, on an embargoed basis, with an advance copy of a CJC report intended for tabling (other than a report on a hearing conducted by the CJC under section 25). This option is consistent with the current practice in respect of research and other reports publicly released by the CJC. The Committee was of the view that if the CJC maintained its position that the definition be clarified, that an embargoed CJC report intended for tabling, should be provided to the Committee, for example five days in advance of tabling (or such lesser period as agreed), and that the Committee simply have a right to make comments to the CJC in respect of any such report, prior to tabling.

The Committee is not seeking a right to veto or otherwise prevent the CJC from tabling a report in the Parliament. The Committee firmly believes that any such action by a Parliamentary Committee would be highly inappropriate.

The CJC, during the Committee's recent public hearings in respect of this review, has clarified its position in respect of the issue of an appropriate definition of a 'report of the Commission'. The CJC Chairperson, Mr Butler SC stated:

*The Commission has considered this from time to time. I think our view has changed, because it is a very difficult section. Because of the way in which it is structured, any change to it can give you quite unexpected results in terms of the ability to produce reports. After a great deal of deliberation on it, we determined that it is probably better to leave it the way it is rather than create some further anomaly in attempting to improve it. It seems to have worked in practice in recent times, certainly in the relationship between the CJC and this Committee. I do not see any reason why it could not work in practice in the future. It might be a little inconvenient for the Committee to find that it has to consider some reports before they can be provided to the Speaker, but that might be better than a situation which creates other problems.*⁷⁹¹

The Committee considers that, rather than seek an amendment to the Act, a more appropriate course may be to consult with the CJC with a view to issuing an appropriate guideline to the CJC pursuant to section 118A of the Act, to require the CJC, prior to tabling a report pursuant to section 26, to provide the Committee on an embargoed basis with an advance copy of its report intended for tabling (other than a report on a hearing conducted by the CJC under section 25).

15.6.4 Recommendations

Recommendation 80

The Committee recommends that section 26(9) NOT be amended.

Recommendation 81

The Committee further recommends that the next Parliamentary Committee give serious consideration to issuing, following appropriate consultation with the CJC, an appropriate

⁷⁹¹ Note 782 at 8.

guideline to the CJC pursuant to section 118A of the Act, to require the CJC, prior to tabling a report pursuant to section 26, to provide the Committee, on an embargoed basis, with an advance copy of its report intended for tabling (other than a report on a hearing conducted by the CJC under section 25).

15.7 Section 27 [Commission reports on court procedures and confidential matter]

15.7.1 Analysis and comment – reports on court procedures

Section 27 provides that the CJC may not present reports relating to ‘procedures and operations of any court of the State’ or those of a court’s registry or administrative offices in the usual way. Instead such reports must be given to the principal judicial officer of the relevant court. The Act is then silent on what steps may be taken to ensure eventual tabling of the report in Parliament.

The process set down by section 27 appears to have been intended to deal with investigative reports about matters affecting the internal workings of the courts (such as official misconduct). However, because of the broad terms in which it is couched, the section catches other research reports which may include recommendations about court practices among a wide range of other matters. Research reports by the CJC may include recommendations that affect court procedures.

The Committee is of the view that section 27 should be clarified.

15.7.2 Recommendation

Recommendation 82

The Committee recommends that section 27 of the Act be amended to clarify that it is not intended to apply to research reports by the CJC that include recommendations about court procedures or processes so that research reports about the courts can be published without the authority of the courts.

15.7.3 Analysis and comment - confidential information provided by the CJC to the Committee

Section 27 also governs the way in which the CJC reports to the Committee on confidential matters.

Section 27 presently provides:

(4) A member of the Parliamentary Committee or a person appointed, engaged or assigned to help the Committee, must not disclose confidential information disclosed to the Parliamentary Committee or person under subsection (3)(b) until the commission advises the Committee there is no longer a need to strictly maintain confidentiality in relation to the information.

The problem with section 27(4) is that it does not make it clear that the normal confidentiality provisions of section 132 of the Act apply to information that has been the subject of a confidential report under section 27 even after the Commission notifies that ‘strict confidentiality’ no longer needs to be maintained.

Section 132 provides that it is not a breach of section 132 for confidential information to be disclosed if it is disclosed ‘in the discharge of a function of the Parliamentary Committee... under this Act.’

The Committee considers that section 27(4) should be amended to clarify that the confidentiality provisions of section 132 apply to information that has been the subject of a confidential report to the Committee under section 27(2) even after the CJC notifies that 'strict confidentiality' no longer needs to be maintained.

The Committee considers that in appropriate cases, 'in the discharge of a function of the Parliamentary Committee', the Committee should, quite appropriately, have the ability, if a bi-partisan majority of the Committee agrees, to inform the Parliament of an issue which may require some reference to confidential information provided by the CJC, including confidential information provided pursuant to section 27.

Whilst section 27 does not of itself create an offence for any breach of section 27, the members of the Committee who determine, in an appropriate case, to divulge such confidential information to the Parliament, could fall foul of the general offence provisions in section 138 of the Act, and face a possible penalty of almost \$6,000 or imprisonment for one year.

The Committee emphasises that prior to divulging any such confidential information to the House, in accordance with established practice concerning the release by the Committee of any information considered sensitive, the Committee should of course consult with the CJC in an attempt to safeguard, where possible, confidential and operational information.

However, if it is considered necessary to statutorily formalise established practice, safeguards against potential abuse of such information by a future Committee could include requirements that:

- any decision by the Committee to divulge confidential information provided to the Committee pursuant to section 27(3)(b) of the Act require bi-partisan support so that an individual member of the Committee or a government controlled majority of the Committee could not divulge the information;
- prior to divulging the information, the Committee consult with the CJC as to the specific information proposed to be released to safeguard the confidentiality of the information.

The Committee considers that the amendment corrects what the Committee believes is a potential accountability flaw in the Act in that the CJC may determine to provide confidential information to the Committee which is specifically stated to be provided pursuant to section 27(3)(b). In those circumstances, the Committee could not inform the Parliament of the matter unless and until the CJC advises the Committee there is no longer a need to strictly maintain confidentiality in relation to the information, or put more starkly, unless and until the CJC authorised the Committee to do so.

For example, in reporting to the Committee in respect of an investigation referred to the CJC pursuant to section 118F(2)(b), the CJC may advise that:

- no misconduct was found but the investigation did highlight flawed CJC procedures and operations which the CJC has subsequently rectified; and
- the report is specifically stated to be provided pursuant to section 27(3)(b).

A recent example perhaps demonstrates the real potential for concern in this area. In responding to an invitation from the Committee in respect of a report of the Parliamentary Commissioner considered adverse to the CJC, the CJC has previously expressed the view that:

As a matter of general principle, reports by the Parliamentary Commissioner which contain adverse findings or opinions critical of the operations or procedures of the CJC (as opposed to findings of misconduct) should not be published.

In those circumstances, if the report from the CJC was expressed to be provided pursuant to section 27(3)(b) of the Act, the Committee could not inform the Parliament of the flawed procedures and operations unless and until the CJC authorised the Committee to do so.

The Committee does not accept the CJC's view that adverse findings or opinions critical of the operations or procedures of the CJC should not be published as a matter of general principle, although the Committee accepts that in any individual case, it may not be appropriate, for a variety of reasons, to publish adverse findings or opinions critical of the operations of the CJC.

The Committee considers that it is appropriate that the Committee must always be the final arbiters of whether it is appropriate to report to the Parliament in respect of information provided to it by the CJC.

Finally, the CJC has submitted that such an amendment '*seems to render the rest of the provisions of section 27 nugatory*'. The Committee does not accept this submission. For example, section 27(5) of the Act provides a mechanism whereby the CJC may, despite section 27(3)(b), if a majority of the Commission agrees, refuse to disclose the information to the Committee. In other words, if the CJC does not provide the Committee with the requested information, section 132 of the Act (which provides a defence in limited circumstances, to the release of confidential information by the Committee) is irrelevant.

15.7.4 Recommendation

Recommendation 83

The Committee recommends that section 27(4) of the Act be amended to clarify that the confidentiality provisions of section 132 apply to information that has been the subject of a confidential report to the Committee under section 27(2) even after the CJC notifies that 'strict confidentiality' no longer needs to be maintained.

15.8 Section 29 [Role and functions (of the Official Misconduct Division)]

15.8.1 Analysis and comment – investigation of alleged or suspected official misconduct

Section 29 of the Act sets out the role and functions of the Official Misconduct Division of the CJC.

The CJC has submitted that its jurisdiction to investigate the conduct of persons who are not holders of appointments in a unit of public administration, where such conduct could amount to official misconduct under section 32(1)(a) of the Act, should be clarified.

In its 1997 submission to the former Connolly / Ryan Inquiry, the CJC commented that:

Where a person who is not a public official bribes a public official, for example, to gain a government contract unfairly, that person will be subject to criminal prosecution for bribery, but will only be liable to a charge of official misconduct if he or she subsequently becomes a public official by virtue of section 31(3) of the Act. The powers of the Commission should be able to be brought to bear to investigate a person who is adversely intruding into the affairs of public office in such a way as to come within the definition of official misconduct in section 32. To clarify that there is jurisdiction to investigate a person who has improper dealings with a public officer, the

Commission recommends that section 29(3)(d)(ii) be amended by the deletion of the words 'by persons holding appointment in other units of public administration'⁷⁹². (Underlining added.)

In March 1998, the CJC repeated this submission in its submission to the third PCJC's three year review of the CJC.

... section 29(3)(d)(ii) be amended by the deletion of the words 'by persons holding appointments in other units of public administration'.

Such an amendment would clarify that the CJC does have jurisdiction to investigate suspected official misconduct (within the meaning of section 32) by persons not holding appointments in units of public administration. Section 32(1)(a) of the definition of 'official misconduct' clearly refers to persons who are not the holders of an appointment in a unit of public administration. (Underlining added.)

The third PCJC in its Report No. 45, on its three yearly review of the CJC, stated that:

... the Committee notes that as a result of s.29(3)(d)(ii) of the Criminal Justice Act it would appear that the Commission does not have jurisdiction to investigate criminal conduct, committed by a person who is not an officer of a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or any person holding an appointment in a unit of public administration. (Underlining added.)

...

Where those possible criminal charges relate to conduct which would constitute official misconduct under s.32(1)(a) of the Act the Committee considers that there is some advantage in the Commission having jurisdiction to investigate such suspected criminal conduct. Given that this conduct by persons other than holders of an appointment in a unit of public administration falls within the definition of official misconduct in the Criminal Justice Act, the Committee considers that it is consistent with the intention of the legislation that the additional coercive powers of the Commission be available to investigate such conduct.

...

Recommendation 13

The Committee recommends that the Criminal Justice Act be amended to ensure that the Commission has jurisdiction to investigate criminal conduct of people who are not officers of a unit of public administration, where such conduct would constitute official misconduct pursuant to section 32(1)(a). (Underlining added.)

The Act has not been amended.

The CJC has reiterated this submission in its most recent submission to this Committee.

The Committee supports and endorses the submission made by the CJC to the former Connolly / Ryan Inquiry, to the third PCJC and to this Committee, and the recommendation of the third PCJC that:

... section 29(3)(d)(ii) be amended by the deletion of the words 'by persons holding appointments in other units of public administration'.

⁷⁹² Note 771 at 92.

The recommendation made by the third PCJC to clarify the CJC's jurisdiction, was in effect, a technical amendment to correct an apparent drafting anomaly. The third PCJC does not appear to have recommended a potentially significant widening of the CJC's jurisdiction.

The Committee accepts that this amendment would clarify that the CJC has jurisdiction to investigate suspected official misconduct (within the meaning of section 32) by persons not holding appointments in units of public administration. The Committee notes that section 32(1)(a) of the definition of 'official misconduct' clearly refers to persons who are not the holders of an appointment in a unit of public administration.

However, in subsequent consultation with the CJC, the CJC has recently endorsed a potentially wider amendment to section 29 as follows:

(4) Subsection (5) applies if, in the course of conducting an investigation of a type mentioned in subsection (3) (the '**original investigation**'), the division-

(a) identifies evidence of a criminal offence (the '**suspected offence**') involving someone other than a person holding an appointment in a unit of public administration or a member of the police service; and

(b) identifies evidence of a criminal offence (the '**suspected offence**') involving a person holding an appointment in a unit of public administration, but not involving official misconduct; and

considers that to refer the matter to another law enforcement agency may jeopardise-

(i) the successful investigation of the suspected offence; or

(ii) the success of the original investigation.

(5) The division may continue to investigate the suspected offence, and exercise powers for the investigation, as if it were an investigation of a type mentioned in subsection (3).

The suggested amendment raises important jurisdictional and policy issues.

The CJC is endorsing, in essence, that in appropriate cases, the CJC should be permitted to investigate suspected criminal conduct outside its jurisdiction (suspected offence) which is discovered during an investigation within its jurisdiction (original investigation) in circumstances where referral of the suspected offence to another law enforcement agency may jeopardise or prejudice the CJC's original investigation.

The CJC has not provided the Committee with details of any specific case or cases where problems had occurred which necessitated such an amendment.

More specifically, the Committee has two primary concerns in respect of the terms of the suggested amendment to section 29. The Committee has concerns in relation to:

- the civil liberties implications of the suggested amendment; and
- the potential for the amended provision to give the CJC (with its standing powers of a Royal Commission) a general law enforcement power contrary to the spirit and intention of the *Criminal Justice Act*.

The Committee firmly believes that the expression 'official misconduct', as defined in section 32 of the Act, indicates an intention on the part of the legislature to encompass only that conduct by a

member of the public service which can, in a broad sense, be said to relate to the powers, functions, duties or responsibilities which arise out of his or her appointment.

15.8.2 Recommendation

Recommendation 84

The Committee recommends that section 29 be amended to clarify the apparent drafting anomaly by deleting from section 29(3)(d)(ii) the words ‘by persons holding appointments in other units of public administration’;

15.8.3 Analysis and comment – scheme for prompt sharing of relevant intelligence between the CJC and the QCC and the QPS

A key issue raised by the suggested amendment, detailed above, is whether the Act provides for an appropriate scheme to provide for the prompt sharing of relevant intelligence from the CJC to other law enforcement agencies namely, the Queensland Crime Commission (QCC) and the Queensland Police Service (QPS).

The Committee notes that section 58(2) of the Act, which details the functions of the CJC’s Intelligence Division, provides that the Intelligence Division can disseminate intelligence information ‘to such persons, authorities and agencies and in such manner as the Commission considers appropriate’.

The provision is not couched in mandatory terms. The Committee notes that there is no provision in the *Criminal Justice Act* in similar terms to section 33 of the *Crime Commission Act 1997* which provides:

CJC to be advised of official misconduct

33.(1) If QCC has evidence of official misconduct, QCC must advise the CJC of the official misconduct as soon as practicable.

(2) If the advice is likely to prejudice an investigation QCC is conducting, QCC need not advise the CJC until QCC is satisfied the advice is not likely to prejudice the investigation.

(3) QCC must advise the Parliamentary commissioner of a decision under subsection (2) not to advise the CJC of evidence of official misconduct.

(4) The Parliamentary commissioner must monitor the delay in giving the evidence to the CJC and decide when it must be given to the CJC. (Underlining added.)

The Committee notes that the Parliamentary Commissioner is required by section 60 of the *Crime Commission Act* to conduct an annual review of the intelligence data held by the CJC, QCC, and the Queensland Police Service to consider:

- whether the intelligence data held by each agency is appropriate having regard to the agency’s functions;
- whether there is any unnecessary duplication of intelligence data;
- whether the agencies are working cooperatively in the collection, management, and use of intelligence data; and

- whether an agency is placing inappropriate restrictions on access to intelligence data by other agencies.

The issue of cooperation between the CJC and the other agencies (and more specifically the sharing of intelligence by the CJC) was raised by the CJC in its submission to this review.

*We continue to share intelligence with other agencies where the information is relevant to other jurisdictions. Examples of such sharing are seen in our frequent self-initiated disseminations to agencies such as the QPS and the QCC and also in our timely responses for requests for information from similar agencies. During the period from January 1998 to June 2000, we disseminated 190 items of intelligence on our own initiative and received 341 requests for information to which 219 positive responses were provided.*⁷⁹³

The CJC submission also emphasised that:

*The CJC's intelligence holdings and its sharing of information with the QPS and QCC is subject to independent audit by the Office of the Parliamentary Commissioner.*⁷⁹⁴

The issue of cooperation between the CJC and the other agencies (and more specifically the intelligence reviews conducted by the Parliamentary Commissioner) was the subject of some discussion at the public hearings conducted by the Committee as part of this review. Mr Paul Roger, the Director of Intelligence and Information at the CJC, referred to the Parliamentary Commissioner's intelligence audit and advised that:

*...in the last two audits conducted by the Parliamentary Commissioner the CJC's holdings have been found to be appropriate, with no unnecessary duplication ...*⁷⁹⁵*... there is no indication that there is anything other than appropriate cooperation.*

*I would like to add personally, though, that there is always room for improvement in these areas of communication and liaison and discussion.*⁷⁹⁶

Mr Roger went on to submit:

... we disseminate information quite regularly. Since January this year, 90 individual pieces of intelligence to various agencies within Brisbane that we have come across during the Commission's own work. That can be as a result of a complaint that is made which actually does not fall within our jurisdiction but the information contains allegations of a criminal nature which would be perhaps better dealt with by the QCC or the QPS, and we disseminate that straightaway. We also ask them to give us some feedback as to the value of those types of disseminations. In at least 50% of the cases, they would rate of general or high value when we get the questionnaire back. Some come back 'of limited value', but intelligence is intelligence. It may be limited today; it may be worth something some other time. So they seem to be appreciated. We also responded to 94 requests for assistance from our intelligence holdings during the same period in the last 11 and a half months. So that gives you an idea of the sort of cooperation that does occur.

*We will continue to work with the other agencies, but nobody has ever brought to my attention that there is actually anything wrong with the way things are happening.*⁷⁹⁷

⁷⁹³ Note 767 at 31.

⁷⁹⁴ Note 767 at 31.

⁷⁹⁵ Note 782 at 26.

⁷⁹⁶ Note 782 at 28.

⁷⁹⁷ Note 782 at 28.

The CJC's Chairperson, Mr Butler SC, specifically addressed the issue of the practicality of an amendment to the *Criminal Justice Act* in similar terms to section 33 of the *Crime Commission Act*:

*... the definition of organised crime under the Crime Commission Act involves indictable offences punishable on conviction by a term of imprisonment not less than seven years and two or more persons and substantial planning and organisation or systematic continuing activity and a purpose to gain some benefit, including power, influence or whatever. Basically, a very large range of all sorts of criminal conduct falls under that definition. Of course, what happens as a matter of practicality is that where we see that there is something that is relevant to the sort of work that we know the QCC is doing, we disseminate it, and that relates to that organised crime milieu that they are dealing with, because we are quite familiar with what they are doing. But if we had to basically disseminate everything that related to possible criminal offences of the nature described here, we would probably be disseminating very much a great proportion of what we are dealing with in terms of official misconduct, because very much of our work would relate to possible criminal offences of that nature that might involve two or more persons and might have some planning involved. Perhaps you can ask Mr Carmody this, but I suspect that the QCC really would not want to receive all that. They would not want to receive loads of information about allegations against public servants, politicians and others. That might happen if they were proven to be criminal offences. I do not know if they want to be burdened with that on a day-to-day basis.*⁷⁹⁸

The QCC was provided with an opportunity to offer its view in relation to:

- the question Mr Butler suggested the Committee ask of Mr Carmody; and
- whether the QCC supported an amendment to the *Criminal Justice Act* to insert a provision in similar terms to section 33 of the *Crime Commission Act 1997*.

The QCC declined to make any comment.

The Committee has no basis to suggest that the CJC is not 'working cooperatively in the collection, management, and use of intelligence data'. Indeed the Parliamentary Commissioner's annual audits of intelligence data suggests otherwise.

The Committee accepts that in all the circumstances, section 58(2) of the Act provides an appropriate scheme for the timely provision of intelligence between the CJC and the other agencies. The Committee is not convinced that the *Criminal Justice Act* ought be amended by inserting a provision in similar terms to section 33 of the *Crime Commission Act*.

15.8.4 Recommendation

Recommendation 85

The Committee recommends that the Act should not be amended by inserting a provision in similar terms to section 33 of the *Crime Commission Act*.

15.9 Section 33 [Reports of (investigations by the official misconduct) division]

15.9.1 Analysis and comment

Section 33 of the Act governs the circulation of reports of the Official Misconduct Division of the CJC.

⁷⁹⁸ Note 782 at 28.

More specifically, section 33 (2A), as a result of an amendment made by the *Criminal Justice Legislation Amendment Act 1997*, imposes a requirement upon the CJC to provide all reports to one of a list of appropriate agencies.

The CJC has submitted that there are occasions where the CJC does not consider any action is warranted on a matter and a matter referred to the CJC under section 33(1) of the Act consists of a report recommending that no action be taken.

The Committee is not convinced that section 33 ought be amended as proposed by the CJC.

Further, the Committee considers that the Committee should be included as one of the entities to which the CJC must report. The Committee considers that the confidential nature of the matter or issues may be such that the Committee is the only agency to which the CJC could appropriately report. Further, such a suggestion simply gives effect, to some extent, to current practice in that the CJC has in the past provided the Committee with a comprehensive confidential report in respect of a matter which either was the subject of a more limited ‘sanitised’ public report or in respect of which there was no public report.

Finally, the Committee notes a minor drafting error in section 33(7) of the Act which ought to be corrected by omitting ‘subsection (2)(a)’ and inserting ‘subsection (2A)(a)’.

15.9.2 Recommendation

Recommendation 86

The Committee recommends that section 33 of the Act be amended by

(a) including the Committee as one of several entities to which the CJC must report; and

(b) correcting a minor drafting error in section 33(7) of the Act by omitting ‘subsection (2)(a)’ and inserting ‘subsection (2A)(a)’.

15.10 Section 39 [Commission’s duty on director’s report of official misconduct]

15.10.1 Analysis and comment – unit of public administration: Chairperson to sign charge against a prescribed person

Section 39(1) appears to provide that it is the duty of the Commission, as a corporate entity, to sign a charge of official misconduct against a prescribed person.

The CJC, in its submission to this review, states that:

As presently drafted, this section requires the Commission, as a corporate entity, to institute charges of official misconduct. It would accord more with the usual practice in such matters, in the Commission’s submission, for a natural person to be given the authority to institute these charges. The Commission therefore seeks an amendment to section 39 which would allow the Chairperson or the Director OMD to charge a prescribed person. Such action could, in any case, be taken only with the approval of the Commission, pursuant to section 33.⁷⁹⁹

The Committee accepts the CJC’s suggestion that it would be more appropriate for the Chairperson to institute such charges.

⁷⁹⁹ Note 767 at 46.

The Committee accepts the CJC's submission that that such action could, in any case, be taken only with the approval of the Commission pursuant to section 33 of the Act.

15.10.2 Recommendation

Recommendation 87

The Committee recommends that section 39(1) of the Act be amended to provide that it is the duty of the CJC Chairperson to sign a charge of official misconduct against a prescribed person rather than the Commission as an entity.

15.10.3 Analysis and comment – unit of public administration: individual appointment to be prescribed

Section 39(3) presently provides that all members of the police service are prescribed persons and may therefore be placed before a Misconduct Tribunal. However, no other unit of public administration has been prescribed. This means that the appointment of other public officials who are not police must be individually prescribed on a case by case basis before each referral to a principal officer.

The CJC submits that such a process has proved to be a cumbersome and time consuming process. The Committee accepts the CJC's suggestion that the requirement that each unit of public administration be separately prescribed be removed.

The Committee also accepts that any amendment should provide for the case where prescribed persons themselves constitute a unit of public administration.

15.10.4 Recommendation

Recommendation 88

The Committee recommends that section 39(2) of the Act be amended to provide generally that all persons who hold appointments in units of public administration are 'prescribed persons' for the purposes of the Act.

15.11 Section 64 [Employment by Commission] – [limit to tenure of CJC Directors]

15.11.1 Analysis and comment

Section 64 of the Act provides for the employment of Directors and staff of the Commission.

The maximum period of appointment for the CJC Chairperson is five years. A part-time commissioner may be appointed for a period up to 10 years.

There is presently no statutory limit on the tenure of CJC Directors.

The issue of a limit on the tenure of senior officers of the CJC was previously addressed by the CJC in its submissions to the former Connolly / Ryan Inquiry and to the third PCJC. In its submission to the third PCJC, the CJC submitted:

To impose such a limit raises concerns about continuity and organisational effectiveness. These concerns would be increased if a number of directors were replaced at or around the same

*time. It may also be difficult to attract appropriately skilled staff if a maximum term applied. No such limit applies to the tenure of Senior Executives at comparable levels in the Queensland public service. However, this matter is open to review by the Commission from time to time.*⁸⁰⁰

The third PCJC, in its Report No. 45 on its three yearly review of the CJC, stated:

It is arguable that stability in senior operational and administrative positions at the Commission aids the effective discharge of functions of the Commission, as long serving Directors will better identify potential areas of difficulty and, therefore, minimise or avoid future problems. Further, officers who have served with the Commission for a considerable time may fulfil their obligations with greater efficiency and effectiveness, allowing the Commission to respond to contemporary or pressing matters arising for consideration more promptly. This may also contribute to a streamlining of Commission operations, and a maximisation of productivity.

Nevertheless, the Committee considers that certain issues of a broader and more fundamental nature confront the Commission, and must be addressed if the relevance and effectiveness of the organisation is to be maintained. The Committee is concerned that a Director of long tenure may be less sensitive to emerging issues and trends within the ambit of his or her division, due to an over familiarity with divisional procedures, operations and subject matter. A further matter of concern to the Committee is that longer serving officers may be less willing to embrace or adapt to reform as necessary within the division. There exists the possibility that an extended period as Director may decrease the ability of an officer to appropriately manage sensitive personnel or operational issues within the division.

Relationships which necessarily develop between officers who have worked closely over long periods may reduce objectivity and impartiality to an unacceptable degree, given the nature of the Commission's powers and functions, and the role of Directors in the discharge of those powers and functions. These matters acquire greater significance due to the unique and influential nature of the position. The Committee accepts that Directors are accountable to the Commission through the Chairperson for the manner in which policy is implemented, and the effectiveness of their respective divisions⁸⁰¹. However, in reality the Commission is reliant upon the Directors for critical information about the day to day operations of a particular division, and the progress of policy implementation. In addition, the making of informed decisions about operational issues and objectives by the Commission is necessarily dependent upon Directors providing information and analysis in a forthright and constructive manner.

...

Rather than detracting from organisational effectiveness, the Committee is of the view that instead, it would be enhanced by the incorporation of fresh ideas, skills and perspectives at regular intervals. The disruption to continuity that is of concern to the Commission could be alleviated by the development and implementation of appropriate protocols and procedures within the Commission, to ensure that necessary information is acquired by the incoming Director as quickly as possible. The Committee is confident that these matters are capable of being adequately addressed by internal controls.

...

...

The Committee does not accept that the tenure of senior public service executives is relevant to the matter of the tenure of Directors of the Commission. Given the role of the Commission, its extensive powers and the particular jurisdiction which it exercises, its officers cannot be compared with those in the general public service. Special safeguards and checks on power are

⁸⁰⁰ CJC, *CJC Submission to the Three Yearly PCJC Review of the Criminal Justice Commission*, 1998, Brisbane, at 10.

⁸⁰¹ Note 771 at 76.

*essential to the maintenance of public confidence in the Commission. It is therefore the Committee's view that it is appropriate that greater limitations be imposed on its officers than apply to members of the public service.*⁸⁰²

The third PCJC concluded that the tenure of CJC Directors should be limited to a maximum term of 5 years.⁸⁰³

In its response to the third PCJC's Report No. 45 on its three yearly review of the CJC, the CJC argued that:

*Suggestions that Directors are or may become inflexible, lacking in objectivity and impartiality, or unable to manage sensitive issues would, if accurate, indicate a failure of management by the Commission and the Chairperson rather than some structural issue requiring legislative change.*⁸⁰⁴

The CJC responded further by stating that once older contracts were renewed all Directors would be appointed on fixed term contracts of up to five years with no automatic right to renew. The CJC also contended that no Australian organisation comparable to the CJC imposes similar restrictions on its senior executives.⁸⁰⁵

The Committee received several submissions to this review which raised the issue of the tenure of CJC Directors.

The Queensland Law Society in its submission to this review, submitted:

Serious concerns are held concerning the length of service of senior staff within the Commission. It is vital for the independence and proper functioning of the Commission that officials do not develop a personal interest in protecting the Commission – their interests should not extend beyond the desire to ensure the impartial discharge of the Commission's functions and responsibilities. In his report Fitzgerald QC (as he then was) warned that:

Here is a risk that any autonomous investigative body, particularly one infused by its own inevitable sense of importance and crusading zeal, may become increasingly insensitive to the delicate balance between conflicting public and private interests... Fitzgerald Report (p302)

*The Society is aware that certain senior officials within the Commission are now longstanding employees of the Commission. Whilst the Commission needs a degree of continuity and stability, the Society considers that it is unhealthy for persons to effectively make employment in the commission their career. The Society adopts the view of the Parliamentary Criminal Justice Committee expressed in its 1988 report that the tenure of divisional directors of the Commission be limited to a period of 5 years, in line with the part-time Commissioners. The Society agrees with the Committee that such limitation would assist in ensuring that objectivity, impartiality and openness to reform are not eroded.*⁸⁰⁶

The Queensland Police Service, in its submission to this review, submitted:

Many officers at the Commission have been there either since inception or for prolonged periods. This might well be appropriate, particularly in areas where skills and reputation are scarce (eg.

⁸⁰² Note 769 at 34-35.

⁸⁰³ Note 769 at 37.

⁸⁰⁴ CJC, *CJC response to PCJC Three-Year Review of the Activities of the CJC*, August 1998, Brisbane, at 5.

⁸⁰⁵ Note 769 at 5.

⁸⁰⁶ Queensland Law Society, submission, *Three Yearly Review of the Criminal Justice Commission*, dated 9 October 2000, Brisbane, at 18.

Research). However, the work of the CJC itself, in particular the Carter Inquiry, highlights the need for tenure of officers in an agency to be reviewed. It is acknowledged that the Carter Inquiry related to Police and Drugs. Nonetheless, in terms of risk of exposure to corruption or institutionalisation, it could be argued that the CJC is one area where the issue of tenure of senior officers needs to be firmly addressed;⁸⁰⁷

This Committee has given this issue some careful and detailed consideration. One option considered by the Committee is whether the tenure of CJC directors should be limited to a period of five years, with any reappointment to be subject to approval by the Committee.

The CJC has responded to this suggestion by submitting that:

...it is inappropriate that the PCJC should be given the further power to 'direct' the Commission not to employ a specified person as a director. The existence of such a power has the potential to inhibit independent decision making by affected officers in regard to politically sensitive issues.

The CJC has further submitted that 'it is an unprecedented power to give to a Parliamentary Committee'. Finally, the CJC submits that 'the existence of such a power has the potential to inhibit independent decision making by affected officers in regard to politically sensitive issues'.

Finally, the issue of tenure was raised at the Committee's public hearings as part of this review. The Chairperson of the CJC, Mr Butler SC stated:

There seems to be an expectation about the CJC that there should be a change of staff running down to relatively lower levels. The first point to be made is that I am the CEO of the organisation. I have limited tenure pursuant to the statute. The major decisions are made by the commission. All of the commissioners have limited tenure under the statute. In terms of directors of the various divisions, they are now all appointed under contracts which give them no guarantee of tenure beyond the life of a contract.

...

The CJC would say that while it is important that there be that scope for directors to be terminated at the end of their contract, it is also important that, where a person is operating effectively and producing the goods - in Public Service terms, in terms of director's positions, certainly no public servant at those levels would have other than permanent tenure- there should be that ability to retain people who are performing well As I say, the option exists there when the period of reappointment arises.⁸⁰⁸

The Committee does not accept the CJC's position in respect of this particular issue.

The Committee endorses the view of its predecessor Committee, the 3rd PCJC, that the tenure of CJC directors ought be limited. More specifically, the Committee considers that the Act should be amended to provide that contracts of employment for 'Directors' of the CJC should be limited to a term of 5 years with any further term to be subject to approval by the Committee.

The Committee is of the view that it may not be in the public interest for senior officers in law enforcement to stay on in one position for too long. A number of positions at the CJC have significant powers attached to them.

The Committee concedes it is important to have some flexibility in making appointments but believes that the public interest in having external scrutiny of extensions to the tenure of CJC

⁸⁰⁷ Queensland Police Service, *Submission to the PCJC Review of the CJC*, dated July 2000, Brisbane, at 1.

⁸⁰⁸ Note 782 at 7.

directors is compelling. Other alternatives such as maximum terms for officers are inherently restrictive and therefore unsatisfactory.

It is the Committee's belief that it is desirable for the CJC to be regularly injected with fresh perspectives, skills and ideas, at both the policy and operational level. The Committee is of the view that these matters are fundamental to the CJC's vitality as an organisation, and that the integrity of Directors in relation to these issues must not be compromised if the effectiveness of the CJC is to be maintained.

The Committee accepts that it should be required to consider issues of natural justice in making a decision as to whether a contract of employment for a Director should be extended and that it would be appropriate to allow a person who is seeking an extension to their contract a right to be heard.

The Committee has considered the CJC's concern that giving the Committee the power to veto any extension of the contract of employment for a CJC director has the 'potential to inhibit independent decision making by affected officers in regard to politically sensitive issues'. The Committee is of the view that an amendment that provides a requirement for any decision of the Committee to have bipartisan support overcomes the CJC's concern.

In summary, the Committee considers that:

- Contracts of employment for directors of the CJC should, in principle, be limited to a term of five years subject to possible extension with the approval of the Committee;
- in considering any extension of a contract of employment for a Director, the Commission should be required to consult with the Committee;
- unless any proposed extension of a contract of employment is vetoed by a bi-partisan majority of the Committee, the extension of contract should be affirmed; and
- in considering any extension of a contract, the Committee should be required to provide the officer with an opportunity to be heard.

15.11.2 Recommendation

Recommendation 89

The Committee recommends that the Act should be amended to provide that:

- (a) contracts of employment for 'Directors' of the CJC should, in principle, be limited to a term of 5 years, subject to possible extension with the approval of the Committee;**
 - (b) in considering any extension of a contract of employment for a Director, the CJC should be required to consult with the Committee;**
 - (c) unless any proposed extension of a contract of employment is vetoed by a bi-partisan majority of the Committee, the extension of contract should be affirmed; and**
 - (d) in considering an extension of a contract, the Committee be required to provide the officer with an opportunity to be heard.**
-

15.12 Section 69 [Notice to discover information]; Section 70 [Entry of public premises]; Section 71 [Warrant to enter, search and seize]*15.12.1 Analysis and comment*

Section 69 of the *Criminal Justice Act* enables the Chairperson to issue a notice to a person to furnish information and/or documents that are relevant to a CJC investigation or proposed investigation.

The CJC uses this power extensively, particularly when attempting to obtain financial documents and information from financial institutions. Such information is important in pursuing the proceeds of crime. However, there is no obligation of confidentiality imposed on the person upon whom the notice is served. Consequently, there is a considerable risk that the subject of the investigation will become aware of the CJC's interest in that person, to the detriment of the investigation.

Most banks and financial institutions have agreed not to inform their client of the CJC's interest in their accounts. The CJC advises that one financial institution advises its clients, which include police officers, of the fact that a notice to produce has been served. This is a major impediment to an effective investigation into police corruption.

A statutory obligation to maintain security in similar circumstances is available to both the QCC (s. 94(3) of the *Crime Commission Act 1997*) and the National Crime Authority.

Mr Carter QC in his report titled *Police and Drugs: A report of an investigation of cases involving Queensland Police Officers* recommended that:

*the Criminal Justice Act be amended to prohibit any person who is served with a notice under section 69 of the Act from informing any other person of the fact of such service.*⁸⁰⁹

The Committee endorses Mr Carter's recommendation that any person to whom a notice is served should maintain confidentiality in respect of the notice.

Sections 70 and 71 of the Act similarly provide the CJC with the ability to enter onto premises and to search and seize material.

The Committee considers that sections 70 and 71 of the Act should also be amended to provide the CJC with the ability to require an occupier of premises or a person acting on behalf of an occupier (s.70) or a person found on premises (s.71) to maintain confidentiality.

The Committee is of the view that in drafting any amendment the following issues should be carefully considered.

(a) Discretion in a CJC officer to hand over a notice requiring confidentiality:

There is no obligation, elsewhere in the Act, requiring persons, in the situations discussed, to maintain confidentiality. The Committee notes that:

- a notice to produce under section 69 of the Act must be issued by the Chairperson or a Commissioner who is a lawyer;

⁸⁰⁹ CJC, *Police and Drugs: A Report of an investigation of cases involving Queensland Police Officers*, (Mr Bill Carter QC), 1997, Brisbane, at 23-24.

- a CJC officer must be authorised in writing by the Chairperson under section 70 of the Act to enter premises used by a unit of public administration; and
- judicial approval is required for the issue of a search warrant under section 71 of the Act.

The Committee is of the view that, if, as outlined above, judicial approval is needed for a search warrant, the warrant should also specify, where necessary, the obligation to maintain confidentiality by a person upon whom a warrant is served. Similarly, if the Chairperson of the CJC is to be required to authorise an officer of the CJC in writing to do certain things, the Chairperson should also be required to authorise, in writing, the serving, in appropriate cases, of a relevant notice (to maintain confidentiality).

(b) Whether the obligation to maintain confidentiality should only apply to wilful disclosure or otherwise provide for an exception:

The Committee considers that any scheme requiring persons to whom a notice has been given to maintain confidentiality, should only apply to ‘wilful’ disclosure (similar to section 132 of the Act) or should otherwise provide for an exception. The person served with a notice may have a lawful excuse for disclosing that fact to certain persons. For example:

- the person may determine to seek legal advice in respect of the notice; or
- in complying with the notice, the person may consider it prudent to raise the matter with his or her superior.

(c) Whether it is appropriate to place a time-limitation on the notice:

The Committee considers that the obligation to maintain confidentiality should cease on a defined event or otherwise come to an end after the expiration of a defined period of time, for example, at the conclusion of the investigation/prosecution etc or after the expiration of, say, 12 months. The Committee is of the view that the removal of a person’s right to speak about any matter is not something that should be undertaken lightly, although the Committee acknowledges the need for such a scheme particularly in circumstances where disclosure of the information may prejudice an investigation.

(d) Appropriate penalty for breach of a notice:

The Committee is of the view that the penalty which should attach to a breach of a notice issued pursuant to sections 69, 70 or 71 of the Act should be 85 penalty units or imprisonment for one year, the same as that provided for in:

- section 132 (Confidentiality to be maintained) which imposes an obligation of confidentiality as an incident of employment by the CJC, the Committee, the Parliamentary Service or the Parliamentary Commissioner, thus in a sense, entailing a breach of trust;
- section 133 (Resisting exercise of powers of the CJC) in circumstances where a person wilfully obstructs or hinders any Commissioner or officer of the Commission in the exercise of power or authority; and
- section 138 (General offence provisions) in circumstances where a person otherwise contravenes the Act and no offence is prescribed.

15.12.2 Recommendations

Recommendation 90

The Committee recommends that section 69 of the Act should be amended to provide the CJC with the ability to require that confidentiality be maintained by a person to whom a notice is served, provided that:

- (i) the obligation to maintain confidentiality should be specified in the notice authorised by the Chairperson (or Commissioner who is a lawyer), and;**
- (ii) the obligation to maintain confidentiality should only apply to wilful disclosure and should otherwise provide for an exception in cases where the person determines to seek legal advice in respect of the notice or in complying with the notice, the person considers it prudent to raise the matter with his or her superior;**
- (iii) the obligation to maintain confidentiality should cease on a defined event, either at the conclusion of the investigation or prosecution, or otherwise come to an end after the expiration of a defined period of time; and**
- (iv) the appropriate penalty which should attach to a breach of confidentiality in respect of a notice issued pursuant to section 69 of the Act should be 85 penalty units or imprisonment for one year (the same as that provided for in sections 132, 133, and 138 of the Act).**

Recommendation 91

The Committee further recommends that sections 70 and 71 of the Act should be similarly amended to provide the CJC with the ability to require that confidentiality be maintained by an occupier of premises or a person acting on behalf of an occupier (section 70) or a person found on premises (section 71), provided that:

- (i) in appropriate cases, a requirement that a person maintain confidentiality should be authorised by the Chairperson and specified in the authority of the Chairperson (section 70) or specified in the warrant issued by the judge (section 71);**
 - (ii) the obligation to maintain confidentiality should only apply to wilful disclosure and should otherwise provide for an exception in cases where the person determines to seek legal advice in respect of the warrant notice or in complying with the notice, the person considers it prudent to raise the matter with his or her superior;**
 - (iii) the obligation to maintain confidentiality should cease on a defined event (for example, at the conclusion of the investigation/prosecution) or otherwise come to an end after the expiration of a defined period of time; and**
 - (iv) the appropriate penalty which should attach to a breach of confidentiality pursuant to sections 70 or 71 should be 85 penalty units or imprisonment for one year (the same as that provided for in sections 132, 133, and 138).**
-

15.13 Section 71 [Warrant to enter, search and seize]

15.13.1 Analysis and comment – removal of two step process

Section 71 of the Act provides for the issue of warrants by a judge.

The CJC in a previous submission to a predecessor Committee, the third PCJC, had submitted that the section requires a two step process, namely after a judge has made a considered decision in accordance with the requirement in section 71(2), a further step is required before the warrant can be issued, namely the exercise by a justice of his or her discretion whether to issue the warrant.

The CJC had submitted that the section be amended to remove the anomaly.

The Committee accepts the CJC's submission and is of the view that this two step process is unnecessary and should be removed.

15.13.2 Recommendation

Recommendation 92

The Committee recommends that section 71 of the Act be amended to clarify that the judge of the Supreme Court to whom an application is made may actually issue the warrant to enter, search and seize rather than being limited to ordering that a warrant be issued.

15.14 Section 82 [Authority to use listening devices]

15.14.1 Analysis and comment - video surveillance warrants and tracking devices

The CJC presently does not have the power to install video surveillance and tracking devices. These powers are available to the Queensland Crime Commission and the Queensland Police Service.

The CJC has submitted that it should have these powers.⁸¹⁰

The Committee accepts the CJC's submission that the CJC should have the power to install video surveillance and tracking devices, consistent with powers granted to the Queensland Police Service under the *Police Powers and Responsibilities Act 2000*.

In considering how such an amendment could be achieved, one option may be to simply widen the ambit of section 82 (presently limited to listening devices) to cover all surveillance devices.

The CJC, in its submission to this review submits that:

*This would bring the provisions governing the CJC's use of surveillance devices in line with the provisions governing the use of such devices by the Queensland Police Service and the Queensland Crime Commission under their respective legislation.*⁸¹¹

The CJC further submits that 'it would clarify the intent of the section for 'surveillance device' to be defined' and 'a definition similar to that contained in the *Crime Commission Act 1997*', seems appropriate, namely:

⁸¹⁰ Note 767 at 46.

⁸¹¹ Note 767 at 46.

‘surveillance device’ includes—

(a) a listening device; and

(b) a visual surveillance device; and

(c) a tracking device; and

(d) a device containing any combination of the devices mentioned in paragraphs (a), (b) and (c).’
[2000:46]

The Committee notes that the *Police Powers and Responsibilities Act* also contains a definition in identical terms.

The Committee supports the CJC's suggestion of defining the term ‘surveillance device’ in similar terms to the *Crime Commission Act* and the *Police Powers and Responsibilities Act*.

15.14.2 Recommendation

Recommendation 93

The Committee recommends that the CJC should have the power to install video surveillance and tracking devices, consistent with powers granted to the Queensland Police Service under the *Police Powers and Responsibilities Act 2000* and the Queensland Crime Commission under the *Crime Commission Act 1997*.

15.14.3 Analysis and comment – consistency of legislative schemes

The Committee believes that the amendment recommended above raises a broader policy question. The Committee recommends that the other relevant provisions relating to the issue of warrants authorising the use of surveillance devices contained in the *Crime Commission Act* and the *Police Powers and Responsibilities Act* should also be replicated in the *Criminal Justice Act*, subject to suitable amendments to reflect the grounds for issue and use. For example, section 82(10) of the *Crime Commission Act* (and a similar provision in section 68(10) of the *Police Powers and Responsibilities Act*) requires the issuer of the warrant to consider various matters, such as the likely extent of interference with the privacy of any person and the extent to which investigators have used or can use conventional methods of investigation. The legislative framework in those two Acts also distinguishes between what is considered more intrusive forms of surveillance (listening devices, visual surveillance devices not installed in a public place or with the occupier’s consent and tracking devices which require covert entry for installation) from the less intrusive forms of surveillance.

The Committee notes that the former Public Interest Monitor (PIM), Mr Richard Perry, both in his second and third Annual Reports in respect of the *Criminal Justice Act* (tabled on 9 November 1999 and on 8 November 2000 respectively) criticised the lack of consistency across the various Acts in relation to surveillance devices and covert search warrants.

Mr Perry stated:

*In general terms, it is, in my view, important that there be consistency firstly between the various provisions of each of the Acts relating to the installation of covert search warrant powers.*⁸¹²

Mr Perry went on to elaborate stating:

⁸¹² Public Interest Monitor, 3rd Annual Report, 2000, Brisbane, at 1.

It is inimical to the proper supervision of criminal investigative agencies for there to be fundamental differences to the ground rules under which each operates. That is not to say that the functions, duties, obligations and tasks of each agency are necessarily alike but is simply a recognition that the public appreciation of what is appropriate by way of monitoring such agencies has perhaps changed since the Criminal Justice Act was first passed.

...

*Whilst the scheme of the current PPRA is not entirely appropriate for simple incorporation into the Criminal Justice Act, it nonetheless provides a useful guide. There are a number of provisions which would require amendment, not only to render them more appropriate for an agency such as the Criminal Justice Commission, but also to make the scheme itself more efficient and effective than it currently is.*⁸¹³

Mr Perry went on to elaborate on specific distinctions between the various Acts:

The most significant distinction between the various Acts is the ability of issuers under the PPRA to impose conditions. Over a period of time a number of essentially standard conditions has evolved which not only reflect the public interest generally but also materially assist the Monitor in monitoring the use of the device.

...

*For example, it is inappropriate for there to be an absence of conditions with respect to an audio surveillance device application under the Criminal Justice Act and the imposition of conditions with respect to a visual surveillance device under the PPRA in circumstances where it may well be the Commission itself which brings each application.*⁸¹⁴

The Committee has previously sought submissions from the CJC in respect of issues raised by the former PIM in his three annual reports to the Parliament. In its most recent response, the CJC, in a letter to the Committee dated 12 December 2000, (in making submissions in response to the third Annual Report of the PIM) submits:

As the Commission has previously submitted in relation to the first two reports of the PIM, it does not consider that it is desirable to attempt to achieve uniformity between the legislation governing the use of surveillance warrants by the CJC and other agencies such as the QPS and QCC. Because of the substantial differences between the respective investigative functions of the agencies, any attempt would, in the Commission's view, be counter-productive.

...

The PIM seems to have moved away from the suggestion that complete uniformity between the legislative requirements governing the use of surveillance and covert search warrants is desirable, noting at p.3 of his latest report that the scheme of the current PPRA is not entirely appropriate for incorporation into the Criminal Justice Act. He suggests however that the PPRA provides a useful guide, and its provisions should be considered as part of the current review of the Criminal Justice Act 1989.

The CJC agrees that such matters should be considered as part of that review, but continues in general to be of the view that the conditions and considerations specified in the Criminal Justice Act 1989 are more relevant and appropriate for CJC investigations, as they were drafted with the specific functions and powers of the CJC in mind, not to support offence based investigations like those undertaken by the QPS and the QCC.

...

⁸¹³ Note 812 at 3.

⁸¹⁴ Note 812 at 2.

*It is noted that the PIM seems to support the continuation of the present procedure under the Act which requires the Chairperson to be satisfied by evidence on oath that the use of a surveillance device may disclose information relevant to an investigation. The PIM recognises that this section is desirable as requiring 'a degree of involvement and supervision in the Chairperson before powers of this nature are to be exercised'. In the Commission's submission, this involvement of the Chairperson in the application procedure also provides another point of distinction between the system provided by the Criminal Justice Act 1989 and that contained in the Police Powers and Responsibilities Act 2000, and another argument against the need for complete uniformity in the legislative requirements.*⁸¹⁵

The issue was further discussed by Mr Butler SC, during his evidence at the public hearings held by the Committee as part of this review. In discussing the issue of the imposition of conditions, Mr Butler stated:

*One question that was asked of Mr O'Gorman which I perhaps can assist on is that issue of the orders made judicially under section 82 of the Criminal Justice Act in respect of listening devices. Although the section does not specifically address the matter of conditions on the warrants, the section does not constrain the ability of judges to place conditions on those warrants, and they do as a matter of course. The CJC consents to that and it is done in consultation with the PIM. So really the process is operating under that section where conditions apply. The CJC has an obligation to report back to the court by way of affidavit on compliance with the conditions and the outcome of the particular operation. There is a good deal of accountability both in relation to the ability of judges to place conditions, the responsiveness to those conditions and the ability for the court to monitor compliance with those conditions.*⁸¹⁶

The issue was further addressed by Mr Perry, during his evidence before the Committee, who referred to the evidence given by Mr Butler and stated:

*It seems to me that that consistency is not only desirable but necessary. It is true indeed, though, that the Criminal Justice Commission undertakes different functions to the QPS. That is also true of the Crime Commission and of course the National Crime Authority, yet the Crime Commission's Act is, in broad terms, consistent with the Police Powers and Responsibilities Act. The National Crime Authority uses the Police Powers Act itself. I can see no compelling reason at all, for example, as to why there should not be broad consistency of the legislative scheme between the various agencies. I think it is unfortunate and indeed inconsistent with the public interest that there be one agency which operates under different and significantly different powers insofar as covert surveillance is concerned.*⁸¹⁷

...

I briefly read outside before some evidence which I think was given by the chairman today—it appears at page 50 of the transcript—to the effect that although the section does not particularly provide for the imposition of conditions, it does not constrain the ability of judges to place conditions on those warrants and they do so as a matter of course. The CJC consents to that and it is done in consultation with the PIM. Certainly the section does not allow the imposition of conditions, and I can say that in the three years that I have been holding this office it has never been the case, as I understand it, expressed by the commission that a judge is entitled in fact to impose conditions of the same kind—that is, broadly speaking, in the public interest—as the Police Powers and Responsibilities Act provides for.

What indeed happens in some respects is that there is agreement now between my office and the Criminal Justice Commission with respect to, for example, the provision of an undertaking by the

⁸¹⁵ Note 812 at 2.

⁸¹⁶ Note 782 at 50.

⁸¹⁷ Note 782 at 72.

chairman concerning the use of the information obtained under the warrant. That undertaking is not one required under the Police Powers Act because of the condition imposition power that exists in that Act, and I do not think it is really appropriate, I must say, to require the chairman to give such an undertaking to the court in respect of the use of information.

A far more appropriate course is for that matter to be addressed by way of imposition of a condition.

Secondly, the conditions that are provided for under the Police Powers Act are simply significantly different to the warrants that are granted to the CJC. All you need do to see the difference in approach between the two is obtain a draft of a standard form Police Powers Act warrant and a warrant provided to the Criminal Justice Commission and compare the two and you will see that the distinction is marked. In particular, the Police Powers Act warrants provide for a mechanism whereby the monitor is provided with certain information. That is not the case under the Criminal Justice Commission, and it ought to be the case.

...

I understand that the position is expressed—and I can see from the commission's perspective why this is the case—that there ought not be that consistency. Well, with respect, I disagree. I cannot see in principle why there cannot be broad consistency of scheme consistent with the different tasks and functions that the QPS, the Crime Commission, the National Crime Authority and the CJC undertake.⁸¹⁸ (underlining added)

Further, in acknowledging the CJC's position, Mr Perry suggested to the Committee that there is some merit in attempting to draft relevant provisions to determine whether consistency can be achieved in a practical sense rather than arguing whether it is a good idea at all. The Committee has accepted Mr Perry's invitation and has asked him to prepare such a draft for the Committee's detailed consideration.

The Committee endorses the views expressed by the former Public Interest Monitor, Mr Perry. In summary, the Committee believes that in the interests of uniformity, particularly in light of the Public Interest Monitor's responsibilities to appear at applications for surveillance warrants under the various Acts, there would seem to be no good reason why relevant obligations and safeguards are not replicated in the *Criminal Justice Act*. The Public Interest Monitor's report notes also that in any such legislative scheme, allowance must be made for a specific difference in terms of the CJC's responsibilities, that is, the 'offence-based' ground for the issue of a warrant under the *Police Powers and Responsibilities Act* is not appropriate. Clearly this would be too restrictive in many circumstances in light of the CJC's responsibilities to investigate official misconduct or misconduct, and a suitable alternative linking the grounds for the issue of the warrant to the CJC's responsibilities, could, in the Committee's view, be appropriately drafted.

The Committee considers it is desirable to attempt to achieve uniformity, as far as is possible, between the legislation governing the use of surveillance warrants by the CJC and the other agencies namely the Queensland Police Service and the Queensland Crime Commission.

⁸¹⁸ Note 782 at 74.

15.14.4 Recommendations

Recommendation 94

The Committee further recommends that:

- (i) the ambit of section 82 (presently limited to listening devices) should be widened to cover all surveillance devices;
- (ii) the term ‘surveillance device’ should be defined in identical terms to that definition in the *Crime Commission Act 1997* and the *Police Powers and Responsibilities Act 2000*; and
- (iii) consequential amendments should be made to section 84B (Responsibilities of the Public Interest Monitor) and section 123 (Applications pursuant to section 82) in relation to the existing references to listening devices.

Recommendation 95

The Committee further recommends that Parliamentary Counsel be asked to redraft the provisions of the *Criminal Justice Act* governing the use of surveillance warrants by the CJC in an attempt to achieve uniformity, as far as is possible, between the *Criminal Justice Act* and the *Police Powers and Responsibilities Act 2000* and the *Crime Commission Act 1997*, consistent with the different tasks and functions each relevant agency undertakes.

15.15 Section 83 [Use of information disclosed by listening device]

15.15.1 Analysis and comment

Section 83(1) of the Act prevents the communication of information gained from listening devices authorised under section 82, except to the Chairperson or a person nominated by the Chairperson. Section 83(2) prevents the use of such information for any purpose, ‘including the investigation by the Commission in relation to which the judge’s approval for use of the device was obtained, without the Chairperson’s approval or a further approval of a judge of the Supreme Court ...’.

The CJC, in an earlier submission to the previous Committee’s three yearly review, submitted that this additional requirement renders the initial approval to use the device meaningless.

*The initial approval would have been given by the judge with knowledge that any information disclosed thereby would be used for the purpose of the investigation. The extent to which the investigation is likely to be assisted by the disclosure of information expected to be disclosed by use of the device is a factor that must be taken into account by the judge. An investigation may be frustrated by an inability to communicate the information in fact disclosed to the investigators assigned to it, until approval has been obtained from the Chairperson (or a Supreme Court judge) to do so.*⁸¹⁹

The CJC has submitted that the perceived problem could be appropriately corrected by simply deleting from section 83(2) the word ‘including’ and substituting ‘excluding’.

The Committee notes that the terms of the present sections 83(2) and 83(3) are identical to section 19C of the *Commissions of Inquiry Act 1950* (Cth) (as amended).

⁸¹⁹ Note 800 at 69.

Consistent with the Committee's views detailed above in which the Committee recommended that an attempt be made to achieve uniformity, as far as is possible, between the *Criminal Justice Act* and the other relevant legislative schemes in the *Crime Commission Act* and the *Police Powers and Responsibilities Act*, the Committee is of the view that section 83(2) of the Act should be redrafted in similar terms to section 146 of the *Police Powers and Responsibilities Act* and section 85 of the *Crime Commission Act*.

Finally, section 83(3) of the Act provides the Commission with wide powers to retain information obtained by use of a listening device. Section 83(3) of the Act provides:

(3) A record of information disclosed by use of a listening device shall be preserved intact, until, in the Chairperson's opinion, it is no longer required for the purposes of the Commission's investigation or of any other proceedings brought against a person, to which proceedings the information or any part of the information is relevant.

The CJC has submitted that section 83(3) of the Act should be retained in that the words '*for the purposes of the Commission's investigation or of any other proceedings brought against a person*' is appropriately broad enough to encompass use of such information for disciplinary offences and disciplinary proceedings.

The Committee accepts the CJC's submission and is of the view that section 83(3) is one section in which uniformity between the *Criminal Justice Act* and the other relevant legislative schemes is not appropriate.

15.15.2 Recommendations

Recommendation 96

The Committee recommends that section 83(2) of the Act should be redrafted in an attempt to achieve uniformity with section 146 of the *Police Powers and Responsibilities Act 2000* and section 85 of the *Crime Commission Act 1997*.

Recommendation 97

The Committee further recommends that 83(3) of the Act should be retained.

15.16 Section 90 [Hearings open to public unless Commission orders otherwise]

15.16.1 Analysis and comment

As a result of the *Criminal Justice Legislation Amendment Act 1997*, section 90 now provides that hearings of the CJC are to be closed to the public, unless the Commission orders otherwise in certain circumstances.

Section 90 previously provided that CJC hearings would proceed in public, unless the Commission ordered otherwise in certain circumstances.

The CJC opposes the reversal of this position which the amended section 90 represents and supports a return to the original position.

The Committee notes that the present section 90 was not proclaimed but rather came into force by default pursuant to section 15DA(2) of the *Acts Interpretation Act*.

The Committee considers that the wording of the current provision that hearings of the CJC are prima facie closed to the public gives greater weight to privacy concerns whilst providing a mechanism for the CJC to hold a public hearing IF the CJC considers certain criteria are satisfied.

The CJC, at a public hearing held by the Committee in respect of the CJC's Annual Report, expressed some concern that the present scheme under which hearings are prima facie closed makes it 'more difficult' for the CJC to 'justify public hearings'. The Chairman of the CJC stated:

*... I believe that over time it will inhibit our ability to adequately investigate some matters which, were the legislation as it was, we would have investigated through a public hearing process... I am talking about hearings here which are dealing with quite serious issues, and one must take care to approach it in that way. The [NSW Police Integrity Commission] have found that the process of public hearings is very effective in encouraging people to provide information and very effective in getting at the truth with certain witnesses. The prospect of lying on oath in public seems to impact on some people much more than if they were doing it in a private room with only a few people present. They seem to be prepared to sit there and stonewall. When it happens in public in a situation where they are aware that other people in that public forum are giving contrary evidence and so on, it seems to enhance their willingness to be truthful. We have seen examples in New South Wales in the Wood royal commission and before the Police Integrity Commission where the public hearing process has been used very effectively to get to the truth.*⁸²⁰

The CJC was questioned whether the reversal of the test in section 90 makes a practical difference.

The CJC's response was that the present test in section 90 'is harder to satisfy than the previous test.' Mr Butler SC went to argue that:

*For that reason, it will always be approached with caution by the Commission. What I say is that, in individual cases, it will be possible to satisfy the test. We believe that hearings that we are conducting at the moment do so satisfy it, but in other cases it will result in the Commission not proceeding with public hearings, which might well have been the more effective investigative technique, where it otherwise would have. I think that is as far as I can take it at this stage...*⁸²¹

The CJC's then Chief Officer of Complaints, Mr Barnes, also argued:

*when there is a statutory presumption that [a hearing] will be held in private, if you want to go public and there is someone who thinks that they might be injured, they certainly are given much greater leverage to challenge the decision in another forum. That is something that we cannot do. In the latest round of hearings, there was the distinct possibility that someone in the Police Service might not have thought that they should be public in relation to the release of confidential information. Certainly, they would be in a far stronger position to challenge the decision with the Act the way it is.*⁸²²

The Committee concedes that it is not an easy exercise to balance the public interest in having open hearings with the rights of individuals who may be prejudiced by the mere fact that they may be subject to a CJC investigation but may ultimately be exonerated.

The Committee has not received from the CJC any practical evidence as to specific cases experienced by the CJC in where the present scheme has in fact proved problematic. Such practical evidence may be persuasive.

⁸²⁰ Transcript of Public Hearing - CJC Annual Report, Legislative Assembly of Queensland, 2000, Brisbane, at 27-28.

⁸²¹ Note 820 at 28.

⁸²² Note 820 at 28.

15.16.2 Recommendation

Recommendation 98

The Committee recommends that on balance, in the absence of any practical evidence to the contrary as to specific cases where problems had occurred, the Committee does not consider that there is sufficient reason to warrant the amendment of section 90 to return the law to the original position that CJC hearings be prima facie open unless the CJC orders otherwise.

15.17 Section 98 [Inspection of material in Commission's custody]

15.17.1 Analysis and comment

Section 98(2) of the Act was amended by the *Criminal Justice Legislation Amendment Act 1997* to provide, in effect, that the Committee or staff of the Committee secretariat may inspect any 'non-operational' record or thing in the CJC's custody and may make copies for use in connection with the Committee's functions. The term 'non-operational' is defined in section 98(4) to include material that relates to a CJC investigation which is not 'finalised'.

In addition to section 98(2), the Parliamentary Commissioner or staff of the office of Parliamentary Commissioner (effectively limited to acting pursuant to a reference from a bi-partisan majority of the Committee) has unlimited access to the records of the CJC. In those circumstances, it is not surprising that no practical problems in respect of access to the Committee has occurred.

In its submission to the previous Committee's three yearly review of the CJC, the CJC submitted:

We consider that the amendments have created problems in two areas. The first relates to the definition of 'non-operational record or thing' and the second relates to the access available to sensitive material. To some extent the two matters are interrelated.

...

The term 'finalised' is ambiguous. It is not clear whether it includes, for example, a matter where the investigative steps have been finalised and a decision has been made to charge a person, but that person has not at that time been charged.

We recommend that a definition be included to the effect that an investigation is not 'finalised' unless:

- *the CJC determines that no further steps are required*
- *any charges against any person or persons have been brought*
- *all criminal and disciplinary proceedings arising out of an investigation have been concluded.*

Furthermore, the definition of 'non-operational record or thing' does not take into account the fact that material may be sensitive well after a matter is 'finalised'. For example, information relating to the process of determining whether or not a person is accepted into our witness protection program would not usually be considered by the CJC as relating to the investigation but may remain sensitive well after an investigation has been finalised. Indeed, witness protection information may in some cases always remain sensitive.

We recommend that a clear distinction be drawn in the legislation between material that is 'non-current' and non-sensitive — which may properly be made available to the PCJC and its officers — and other sensitive material (whether or not related to a current investigation). With

*the latter category, the Parliamentary Commissioner or a Parliamentary Commissioner Officer would in any event have access to the material.*⁸²³ (Underlining added.)

The Committee accepts that the definition of ‘non-operational’ is ambiguous. The Committee is of the view that the three yearly review is an opportune time to clarify the Committee’s power to inspect material in the CJC’s custody by inserting a definition of the term ‘finalised’. The Committee is of the view that the potential difficulties with the definition of ‘non-operational thing’ in respect of the absence of a definition for ‘finalised’ may be corrected by the insertion of the following amendment:

An investigation is considered ‘finalised’ when all investigative steps have been finalised and the CJC has determined either to charge a person or advised the person that he/she will not be charged.

Section 27(5) – (10) of the Act governs information which the CJC may refuse to disclose to the Committee. Section 27 provides, in effect, that the CJC is required to maintain a register of such information withheld from the Committee and that Register may be audited by the Parliamentary Commissioner.

The functions of the Parliamentary Commissioner set out in section 118R of the Act. Section 118R(2)(d) provides:

(d) inspect the register of confidential information kept under section 27(6) to verify the commission’s reasons for withholding information from the Parliamentary Committee;

The Committee notes that section 118R(2)(h) of the Act operates as a ‘catch-all’ provision by providing that the Committee may ask the Parliamentary Commissioner to:

(h) perform other functions the Parliamentary Committee considers necessary or desirable.

However, section 118R(2)(d) of the Act is specifically drafted and, in respect of information withheld from the Committee pursuant to section 27 of the Act, appears to limit the Parliamentary Commissioner’s role to inspecting the register of confidential information withheld from the Committee to verify the CJC’s reasons for withholding the information. On one view, section 118R(2)(d) may not authorise the Committee to ask the Parliamentary Commissioner, for example, to:

- determine whether the confidential or otherwise ‘sensitive’ information withheld from the Committee by the CJC pursuant to section 27 of the Act (or otherwise) should appropriately be forwarded to the Committee; or
- examine the confidential or otherwise ‘sensitive’ information withheld from the Committee by the CJC and to report to the Committee, in a sanitised manner, in respect of the concerns held by the Committee.

On the rare occasion that the Committee has asked for information from the CJC which the CJC has considered ‘sensitive’ (for example, access to the CJC’s Witness Protection Policy and Procedures Manual) the Committee asked the Parliamentary Commissioner to examine the Manual and to report to the Committee, in a sanitised report.

The Committee is of the view that section 27 (and section 118R) of the Act should be amended to confirm that the Committee may ask the Parliamentary Commissioner to:

⁸²³ Note 800 at 77-78.

- determine whether the confidential or otherwise ‘sensitive’ information withheld from the Committee by the CJC pursuant to section 27 of the Act (or otherwise) should appropriately be forwarded to the Committee; or
- examine the confidential or otherwise ‘sensitive’ information withheld from the Committee by the CJC and to report to the Committee, in a sanitised manner, in respect of the concerns held by the Committee.

15.17.2 Recommendations

Recommendation 99

The Committee recommends that the term ‘finalised’ in section 98(4) be defined as follows:

‘An investigation is considered ‘finalised’ when all investigative steps have been finalised and the CJC has determined either to charge a person or advised the person that he/she will not be charged.’

Recommendation 100

The Committee further recommends that the Act be amended to provide for a scheme by which the Committee may ask the Parliamentary Commissioner to:

- determine whether the confidential or otherwise ‘sensitive’ information withheld from the Committee by the CJC pursuant to section 27 of the Act (or otherwise) should appropriately be forwarded to the Committee; or**
 - examine the confidential or otherwise ‘sensitive’ information withheld from the Committee by the CJC and to report to the Committee, in a sanitised manner, in respect of the concerns held by the Committee.**
-

15.18 Section 116A [Membership of Parliamentary Committee continues despite dissolution]

15.18.1 Analysis and comment

Section 116A of the Act was inserted by the *Criminal Justice Legislation Amendment Act 1997* to provide, in effect, that the Committee continues in existence after the dissolution of the House until new members are appointed by the Legislative Assembly.

The rationale for this amendment was that the previous Committee considered there was an important need for the CJC to be continually monitored and reviewed and that the Committee was required to fulfil a number of functions required by the Act. This means that a person can remain as a member of the Committee even if a member loses his or her seat following an election.

The previous Committee in the first part of its three year review report, Report No. 38, had recommended that section 116A of the Act be amended to permit the leader of a party, following a dissolution of the House and subsequent election, to nominate another member to sit as a temporary member of the Committee until Parliament formally appoints a new Committee.⁸²⁴

⁸²⁴ PCJC, *Report on the Accountability of the CJC to the PCJC*, Report No. 38, Legislative Assembly of Queensland, 1997, Brisbane, at 28.

This recommendation has not been implemented.

The Committee endorses, in principle, the recommendation of the previous Committee.

15.18.2 Recommendation

Recommendation 101

The Committee endorses, in principle, the recommendation of the third PCJC that section 116A be amended to enable, following a dissolution of the House and subsequent election, another member to sit as a temporary member of the PCJC until Parliament formally appoints a new Committee.

15.19 Section 118 [Functions and powers (of the PCJC)]

15.19.1 Analysis and comment – cooperation between the CJC and the QCC

Section 118 of the Act prescribes the functions of the Committee.

Consistent with the Committee's recommendation that the Queensland Crime Commission (QCC) be accountable to the Parliament through the Committee, as the CJC is⁸²⁵, the Committee considers that section 118(1)(a) of the Act should be amended to provide the Committee with the additional function to 'monitor and review the level of cooperation between the CJC and the QCC'.

The need for greater cooperation and sharing of resources between the CJC and the QCC is highlighted by the fact that, until the 1997 amending legislation, apart from responsibility for paedophilia, the jurisdiction of the QCC was undertaken by the CJC.

The creation of the QCC further fragmented the intelligence databases in Queensland, which are now held by the QPS, the CJC and the QCC. However, the word 'cooperation' connotes something more than the mere timely sharing of relevant intelligence between agencies, although cooperation in this area is potentially relevant for present purposes. Such fragmentation of intelligence bases has the potential, at least, of compromising the effectiveness of the agencies and of incurring greater costs for the community.

Further, in order to effectively perform its functions the QCC needs to maintain an extensive research capacity to accurately monitor trends in organised and major crime and paedophilia. Section 56(3)(b) of the Act provides that it is a function of the CJC's Research and Prevention Division:

(b) to research trends in criminal activity, in particular any trend to organised crime ...
(Underlining added.)

Finally, organised crime often only exists with the support of corrupt public officials, and it is critical therefore, that extensive links are maintained between the official misconduct function and the investigation of organised and major crime.

In October 1998, shortly after it was appointed, the Committee raised with the CJC, a number of issues including the nexus between organised crime investigations and corruption. The CJC responded to the Committee's queries by way of a confidential briefing paper.

⁸²⁵ See Chapter 13 of this report.

In respect of the possible nexus between organised crime and corruption, the CJC submitted:

Organised crime is the corporate approach to criminal activity. True organised crime involves the corruption of officials including police. Corruption is the equivalent of 'taking out insurance' in the world of legitimate business. To separate the investigation of organised crime from the investigation of the associated corruption is illogical, inefficient and sows the seeds of eventual failure. Although significant arrests will be made, the organisation will remain intact and the principals will largely escape prosecution. This situation has been reported on again and again by commissions of inquiry both within Australia and overseas. A community which ignores the lessons of history is condemned to repeat its mistakes.

The issue of the possible nexus between corruption and organised and major crime was discussed more recently by Mr Butler SC during the public hearings held by the Committee as part of this review. Mr Butler stated that as a matter of practicality it would be quite infrequently that the QCC would come upon information of official misconduct.

*Typically, it would only be if, as a result of their investigation into some organised crime, they learn of an allegation of corruption by a police officer or other public official. That would be a fairly isolated sort of instance, one would think.*⁸²⁶

Mr Butler went on to concede that:

*it would be hard for some forms of sophisticated organised crime to exist without the assistance of corrupt officials.*⁸²⁷

In attempting to explain the possible explanations for the apparently limited disseminations from the QCC to the CJC, Mr Butler stated:

It is not very often, in the way in which it is approached by the Crime Commission, that it seems to result in a dissemination. Partly, that might be because the Crime Commission, of course, does not have its own investigators. It uses police investigative teams, which are basically managed out of and responsible to the State Crime Operations Command. Very often, gathering this sort of information involves the people who are involved in the investigations listening out for that sort of information as it happens, because if you are dealing with criminals, they will be talking; loads of things are said. Once again, it is a matter of analysing what is said and understanding the significance of it.

*In the context where organised crime was dealt with by the CJC so that the people doing that were also involved in official misconduct investigations or corruption investigations, I suspect there was a lot more sensitivity to listening to whether or not those sorts of allegations are made. Probably these days there is less likelihood that that sort of information is going to translate to us.*⁸²⁸ (Underlining added)

Mr Butler's comments may simply be a statement that the investigating and intelligence officers utilised by the QCC may, either due to inexperience in identifying signs of corruption and official misconduct or for any other reason, not be sensitive to picking up intelligence potentially relevant to the CJC resulting in less intelligence being conveyed to the CJC. Whilst being careful not to misinterpret Mr Butler's comments, one thing is clear. Now that the functions of investigating corruption and organised and major crime are separated between the two agencies, there is a potential at least that important intelligence may, in certain circumstances, not be disseminated to the CJC.

⁸²⁶ Note 782 at 28.

⁸²⁷ Note 782 at 29.

⁸²⁸ Note 782 at 29.

The need for careful consideration of any opportunities for greater cooperation between the CJC and the QCC and increased sharing of resources in appropriate circumstances is critical to the success of each agency.

Greater cooperation and sharing of resources between the CJC and the QCC with the aim of increasing efficiencies and the effectiveness of each agency could include:

- greater use by the QCC of the CJC's research capacity;
- greater sharing between the CJC and the QCC of intelligence resources; and
- greater sharing between the CJC and the QCC of surveillance resources.

Any reform, which may result in greater cooperation between the agencies is in the public interest.

In the absence of major structural changes - something which neither the CJC nor the QCC has urged upon the Committee - there is little that can be achieved through legislation. However, specific monitoring by the Committee of the level of cooperation between the CJC and the QCC, (assuming the Committee's recommendation is accepted and the QCC is to be accountable to the Parliament through the Committee), may, in the Committee's view, go some way to increasing efficiencies and the effectiveness of each agency through appropriate sharing of resources.

The Committee is of the view that a corresponding function be inserted in section 59A of the *Crime Commission Act*.

Further, to assist the Committee in carrying out this additional function, the Committee is of the view that section 60 of the *Crime Commission Act* should be amended to provide that the Parliamentary Commissioner, in addition to advising the relevant agencies, also advise the Committee as to the results of her annual review of the intelligence data held by the QCC, CJC, and the QPS.

15.19.2 Recommendations

Recommendation 102

The Committee recommends that consistent with the Committee's recommendation that the Queensland Crime Commission (QCC) be accountable to the Parliament through the Committee, section 118(1)(a) of the Act should be amended to provide the Committee with the additional function to 'monitor and review the level of cooperation between the CJC and the QCC'.

Recommendation 103

The Committee further recommends that a corresponding function be inserted in section 59A of the *Crime Commission Act*.

Recommendation 104

The Committee further recommends that section 60 of the *Crime Commission Act* should be amended to provide that the Parliamentary Commissioner, in addition to advising the relevant agencies, also advise the Committee as to the results of her annual review of the intelligence data held by the QCC, CJC, and the QPS.

15.19.3 Analysis and comment – review of the office of the Parliamentary Commissioner

The Parliamentary Commissioner performs roles under both the *Criminal Justice Act* and the *Crime Commission Act*.

Under the *Criminal Justice Act*, the Parliamentary Commissioner plays a key role in providing assistance to the Committee in enhancing the accountability of the CJC by undertaking a range of important functions on behalf of the Committee, at its direction, and by reporting back to the Committee. In undertaking these functions, the Parliamentary Commissioner can only act upon a reference from the Committee. These functions include:

- conducting audits of records, operational files and other material held by the CJC⁸²⁹, including current sensitive operations, for the purpose of determining, amongst other things:
 - whether the way the CJC has exercised power is appropriate;
 - whether matters under investigation are appropriate for investigation by the CJC or are more appropriately the responsibility of another law enforcement agency;
 - whether registers are up to date and complete and all required documentation is on the file and correctly noted on the registers;
 - whether required authorisations for the exercise of powers has been obtained; and
 - whether the policy and procedures guidelines set by the CJC have been strictly complied with;
- investigating complaints against the CJC or officers of the CJC, including alleged unauthorised releases of confidential information;
- inspecting the register of confidential information kept by the CJC to verify the CJC's reasons for withholding certain information from the Committee;
- reviewing reports given by the CJC to the Committee to verify their accuracy and completeness, particularly in relation to an operational matter;
- assisting the Committee with the preparation of its three yearly review of the activities of the CJC, and other reports; and
- other functions the Committee considers necessary.

The Parliamentary Commissioner also has a role under the *Criminal Justice Act* in relation to the records of the former Commission of Inquiry into the Effectiveness of the CJC (the Connolly / Ryan Inquiry).

Under the *Crime Commission Act*, the Parliamentary Commissioner is required to perform three further functions:

- to conduct an annual review of the intelligence data held by the QCC, Queensland Police Service and the CJC.
- to provide advice to the QCC Management Committee on the results of performing this review; and
- to review decisions of the QCC to refuse the CJC access to QCC information.

⁸²⁹ These audits are discussed in greater detail in paragraphs 13.3.1.4 and 14.10.4.

The Parliamentary Commissioner is required to report back to the Committee in relation to investigations referred by the Committee, pursuant to sections 118F and 118R of the Act. In addition, the Committee has established a practice by which the Parliamentary Commissioner reports on a bi-monthly basis to the Committee in respect of her activities for the previous two month period. However, there is currently no provision which formally makes the Parliamentary Commissioner accountable to the Committee.

Further, the Committee considers that section 118 of the Act should be amended to clarify that in conducting its three yearly review of the CJC, the Committee may conduct a review of the office of the Parliamentary Commissioner. Such an amendment may be achieved by the insertion of a provision in similar terms to section 38 of the *Misconduct Tribunals Act 1997*.

Finally, the Committee considers that the Act should be amended to provide that the Parliamentary Commissioner be required to provide the Committee with an annual report for tabling in the Parliament. The Parliamentary Commissioner provides a confidential report to the Committee on a bi-monthly basis prior to the bi-monthly meeting with the Committee. However, the Committee considers that the Parliament and indeed the community may benefit from a public report detailing the activities of the office over the prior 12 month period.

15.19.4 Recommendation

Recommendation 105

The Committee recommends that section 118 of the Act should be amended to clarify that in conducting its three year review of the CJC, the Committee may conduct a review of the office of the Parliamentary Commissioner.

15.20 Section 118R [Functions of Parliamentary Commissioner] – [clarification of power to recommend disciplinary action or criminal prosecutions against officers of the CJC where appropriate]

15.20.1 Analysis and comment

Section 118R of the Act details the functions of the Parliamentary Commissioner which includes a function to ‘report back to the Committee on the results of carrying out [investigations requested by the Committee]’ (Underlining added.)

The issue of the powers of the Parliamentary Commissioner in reporting back to the Committee was addressed by the former Parliamentary Commissioner, Ms Julie Dick SC, (as she then was) in her submission to this review. Ms Dick SC stated:

... it is not advisable that the reports [of the Parliamentary Commissioner] contain recommendations in relation to criminal or disciplinary charges.

...

One of the difficulties with the proposition that disciplinary charges could be recommended directly from a Commissioner’s investigation is that much of the evidence obtained during the investigation would be obtained by compulsory process and may not necessarily be admissible in a court.

...

*However, it would be permissible, in appropriate circumstances, for the Commissioner's report to advise the Committee that the allegations and evidence raise a reasonable suspicion of misconduct, official misconduct or criminal offences. The Committee could then, if it is considered appropriate, take any one of the steps available to it under s.118F.*⁸³⁰ (Underlining added.)

The CJC has commented on Ms Dick's submission under cover of a letter dated 13 December 2000.⁸³¹ The CJC did not comment specifically on the Parliamentary Commissioner's view that '*it would be permissible, in appropriate circumstances, for the Commissioner's report to advise the Committee that the allegations and evidence raise a reasonable suspicion of misconduct, official misconduct or criminal offences*'. The CJC did however question the utility of the Commissioners' investigation of allegations of misconduct, in that any investigation by the Parliamentary Commissioner could '*never result in any positive outcome in relation to criminal or disciplinary matters*' if:

- the only action the Committee could take on receipt of the Parliamentary Commissioner's report is to refer the report to another agency; and
- the other agency would not be able to use any of the product of the Commissioner's investigation (either because it was obtained under compulsion or is privileged) but would presumably have to start an investigation afresh.⁸³²

The Committee is firmly of the view that the Parliamentary Commissioner's role should not be limited to simply conducting investigations, compiling the available evidence and presenting it to the Committee without the benefit of any conclusions.

This issue is discussed in greater detail in paragraph 14.12.5 above.

The Committee is of the view that section 118R of the Act should be clarified to confirm that in reporting back to the Committee in relation to '*the results*' of carrying out investigations referred by the Committee, the Parliamentary Commissioner be permitted to advise the Committee, in appropriate cases, that the allegations and evidence raise a reasonable suspicion of misconduct, official misconduct or criminal offences.

⁸³⁰ Parliamentary Criminal Justice Commissioner, *Submissions on the Three Yearly Review*, dated October 2000, Brisbane, at 13.

⁸³¹ CJC, Supplementary submission, *Comments on the Parliamentary Criminal Justice Commissioner's submission to the PCJC three year review*, December 2000, Brisbane.

⁸³² Note 831 at 13.

15.20.2 Recommendation

Recommendation 106

The Committee recommends that section 118R of the Act should be clarified to confirm that in reporting back to the Committee in relation to the results of carrying out investigations referred by the Committee, the Parliamentary Commissioner be permitted to advise the Committee, in appropriate cases, that the allegations and evidence raise a reasonable suspicion of misconduct, official misconduct or criminal offences.

15.21 Section 118Y [Commission not entitled to privilege]

15.21.1 Analysis and comment

Section 118Y of the Act provides:

118Y. The Commission is not entitled, in relation to a investigation under this Part, to any privilege in relation to the production of documents or the giving of evidence allowed by law in legal proceedings.

Legal professional privilege is a substantive principle of the common law which can be abrogated by statute by express words or necessary intendment: *Baker v Campbell* (1983) 153 CLR 52, 96-97, 116.

The Committee has given consideration to the issue whether, notwithstanding that the CJC's right to claim privilege has been removed by section 118Y of the act, an individual CJC officer's right to claim privilege continues.

The issue is more than a mere academic one. In one investigation conducted by the Parliamentary Commissioner, the Parliamentary Commissioner has recently advised the Committee that she had issued a Notice to Produce to the CJC, requiring production of documents in respect of which a claim of legal professional privilege had been made by both the CJC and an officer of the CJC. The CJC agreed that it did not have legal professional privilege in respect of the documents but claimed that it could not produce the said documents as an officer of the CJC had claimed privilege in respect of the documents. Ultimately the CJC produced the documents in question to the Parliamentary Commissioner on the basis that the individual officer of the CJC agreed to provide the Parliamentary Commissioner limited access to the documents only for the purpose of reading the said documents:

on the condition that the Parliamentary Commissioner undertakes:

- *not to divulge their contents to any other person without first giving [the officer of the CJC] the opportunity to test [his/her] construction of section 118Y of the Act; and*
- *not to contend that [the officer of the CJC]'s agreement to the Parliamentary Commissioner looking at them has defeated [his/her] pre-existing claim to privilege (as viewing it exists despite section 118Y)⁸³³*

Section 14A of the *Acts Interpretation Act 1954* provides, in essence, that the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation. Section 14B of the *Acts Interpretation Act* permits consideration to be given to extrinsic material capable of assisting in

⁸³³ Letter from the Parliamentary Commissioner dated 08/02/00 attaching letter from [Lawyers representing the CJC officer] dated 03/02/00.

the interpretation of section 118Y, either because there is ambiguity in section 118Y or because a literal interpretation of section 118Y that it did not apply to documents the subject of joint privilege results in a manifestly absurd or unreasonable application of section 118Y.

Extrinsic material which can be used includes the Explanatory Notes to the relevant Bill. The Explanatory Notes provide that the primary purpose of the Bill was ‘*to introduce new measures to heighten existing processes of accountability of the Criminal Justice Commission*’. The Notes comment on the provisions relating to the Parliamentary Commissioner in the following terms:

In relation to investigations by the Parliamentary Commissioner, the Commission will not be able to claim privilege, such as legal professional privilege. It is considered that in order to achieve scrutiny of the Commission the Parliamentary Commissioner must have as much access as is possible to the information held by the Commission. (Underlining added.)

The comment in the Notes on section 118Y is:

This provides that in relation to an investigation under Part 4A, the Commission is not entitled to claim privilege.

The Committee is of the view that the clear intention of the Parliament is that the CJC not be entitled to claim legal professional privilege in relation to an investigation by the Parliamentary Commissioner. It is arguable that by the express provisions of Part 4A of the Act, the Parliament has made it clear that in relation to an investigation by the Parliamentary Commissioner, the policy of improving the accountability of the CJC must override the policy behind legal professional privilege.

The Committee is of the view that it would defeat the purpose and intent of enacting section 118Y, if an individual officer or officers could successfully claim privilege which the CJC is statutorily prevented from claiming, resulting in the Parliamentary Commissioner being refused access to those documents.

Irrespective of the perceived present state of the law (being an issue upon which legal minds will no doubt differ) the Committee considers that effective scrutiny of the CJC requires that section 118Y of the Act be clarified to make it clear that an individual officer or officers of the CJC is not permitted to claim privilege which the CJC is statutorily prevented from claiming.

15.21.2 Recommendation

Recommendation 107

The Committee recommends that section 118Y of the Act be clarified to make it clear that an individual officer or officers of the CJC is not permitted to claim privilege which the CJC is statutorily prevented from claiming.

15.22 Section 118Z [Investigations closed to the public unless authorised by Parliamentary Committee]

15.22.1 Analysis and comment

Section 118Z of the Act provides that ‘investigations’ by the Parliamentary Commissioner are to be closed to the public unless authorised by the Committee.

In a practical sense it is difficult for the Committee to authorise any aspect of an investigation by the Parliamentary Commissioner, other than a hearing, to be open to the public

Accordingly, the Committee considers that section 118Z of the Act should be amended to refocus the ambit of the section on hearings conducted by the Parliamentary Commissioner (which the Committee considers is the true intention of the provision) rather than the broader term of ‘investigations’ which is presently used.

15.22.2 Recommendation

Recommendation 108

The Committee recommends that section 118Z of the Act should be amended to refocus the ambit of the section on ‘hearings’ conducted by the Parliamentary Commissioner rather than the broader term of ‘investigations’ which is presently used.

15.23 Section 118ZA [Protection of the Parliamentary Commissioner and officers etc]

15.23.1 Analysis and comment

Section 118ZA of the Act relevantly provides, in broad terms, that the Parliamentary Commissioner and Parliamentary Commissioner officers are afforded protection for things done in ‘good faith and without negligence’.

Section 118ZA also provides that:

- no civil or criminal proceedings may be brought against the Parliamentary Commissioner ... without the leave of the Supreme Court (which must be satisfied that there is a substantial ground for claiming lack of good faith or negligence)⁸³⁴; and
- the Parliamentary Commissioner can not be called to give evidence or produce documents in any court or judicial proceedings.⁸³⁵

The Committee notes that by comparison, section 20 of the *Commission of Inquiry Act 1950* (COI Act) provides that protection is given to persons who act in ‘good faith’, without any further requirement that a person act ‘without negligence’.

The former Parliamentary Commissioner, Ms Julie Dick SC (as she then was), has submitted to the Committee that consideration ought be given to amending section 118ZA of the Act to remove the qualification or limitation on the protection provided to the Parliamentary Commissioner and her officers by removing the phrase ‘and without negligence’.⁸³⁶ In her submission to this review, Ms Dick SC has submitted that the statutory protection afforded to the Parliamentary Commissioner for Administrative Investigations (the Ombudsman) under the *Parliamentary Commissioner Act 1974* (Qld)⁸³⁷ is wider than that conferred on the Parliamentary Commissioner by section 118ZA of the Act.

The CJC, has submitted that a more appropriate amendment may be to ‘*indemnify the Parliamentary Commissioner in terms of section 100 and section 101 of the Criminal Justice Act*

⁸³⁴ See s. 118ZA(2) and (3) of the *Criminal Justice Act*.

⁸³⁵ See s. 118ZA(4) of the *Criminal Justice Act*.

⁸³⁶ Letters to the Committee dated 4 October 2000 and 14 December 2000

⁸³⁷ See s. 29 *Parliamentary Commissioner Act 1974* (Qld).

1989 and to indemnify staff of the Parliamentary Commissioner and persons assisting those staff only to the extent of section 101’.

This issue is discussed in greater detail above in paragraph 14.14.

In considering this issue, the Committee has felt constrained by the fact that the extent to which the Parliamentary Commissioner is amenable to the courts is presently the subject of an appeal before the courts.⁸³⁸

This difficulty was raised by the Chairperson of the CJC, Mr Butler SC, in his evidence before the Committee as part of this review:

I would prefer to see the outcome of that litigation before forming a final view on how the Queensland position might be best dealt with... If the present court action were to result in the position being submitted by the CJC before the court—namely, that judicial review is available in respect of the Parliamentary Commissioner—there would seem to be no great need to be completely rethinking the position [of the Parliamentary Commissioner].⁸³⁹

The Committee does not accept the CJC’s submission that the Parliamentary Commissioner’s position ‘is similar to that of CJC Commissioners’.

The Committee is of the view, however, on balance, that given that the issue of the extent to which the Parliamentary Commissioner is amenable to the courts is presently the subject of an appeal before the courts,⁸⁴⁰ the Committee should appropriately await the outcome of that appeal before forming a concluded view in respect of these issues.

15.23.2 Recommendation

Recommendation 109

The Committee recommends that the next Parliamentary Committee give further consideration to the issues of the appropriate amenability of the Parliamentary Commissioner to judicial review and the appropriate protections for the Parliamentary Commissioner following the outcome of the current court action by the CJC.

15.24 Section 132 [Confidentiality to be maintained]

15.24.1 Analysis and comment – defence for CJC commissioners, officers and persons engaged by the CJC under section 66 of the Act

Section 132 of the Act creates an offence of wilful disclosure of information from the CJC.

Section 132(2) provides a defence for CJC commissioners, officers and persons engaged by the CJC under section 66 in respect of the information ‘disclosed for the purposes of the Commission, this Act or an investigation of an alleged contravention of this section’.

⁸³⁸ On 23 December 1999, the CJC commenced legal proceedings against the Parliamentary Commissioner seeking, in essence, a declaration, amongst others, that the Parliamentary Commissioner failed to observe the requirements of procedural fairness. This matter was heard on 17 and 18 July 2000 and a decision by Helman J. was handed down on 25 July 2000. Helman J. declined to make the declarations sought by the CJC. On 18 August 2000 the CJC filed a notice of appeal. This matter has not yet been determined.

⁸³⁹ Note 782 at 8.

⁸⁴⁰ Note 758.

Section 132(4) provides a defence for members of the Committee, the Parliamentary Commissioner and officers of the Parliamentary Service, and a person appointed, engaged or assigned to help the Committee or the Parliamentary Commissioner, in respect of the disclosure of information from the CJC:

- if disclosure of the information is in the discharge of a function of the Committee or the Parliamentary Commissioner;
- the information is contained in a report of the CJC that has been ordered by the Legislative Assembly to be printed;
- the disclosure is for an investigation of an alleged contravention of this section; or
- the information is 'publicly available'. (Underlining added.)

The CJC, in its submission to this review, has submitted that there seems to be no logical basis for not providing a similar protection from prosecution to CJC Commissioners, officers and persons engaged by the CJC under section 66 of the Act, in the case of the disclosure of publicly available information.

The Committee was initially inclined to support such an amendment. However, on reflection, the Committee considers there is good reason for maintaining the scheme in section 132 as it presently exists.

The issue of alleged unauthorised releases of confidential information from the CJC, has, during the early part of the Committee's term, been a issue. The Committee accepts that the practical reality of such allegations is that they are almost impossible to effectively investigate to any degree of certainty, one way or another.

The competing interests in respect of confidential information from the CJC is appropriately summarised in the CJC's Media Policies and Procedures which were recently reviewed in 1999.

Members of the public who bring their complaints to the CJC and those investigated as a result of such complaints have an entitlement to privacy and confidentiality as preserved by the Criminal Justice Act and the Common Law.

On the other hand, effective media and public relations are vital to the CJC if its role and place in the community are to be recognised, understood and supported. The maintenance of a good reputation is crucial to reinforcing public trust and confidence in the CJC.

These competing interests require that the CJC strike an appropriate balance between the rights of individuals and those of the community. The achievement of an appropriate balance is of vital importance to the public profile of the organisation.

The terms of appointment of CJC officers require that confidentiality of information received in the course of their duties is maintained.

It is unlawful to disclose confidential information unless the disclosure is 'for the purposes of the Commission' or is made 'in the discharge of the functions and responsibilities of the Commission'. It is important that all staff clearly understand the circumstances in which disclosure will be 'for the purposes of the Commission' and that any such disclosures are documents to allow audits to be conducted assessing the appropriateness of the decisions made to release information.⁸⁴¹

⁸⁴¹ CJC, *Policy and Procedures Manual*, Volume 16, *Publications and media*, at 1-1.

The CJC's media policies also warn staff that '*the mere confirmation of information advanced by a journalist [which may even have been discussed on the public record] can, of itself, be considered to be a release of information*'.

In broad terms, the CJC's media policies and procedures provide that:

- the Chairperson is the chief spokesperson for the CJC, and Divisional Directors are spokespersons on matters relevant to their Divisional functions and responsibilities;
- all media enquiries received by officers of the CJC, other than the Chairperson or Divisional Directors are to be directed to the Manager, Media and Communications, who is responsible for coordinating all responses;
- on receipt of an enquiry, the Media Manager is required to take up the enquiry with the CJC Chairperson or the relevant Divisional Director;
- the CJC Chairperson or the relevant Divisional Director is required to authorise any appropriate Commission response.

The CJC's Media policies further address the issue of the release of information which may be said to be 'publicly available' in the following situations.

Correction of inaccurate reporting

...

Where the CJC becomes aware that a matter relating to the CJC has either been inaccurately reported by the media or the media are preparing to publish a report which contains inaccurate information, the Chairperson or relevant Divisional Director is responsible for considering whether a correction is necessary and, if so, what information can be appropriately provided.

Information Relating To Complaints

...

Generally, the CJC cannot comment on whether a complaint has been received.

However, when it is clear that knowledge of the matter is already in the public domain, the Chairperson, Director, Official Misconduct Division (OMD), Deputy Director, OMD, or Chief Officer, Complaints Section OMD may authorise confirmation that a particular complaint has been received and is in the process of being assessed. Any such contact shall be documented in accordance with the procedures in chapters 4 and 5 as they apply to Divisional Directors. On such occasions, careful consideration will be given to ensuring that personal information regarding the complainant or the subject of the complaint is not divulged and that appropriate consideration is given to ensuring that individual reputations are protected. Each request will be considered on its merits.

Information Relating to Current Investigations

The CJC's policy is to not comment on current investigations unless details of the investigation are a matter of public record or it is clear that the media possess knowledge of an investigation and are about to publish material which could jeopardise the success of the investigation.

...

The CJC:

- *generally neither confirms nor denies the existence of or any aspect of any alleged*

investigation ...

- *may comment on matters that have been discussed on the public record depending on the circumstances, for example, where the facts have been misrepresented or distorted.*

The guiding principles outlined in chapter 3 will be given careful consideration in reaching a decision as to whether or not to comment on an investigatory matter.

Information Relating to Completed Investigations

The CJC does not generally disclose the results of investigations to the public. There are, however, circumstances which may give rise to public interest in the result of an investigation.

...

Where a request is received from the media regarding a completed investigation, the CJC will generally advise if an investigation has been finalised. Any additional information regarding the result of an investigation will only be provided after consideration has been given to the level of public interest and the guiding principles in chapter 3.

Non-Sensitive Background Material

From time to time requests are received from the media for information of a non-operational, non-investigative nature to assist in the preparation of a public interest article. Such requests may be seeking information of a historical nature or a statistical nature, or may be seeking to draw on the knowledge of particular officers of the CJC who have degree of recognised expertise in a particular area. On these occasions, where it is considered it would be in the public interest to assist the media with the provision of such non-operational information, the Chairperson or the relevant Divisional Director may authorise the provision of the requested material.

In summary, the CJC's Media policies and procedures make it clear that even in situations where information may be said to be 'publicly available', the decision whether further information should be released on behalf of the Commission and if so what information, is, quite appropriately, a matter for the CJC Chairperson or the relevant Divisional Director. It is clear from the CJC's Media policies and procedures detailed above, that the CJC considers it is inappropriate to permit individual officers of the CJC to release information simply on the basis that the information may be 'publicly available'.

In summary, an individual officer of the CJC who releases information contrary to the CJC's Media policies is afforded no protection. The Committee considers that the Act should also not provide an individual officer with such protection.

The Committee considers that the current defence available to CJC officers for disclosures which are 'for the purposes of the Commission' is sufficiently wide, having regard to the CJC's media policies and procedures (and the protection to officers who comply with the guidelines), to appropriately protect CJC officers. The Committee does not support the amendment proposed by the CJC to 'provide protection from prosecution to CJC Commissioners, officers and persons engaged by the CJC under section 66 of the Act, in the case of the disclosure of information that is publicly available'.

15.24.2 Recommendation

Recommendation 110

The Committee recommends that section 132 of the Act NOT be amended (as submitted by the CJC) to provide protection from prosecution to CJC Commissioners, officers and persons engaged by the CJC under section 66 of the Act, in the case of the disclosure of information that is publicly available.

15.24.3 Analysis and comment – extension of limitation period

The offence of wilfully disclosing information under section 132 of the Act is a simple offence and therefore carries a limitation period, as provided for in section 52 of the *Justices Act 1886*, of one year.

Allegations of this nature sometimes come to light some time after the actual disclosure was made. In those circumstances, it may not be possible to finalise any investigation within the one year limitation period.

The Committee is of the view that section 132 of the Act should be amended to specifically extend the time limitation period to 2 years from the time when the matter of complaint arose, but that provision be made for extension of that two year limitation period in appropriate cases, with the consent of a Crown Law Officer, as that term is defined in section 1 of the Criminal Code. The term ‘Crown Law Officer’ is defined in section 1 of the Criminal Code to mean the Attorney-General or Director of Public Prosecutions, although the powers of a ‘Crown Law Officer’ is ordinarily exercised by the Director of Public Prosecutions. Under the Criminal Code, a Crown Law Officer’ is required to exercise a discretion to consent or otherwise to a prosecution being commenced under sections 229B, (maintaining a sexual relationship with a child) 427A (obtaining property by passing valueless cheques). Until amending legislation in 1998, a prosecution for an offence of ‘unlawful carnal knowledge of a girl under 16 could not be begun after two years without the consent of a Crown Law Officer.

Such an amendment may be achieved by a clause in the following terms:

- (5) *A complaint for an offence defined in this section must be made within two years from the time when the matter of complaint arose unless the consent of a Crown Law Officer is obtained.*

15.24.4 Recommendation

Recommendation 111

The Committee further recommends that section 132 of the Act be amended by extending the current limitation period (currently one year) to two years from the time when the matter of complaint arose and that provision be made for extension of that two year period in appropriate cases, with the consent of the Director of Public Prosecutions.

15.25 Sections 132A - 132C [deletion of obsolete sections - defunct Connolly / Ryan Inquiry]*15.25.1 Analysis and comment*

Sections 132A, 132B and 132C were inserted to support the now defunct Connolly / Ryan Commission of Inquiry into the CJC.

The Committee notes that:

- section 118W of the Act provides that in undertaking an investigation referred to the Parliamentary Commissioner by the Committee, the Parliamentary Commissioner has all the rights and privileges under the *Commissions of Inquiry Act*; and
- section 132A(1) of the Act provides that the *Commissions of Inquiry Act 1950* prevails over the *Criminal Justice Act 1989*.

The Committee had initially considered that section 132A(1) should be retained. However, after careful reflection, the Committee is of the view that as a question of policy, it is more appropriate that the *Criminal Justice Act*, which prescribes the powers and privileges of the Parliamentary Commissioner, should, in the event of any inconsistency, prevail over the *Commissions of Inquiry Act*.

Accordingly, the Committee considers that sections 132A, 132B and 132C of the Act should be deleted.

15.25.2 Recommendation

Recommendation 112

The Committee recommends that sections 132A, 132B and 132C of the Act should be deleted.

15.26 Section 137 [False complaints or information]*15.26.1 Analysis and comment*

Section 137 of the Act creates an offence for making a false complaint or providing false information to the CJC.

The current section 137(1) was inserted by the *Criminal Justice Legislation Amendment Act 1997*. This amendment failed to remedy the problem identified in the previous section 137, namely that the section did not apply to the situation of a person making a false allegation to a third party which causes a CJC investigation. A large proportion of complaints investigated by the CJC are made directly to the QPS in the first instance and referred to the CJC in accordance with obligations under the Act and the *Police Service Administration Act 1990*.

The CJC had previously sought this amendment, as part of its submission to the previous Committee's three yearly review.

The Committee accepts the CJC's submission that the loophole in the legislation should be corrected by providing that a false complaint made to the QPS, and forwarded by the QPS to the CJC for its investigation, which is investigated by the CJC, is for the purposes of the section deemed to be a false complaint to the CJC, whether or not the person who made the complaint

intended it to be forwarded to the CJC. A similar provision should also be inserted to cover ‘false information’.

Further, the Committee gave some consideration to whether the provision should also be extended to cover persons (other than police) who hold an office in a ‘unit of public administration’ or who ‘constitute a corporate entity that is a unit of public administration’ under section 37 of the Act. For example, a large proportion of complaints investigated by the CJC against teachers, and to a lesser extent other persons who hold office in a ‘unit of public administration’ are made directly to the QPS or to the relevant department head in the first instance and are then referred to the CJC in accordance with obligations under the Act (s.37).

The Committee is of the view that the offence provision in section 137 of the Act should therefore be similarly expanded to apply in those instances to persons other than police officers.

A similar provision should also be inserted to cover ‘false information’.

15.26.2 Recommendations

Recommendation 113

The Committee recommends that section 137 of the Act should be amended by providing that a false complaint made to the QPS, and forwarded by the QPS to the CJC for its investigation, which is investigated by the CJC, is for the purposes of the section deemed to be a false complaint to the CJC, whether or not the person who made the complaint intended it to be forwarded to the CJC.

The Committee further recommends that the amended section also cover ‘false information’.

Recommendation 114

The Committee further recommends that section 137 of the Act should also be extended to cover false complaints made to persons (other than police) who hold an office in a ‘unit of public administration’ or persons who ‘constitute a corporate entity that is a unit of public administration’ under section 37 of the Act.

15.27 Section 139A [Delegation by the Commission]

15.27.1 Analysis and comment

Section 139A details those powers which the Commission may delegate to the Chairperson.

Section 139A was significantly amended in 1997 to limit the powers which the Commission could delegate to the Chairperson alone.

The CJC had previously submitted that the power of the Commission to delegate powers to the Chairperson should be extended, in order to facilitate a more efficient and effective administrative structure within the CJC. The CJC suggests that the Commission be able to delegate to the Chairperson powers under the following sections:

- section 29(3) [the power to issue directions and orders to the OMD]
- section 33(8) [the power to give directions to the director of the OMD]

- section 38(9) and (10) [the power to give orders and directions about complaint matters]
- section 58(2) [the power to approve the dissemination of intelligence information]
- section 64(1) and (3) [the power to employ staff, and approve contractual officers or classes of officers]
- section 65 [the power to arrange for the secondment of public service officers]
- section 66 [the power to engage persons to provide services, information or advice]
- section 91 [the power to appoint external (and in-house) legal practitioners]

The Committee supports the suggestions made by the CJC with two exceptions. The Committee has no concerns that the present Chairperson may exercise these powers in any inappropriate manner. However, the Committee considers, as a question of policy, it is more appropriate, in the interests of the long-term accountability of the CJC, having regard to the philosophy of retaining community representatives on the Commission board, that the powers detailed in sections 66 and 91 of the Act be exercised by the Commission as a whole. Exercise of these powers may result in the expenditure of significant funds. Further, a requirement that these powers be exercised by the Commission as a whole may lessen any perception, however unfairly held, that the appointment of a particular legal practitioner to assist the Commission, may, for whatever reason, be inappropriate.

15.27.2 Recommendation

Recommendation 115

The Committee recommends that section 139A of the Act be amended to enable the Commission to delegate to the Chairperson the following additional powers:

- | | |
|-----------------------------------|---|
| (a) section 29(3) | [the power to issue directions and orders to the OMD] |
| (b) section 33(8) | [the power to give directions to the director of the OMD] |
| (c) section 38(9) and (10) | [the power to give orders and directions about complaint matters] |
| (d) section 58(2) | [the power to approve the dissemination of intelligence information] |
| (e) section 64(1) and (3) | [the power to employ staff, and approve contractual officers or classes of officers] |
| (f) section 65 | [the power to arrange for the secondment of public service officers] |
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15.28 Section 147 [Commission's budget]

15.28.1 Analysis and comment

The PCJC currently has no statutory role in relation to the CJC's budget. This presents two possible issues – lack of accountability of the CJC to the PCJC in budgetary matters and potential to compromise the independence of the CJC from the Executive.

The third PCJC was concerned that the Committee has no specific statutory role in the development of the CJC's budget. The Committee reported that it:

*has felt constrained in its ability to fully and critically assess many financial, budgetary and associated matters as they pertain to the CJC. The Committee is often seeking such information after the occurrence of events which it believes it should have been part of.*⁸⁴²

The previous Committee was also concerned because the relevant Minister is responsible for making budgetary decisions about the CJC without having insight into its operations and functions. The Committee believed it was in a unique position with respect to the claims made by the CJC in budget development because of the ‘*statutory relationship of confidentiality*’ between the Committee and the CJC.⁸⁴³ The Committee recommended that the Act be amended to provide that the Minister/Treasurer be required to consult with the Committee in developing the proposed budget of the CJC for each financial year.

The third PCJC’s recommendations relating to the budget have not been implemented. In his response to the recommendations, the Premier, as the Minister administering the *Criminal Justice Act*, stated that the Government does not support the PCJC’s recommendations for amendment relating to the Committee’s role in the CJC’s budget development and approval. He stated:

*The Parliamentary Committee may have a role in advocating for funding on behalf of the Commission. However, the Government does not consider it necessary to make legislative amendments to achieve this.*⁸⁴⁴

The Committee canvassed some of the issues relating to the CJC’s budget at the public hearings held as part of this review. The Executive Director of the CJC, Mr Graham Brighton, told the Committee:

*...I do not believe that the commission has experienced any operational difficulties which it could be suggested arose from any ministerial interference. In relation to the way the budget process is managed at the present moment, we obviously present a budget to the Minister once the appropriations are announced. We provide the Minister with all the supporting budget documentation that any other consolidated revenue funded organisation would provide and the Minister approves it...I guess it is a little bit unusual in that the Minister approves the budget, but for everything else the organisation answers to this Committee. I have not experienced a problem that has entered the organisation at this stage.*⁸⁴⁵

The Committee notes the statutory role of other Parliamentary Committees of the Queensland Legislative Assembly, namely:

- the Public Accounts Committee in the development of the budget for the Queensland Audit Office (QAO) under section 68 of the *Financial Administration and Audit Act 1997 (Qld)*; and
- the Legal, Constitutional and Administrative Review Committee in the development of the budget for the Parliamentary Commissioner for Administrative Investigations (Ombudsman) under section 31 of the *Parliamentary Commissioner Act 1974 (Qld)*.

The Committee considers that the CJC can be likened to these two entities in that, for all three organisations, independence from the Executive is vital to the effective discharge of their functions. The Committee considers it would be appropriate for a parallel statutory role to be given to the PCJC in order to further ensure the CJC’s independence from the Executive and accountability to the Committee.

⁸⁴² Note 824 at 65.

⁸⁴³ Note 824 at 69.

⁸⁴⁴ Beattie, P., Hon. the Premier of Queensland, *Ministerial Response to the Parliamentary Criminal Justice Committee Report No. 45*, tabled in the Legislative Assembly on 26 October 1999.

⁸⁴⁵ Note 808 at 39.

15.28.2 Recommendation

Recommendation 116

The Committee endorses the recommendation of the previous Committee and recommends that section 147 of the *Criminal Justice Act* be amended to require that the Minister consult with the Committee in developing the budget of the CJC for each financial year.

15.29 New section 147C [Strategic reviews of the CJC]

15.29.1 Analysis and comment

The idea of strategic reviews of the CJC was canvassed by the third PCJC in 1997 in its Report No. 38 on the accountability of the CJC to the PCJC. The third PCJC concluded that regular conduct of external performance and management audits or 'strategic reviews' of the CJC were an essential part of the CJC's accountability and that the PCJC should play an instrumental role in these reviews. The third PCJC made a detailed recommendation for the conduct of such reviews.

This recommendation has not been implemented. In his Ministerial Response to this recommendation, the then Attorney-General, Hon. Denver Beanland MLA, explained his reasons for not implementing the recommendation as follows:

*Having regard to the existing process for monitoring and reviewing the CJC and the proposal to create an office of the Parliamentary Commissioner, I do not consider that it is appropriate at this time to introduce the further layer of strategic review as a statutory requirement.*⁸⁴⁶

The CJC provided a response to the third PCJC's recommendations in this area, expressing concerns about costs, particularly in relation to the need to bring reviewers up to the necessary level of familiarity with processes and issues for the review to be conducted expeditiously. The CJC requested that any reviews should alternate with the PCJC's reviews at three yearly intervals, so that each type of review is conducted only once every six years.⁸⁴⁷

Although the requirement for strategic reviews has not been introduced into the *Criminal Justice Act* the CJC has engaged consultants to undertake strategic reviews on its behalf and report back to the CJC.

The Committee believes there is an inherent problem in the CJC itself engaging a person or entity to report to the Commission staff on the outcome of such a review. While the Committee respects the professionalism of any entity which may be engaged, the nature of such an appointment is fundamentally commercial - in reporting directly to the CJC there is a natural potential for consultants to be influenced by the desire to ensure the return business of the organisation. The independence of the reviewer could not be assured.

In relation to the comments of the then Attorney-General noted above, the Committee considers that a strategic review of the CJC is different from the three yearly review undertaken by the PCJC for several reasons. Firstly, an external performance review differs from the PCJC's three yearly reviews by virtue of it being undertaken externally to the CJC and the Committee. Also, it is likely that the focus of a strategic review would be broader than the Committee's three year review in that

⁸⁴⁶ Beanland, D., Hon. Attorney-General and Minister for Justice, *Ministerial Response to the Parliamentary Criminal Justice Committee Reports Numbered 34, 38 and 39*, tabled in the Legislative Assembly on 8 October 1997.

⁸⁴⁷ Note 804 at 38-39.

it would address more day to day management and efficiency issues while the Committee focuses on the CJC's areas of responsibility, adherence to the *Criminal Justice Act* and policy and procedures. The Committee's review is based largely on the Committee's experience in dealing with the CJC in the preceding three years and issues that come to its attention through complaints, through application of the *Criminal Justice Act*, the necessity for legislative amendment and the activities of the Parliamentary Criminal Justice Commissioner. The PCJC's area of expertise is accountability of the CJC and the *Criminal Justice Act*. The Committee envisages that a strategic review would have a more corporate governance and organisational approach.

It is arguable that the powers of the Parliamentary Commissioner could be extended to conduct such a review of the CJC. However, to obtain the full value of an independent review, the Committee considers that it is necessary for the review to be conducted by an entity whose independence could not be brought into question. Further, the Parliamentary Commissioner would not necessarily have the requisite skills to carry out an organisational / management style review.

Precedents exist for the previous Committee's recommendation. Section 32 of the *Parliamentary Commissioner Act 1974 (Qld)* prescribes a process for the strategic review of the Office of the Parliamentary Commissioner for Administrative Investigations (Ombudsman) that is virtually identical to the one recommended by the previous Committee. Section 72 of the *Financial Administration and Audit Act 1977 (Qld)* prescribes a similar process for strategic review of the Queensland Audit Office.

The Committee disagrees with the CJC's proposition that strategic reviews and PCJC reviews of the CJC should be carried out alternatively at three yearly intervals. The Committee notes that the CJC itself has commissioned a strategic review since the last three yearly review. Further, the Committee is of the view that the reviews are so different that it is necessary for each to be conducted every three years to complement the other. Further, the Committee considers that, since the CJC has engaged a body to undertake a strategic review in the absence of a legislative requirement or guidelines, a statutory provision in the terms recommended by the Committee would only serve to increase the value of that review.

15.29.2 Recommendation

Recommendation 117

The Committee endorses the recommendation of the third PCJC and recommends that a new section 147C be inserted into the *Criminal Justice Act* requiring regular strategic reviews of the CJC including the requirements that, amongst other things:

- **such reviews be conducted at least every three years;**
- **the reviewer should be an appropriately qualified person (who has cleared the requisite security standard) appointed by the Governor in Council;**
- **the terms of reference for the review should be determined by the Governor in Council;**
- **before a person is appointed to conduct a review, the Minister must consult with a quorum of the CJC Commissioners about:**
 - **the appointment of the reviewer; and**
 - **the terms of reference for the review;**

- before a person is appointed to conduct a review, the Minister must seek the approval of a majority of members of the PCJC, unanimously or by a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Assembly, about:
 - the appointment of the reviewer; and
 - the terms of reference for the review;
- the remuneration and other terms of appointment of a person appointed to conduct a review are to be determined by the Governor in Council. However, all costs of the review, including such remuneration, are to be borne by the CJC;
- for the purposes of conducting the review:
 - the reviewer is to have all powers that an authorised auditor has for the purposes of auditing an entity; and
 - the CJC is to grant the reviewer full and free access to the CJC's premises, staff, processes and procedures;

However, nothing in this provision is to allow the reviewer access to any operational material held by the CJC;

- the PCJC should have the power to give directions to the reviewer in respect of any matter which the Committee considers relevant to the review and to call for the reviewer to give interim reports on the review as and when the PCJC determines fit;
- on completion of the review the reviewer must provide a written report to the Minister, PCJC and CJC Commissioners;
- if the reviewer proposes to include in the report a matter which in his/her opinion is a matter of significance, the reviewer must –
 - (c) give the Minister, the PCJC and the Chairperson of the CJC written advice of the matter; and
 - (d) include in the advice a statement to the effect that comments on the matter may be made in writing to the person within -
 - (iii) 21 days after the advice is received; or
 - (iv) such longer period as is specified in the advice.

Further, if such matter is included in the review report, any comments so given to the reviewer must also be included in the report;

- the Minister must lay the reviewer's report before the Legislative Assembly within three sitting days after the Minister receives the report; and

- the PCJC should review the reviewer's report and in its discretion determine to table its own report in Parliament on the review, including in its report any recommendations and comments which it sees fit and stipulating who should implement those recommendations.
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16. AMENDMENTS TO THE *CRIME COMMISSION ACT 1997*

16.1 Section 16 [Nomination for appointment as commission member]

16.1.1 Analysis and comment

Section 16 of the *Crime Commission Act 1997* governs the nomination for appointment of a Crime Commission member.

Consistent with the Committee's recommendation that the Queensland Crime Commission (QCC) be accountable to the Parliament through the Committee, as the CJC is⁸⁴⁸, the Committee considers that section 16 of the *Crime Commission Act* should be amended to require consultation with the Committee in the appointment of the Crime Commissioner and Crime Commission members.

The Committee further considers that section 16 should be amended to provide that the Crime Commissioner and a Crime Commission member may only be appointed if the appointment is supported by a bi-partisan majority of the Committee. The Committee recommends that the scheme for the selection of Crime Commission members replicate the scheme in section 11 of the *Criminal Justice Act* in respect of the appointment of CJC Commissioners.

16.1.2 Recommendations

Recommendation 118

The Committee recommends that, consistent with the Committee's recommendation that the Queensland Crime Commission (QCC) be accountable to the Parliament through the Committee, as the CJC is, section 16 of the *Crime Commission Act* be amended to require consultation with the Committee in the appointment of the Crime Commissioner and Crime Commission members.

Recommendation 119

The Committee further recommends that the scheme for the selection of the Crime Commissioner and Crime Commission members replicate the scheme in section 11 of the *Criminal Justice Act* in respect of the appointment of CJC Commissioners, namely that the Crime Commissioner or a Crime Commission member may only be appointed if the appointment is supported by a bi-partisan majority of the Committee.

16.2 Section 39 [Membership of the Management Committee]

16.2.1 Analysis and comment

Section 39 of the *Crime Commission Act* provides for the membership of the Management Committee of the Crime Commission. The Chairman and Deputy Chairman of the Committee are presently members of that Management Committee.

The Chairman and Deputy Chairman of the Committee do not sit on the Management Committee as members of the Parliamentary Criminal Justice Committee in the sense that there is no direct line of

⁸⁴⁸ See Chapter 13 of this report.

accountability or report to this Committee. The specific reasons for the inclusion of the Chairman and Deputy Chairman of the Committee on the Management Committee appears to be an intention to provide some accountability to the Parliament. During his Second Reading Speech on the Crime Commission Bill 1997, the Minister stated, in part:

*The composition of the [Management] Committee is intended to strike a balance between law enforcement on the one hand, and bi-partisan Parliamentary, community and civil liberties representation on the other.*⁸⁴⁹

Consistent with the Committee's recommendation that the Queensland Crime Commission (QCC) be accountable to the Parliament through the Committee, as the CJC is⁸⁵⁰, the Committee considers that section 39 of the *Crime Commission Act* should be amended to restructure the Management Committee by removing the Chairman and Deputy Chairman of the Parliamentary Criminal Justice Committee.

16.2.2 Recommendation

Recommendation 120

The Committee recommends that section 39 of the *Crime Commission Act* should be amended to restructure the Management Committee by removing the Chairman and Deputy Chairman of the Parliamentary Criminal Justice Committee.

16.3 NEW Part 3A [Parliamentary Committee]

16.3.1 Analysis and comment - role and functions of the Parliamentary Committee

During consideration of possible reforms of the *Criminal Justice Act*, one issue which was raised with the Committee was what role, if any, the Committee could play in restructuring and simplifying the accountability and governance arrangements for the QCC. One option raised with the Committee is to make the QCC directly accountable to the Parliament. The issue of accountability of the QCC arose primarily in the context of possible ways to improve coordination and cooperation between the CJC and the QCC, the jurisdictions of both agencies had been, until amendments were made in 1997, under the umbrella of the CJC.

It is perhaps trite for the Committee to observe that when the CJC had jurisdiction over organised and major crime, the CJC was accountable to the Committee.

The current structure of the QCC Management Committee combines the governance and accountability functions. The Management Committee performs a governance function in that it directs the general policy and operations of the QCC. The Management Committee also performs an accountability function in that it hears complaints about the QCC and by the fact that it includes members of Parliament and community representatives.

There is at present no direct accountability of the QCC to the Parliament, although as noted above, the presence of the Chair and Deputy Chair of the Committee seems to partly fulfil this function. The issue of the accountability of the QCC to the Parliament was raised with the Crime Commissioner, Mr Carmody SC, during his evidence at the Committee's recent public hearings in respect of this review. Mr Carmody stated:

⁸⁴⁹ *Second Reading Speech on the Crime Commission Bill 1997*, Legislative Assembly of Queensland, Brisbane, at 3.

⁸⁵⁰ See Chapter 13 of this report.

*all bodies with powers like ours need to be closely monitored and oversighted. I have no problem with that. The management Committee of the Crime Commission is one of those accountability mechanisms that we are subject to and we are also subject to the Parliamentary Commissioner in a limited respect. We have, of course, judicial control over the exercise of our powers for surveillance and such things. We also have judicial review of decisions that I make and actions that we carry out. I am also accountable to a Minister—the Minister for Police—under the legislation. I think there are enough and suitable accountability mechanisms. But as a general proposition I do not have a problem with being accountable to a Parliamentary Committee, either. I think it is a question for Government policy and the way it wants to rationalise, if you like, how it structures, funds and oversights its specialist bodies like the Crime Commission and the Criminal Justice Commission.*⁸⁵¹

Mr Terry O’Gorman, President of the Australian Council for Civil Liberties and Vice-President of the Queensland Council for Civil Liberties agreed, during his evidence, that the QCC should be accountable to a Parliamentary Committee stating:

I was not aware that the QCC was not subject to a Parliamentary committee. I suppose that is because I have been preoccupied with some other aspects of it. There is no justifiable explanation for the QCC not being subject to a Parliamentary committee, and why not this Committee? I think this Committee historically—it has changed membership from time to time—has done a very good job.

*Particularly given some of the antics that have gone on with the Herron issue this week—people’s names have been leaked to the press; the QCC has said, ‘Yes, we are having investigative hearings, but’—cutely—‘we are not going to tell you who it is’; the Courier-Mail has already told us through a leak from the Police Service—the QCC’s leaking and other issues need to be the subject of Parliamentary supervision as well as the Parliamentary Commissioner...I think [Mr Carmody] said they could live with [being accountable to a Parliamentary committee]. The CJC has lived well with Parliamentary supervision and it seems now to thrive on it.*⁸⁵²

The Committee initially held reservations about any role for the Committee in the accountability of the QCC. Most significantly, any such a policy change will have obvious resource implications for the Committee.

However, on reflection, the Committee would support a policy change to make the QCC accountable to the Parliament through the Committee. The Committee is of the view that significant advantages potentially result if both agencies are accountable to the one Parliamentary Committee.

The Committee considers that in the interests of equity and efficiency that the Committee’s role in respect of the QCC should mirror those functions presently undertaken by the Committee and the powers presently available to the Committee in respect of the CJC. Such an approach would provide for a consistency of approach in terms of the accountability of the two agencies.

16.3.2 Recommendations

Recommendation 121

The Committee recommends that the accountability and governance arrangements for the QCC be restructured and simplified by making the QCC directly accountable to the Parliament through the Committee.

⁸⁵¹ PCJC, Transcript of Public Hearing - Three Yearly Review of the CJC, 14-15 December 2000, Brisbane, at 33.

⁸⁵² Note 851 at 47.

Recommendation 122

The Committee further recommends that in the interests of consistency of approach in terms of the accountability of the CJC and the QCC, that the Committee's role in respect of the QCC mirror those functions presently undertaken by the Committee and the powers presently available to the Committee in respect of the CJC.

16.3.3 Analysis and comment – complaints or concerns against officers of the QCC

Consistent with the Committee's recommendation that the Queensland Crime Commission (QCC) be accountable to the Parliament through the Committee, the Committee considers that a new section should be inserted to provide that the Committee is to receive complaints or concerns against officers of the QCC.

The Committee submits that the present formalised structure for the handling of complaints against officers of the CJC, under section 118F of the *Criminal Justice Act*, be repeated in the *Crime Commission Act* in respect of officers of the QCC.

Such an approach would make the QCC primarily accountable to the Committee and through the Committee to the Parliament. If accepted, the Committee may, as it can in respect of the CJC, on receipt of a complaint or in circumstances where the Committee otherwise has concerns about the conduct or activities of an officer of the QCC, elect to do one or more of the following—

- (a) ask the QCC to give a report on the matter to the Committee;
- (b) ask the QCC to investigate and give a report on the matter to the Committee;
- (c) ask the Queensland Police Service or another law enforcement agency to investigate and give a report on the matter to the Committee;
- (d) ask the Parliamentary commissioner to investigate and give a report on the matter to the Committee;
- (e) take other action the Committee considers appropriate.

The Committee considers that a scheme that requires complaints to be made to the Committee at first instance is preferable to permitting complaints to be made direct to the Parliamentary Commissioner as the former scheme prevents a duplication of resources. For example, if a complaint could be made direct to the Parliamentary Commissioner, it is likely that the Committee will not be aware of it, and the Committee, as part of the general accountability process, may have sought a report from the QCC in respect of the same issue or matter.

Therefore, adopting the current scheme governing the handling of complaints against officers of the CJC, which operate under the *Criminal Justice Act*, the Parliamentary Commissioner would only act at the direction of a bi-partisan majority of the Committee. Such a scheme avoids the possible perception, however unfairly held, that in investigating a complaint the Parliamentary Commissioner 'had it in for the QCC'. Further, through such an approach, the Committee would act as a filter to weed out complaints which are outside jurisdiction or frivolous or vexatious complaints, or complaints lacking merit. The Committee considers it is a more efficient use of resources for the Committee to undertake such a filtering process rather than the office of the Parliamentary Commissioner.

If accepted, this reform could be achieved by the insertion of:

- a provision which replicates, with some modifications, the terms of section 118F of the *Criminal Justice Act* [Referral of concerns by Parliamentary Committee]; and
- a new sub-section (2) in section 60 of the *Crime Commission Act* which replicates, with some modifications, the terms of section 118R of the *Criminal Justice Act* [Functions of the Parliamentary Commissioner]

Finally, the Committee considers that section 60 of the *Crime Commission Act* should be amended to require the Parliamentary Commissioner, in addition to advising the QCC, to report to the Committee in respect of the results of the Parliamentary Commissioner's annual review of the intelligence data held by the QCC, CJC, and the QPS. The Committee submits that the Parliamentary Commissioner could provide the Committee with a sanitised report, where appropriate, to safeguard any confidential or operational information which may be detailed in the report. Such an approach would provide the Committee, as the primary overview mechanism, with important information to assist it in effectively monitoring and reviewing the QCC, monitoring the cooperation between the two agencies and identifying any areas where efficiencies could be achieved. If accepted, such a reform could be achieved by amending the present section 60(c) of the *Crime Commission Act* by inserting after the words Management Committee, the words 'and the Parliamentary Committee'.

16.3.4 Recommendations

Recommendation 123

The Committee recommends that the *Crime Commission Act* be amended by inserting a provision to provide that the Committee is to receive and consider complaints or concerns against officers of the QCC.

Recommendation 124

The Committee further recommends that section 60 of the *Crime Commission Act* be amended to require the Parliamentary Commissioner, in addition to advising the QCC, to report to the Committee in respect of the results of the annual review of the intelligence data held by the QCC, CJC, and the QPS.

16.3.5 Analysis and comment - guidelines on operation of the QCC

Consistent with the Committee's recommendation that the Queensland Crime Commission (QCC) be accountable to the Parliament through the Committee, the Committee is of the view that a new provision be inserted, replicating sections 118A-D of the *Criminal Justice Act*, to provide for a scheme pursuant to which the Committee can formulate policies and issue general guidelines to the QCC that must be adhered to by the QCC.

The Committee considers that, if the presence of such a mechanism is seen as enhancing the effectiveness of an agency's accountability, there is no reason why the QCC should be in any different position to that of the CJC.

The Fitzgerald Report specifically stated that the PCJC should have the power to formulate policies and guidelines to be obeyed by the CJC.⁸⁵³

Although the Committee has always been at liberty to formulate policies and guidelines to be adopted by the CJC which the Committee may from time to time, in appropriate cases, consider necessary and desirable, the CJC was not bound to adhere to them.

The Act was amended in 1997 to provide the Committee with such a statutory power. However, no formal guidelines have to date been issued by the Committee pursuant to the power. The Committee considers that the power should only be exercised in appropriate and deserving cases. In most cases, the Committee considers that the mere availability of the power is sufficient to ensure effective accountability.

The Committee notes that the CJC possesses a similar statutory power in relation to its monitor and review role in respect of the Queensland Police Service pursuant to section 23(h) of the *Criminal Justice Act*. The Committee also notes that the CJC has never issued such a direction to the Commissioner of Police pursuant to the power.

Arguments previously raised by successive Parliamentary Criminal Justice Committees in support of the Committee having the power to issue binding guidelines in respect of the CJC include that:

- it would allow the Committee to be an objective arbitrator in matters such as the development of policies and protocols for the CJC developed in conjunction with the CJC and associations such as the Bar Association, Law Society and Queensland Police Union of Employees;
- although not a substitute for legislation, guidelines that had the force of law would suffice on an interim basis until legislation could be enacted or considered; and
- guidelines could be developed in relation to matters which were not appropriate for legislation.⁸⁵⁴

For these reasons and from its experience, and that of its predecessor Committees, the Committee submits that in order to effectively monitor and review the QCC, the Committee should have the power to issue guidelines and policies to be obeyed by the QCC.

However, the Committee also recognises that if accepted, the safeguards presently provided for in section 118A-D of the Act should be replicated in the *Crime Commission Act*.

16.3.6 Recommendation

Recommendation 125

The Committee recommends that consistent with the Committee's recommendation that the Queensland Crime Commission (QCC) be accountable to the Parliament through the Committee, that the *Crime Commission Act* be amended by inserting a new provision replicating sections 118A-D of the *Criminal Justice Act*, to provide for a scheme pursuant to which the Committee can formulate policies and issue general guidelines to the QCC that must be adhered to by the QCC.

⁸⁵³ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council*, (Commissioner G E Fitzgerald QC), 1989, Brisbane, at 309.

⁸⁵⁴ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, Legislative Assembly of Queensland, 1995, Brisbane, at 13-15.

16.4 Section 61 [Intelligence data review]

16.4.1 Analysis and comment

Section 61 of the *Crime Commission Act* provides for an annual review by the Parliamentary Commissioner of intelligence data in the possession of the QCC, the police service and the CJC.

The CJC has previously submitted that an ‘unfortunate’ situation has been created by the present provisions of section 60(c) and 61(3) of the *Crime Commission Act* in that the Chairperson of the CJC was privy to the Parliamentary Commissioner’s first annual report as a member of the Management Committee of the QCC, but arguably could not disclose the contents of the report or take any action in relation to it in his role as Chairperson of the CJC.

The CJC further submits that *‘there is no practical or logical reason why the Parliamentary Commissioner should report on a review of the intelligence data of the other agencies to the Management Committee of the QCC’*.

The CJC further suggests that a more simple and logical arrangement is for the Parliamentary Commissioner to provide a report to each of the agencies whose intelligence is audited. The CJC suggests that the problem may be corrected by:

- amending section 60(c) of the *Crime Commission Act* to delete the reference to ‘paragraph (a)’; and
- amending section 61(3)(b) of the *Crime Commission Act* to delete the phrase ‘give to the management Committee’ and substituting ‘give the advice to the management committee of the QCC, the commissioner of police and the CJC’.

The Committee supports the logical approach suggested by the CJC, subject to one further change, namely to include the Committee in the list of agencies which are advised by the Parliamentary Commissioner as to the results of the review. If accepted, such a reform could be achieved by amending:

- section 60(c) of the *Crime Commission Act* to insert after the words ‘management committee’ the words, ‘, the Commissioner of Police, the Chairperson of the CJC, and the Parliamentary Committee’; and
- section 61(3)(b) of the *Crime Commission Act* to delete the phrase ‘give to the management committee’ and substituting ‘give the advice to the management committee, the Commissioner of Police, the Chairperson of the CJC and the Parliamentary Committee’.

16.4.2 Recommendation

Recommendation 126

The Committee recommends that the scheme for the annual review by the Parliamentary Commissioner of intelligence data in the possession of the QCC, the police service and the CJC be changed by amending:

- (i) section 60(c) of the *Crime Commission Act* to insert after the words ‘management committee’ the words, ‘, the Commissioner of Police, the Chairperson of the CJC, and the Parliamentary Committee’; and**

(ii) section 61(3)(b) of the *Crime Commission Act* to delete the phrase ‘give to the management committee’ and substituting ‘give the advice to the management committee, the Commissioner of Police, the Chairperson of the CJC and the Parliamentary Committee’.

16.5 Section 68 [Protection of Parliamentary Commissioner]

16.5.1 Analysis and comment

The Committee has recommended changes in respect of the protection afforded to the Parliamentary Commissioner under section 118ZA of the *Criminal Justice Act*, namely to ‘*indemnify the Parliamentary Commissioner in terms of section 100 and section 101 of the Criminal Justice Act and to indemnify staff and anyone assisting those staff to the extent of section 101 of the Act.*’ Consistent with those changes, the Committee is of the view that section 68 of the *Crime Commission Act* should be recast accordingly.

16.5.2 Recommendation

Recommendation 127

The Committee recommends that, consistent with the recommendation made by the Committee under section 118ZA of the *Criminal Justice Act*, the next Parliamentary Committee give further consideration to the issues of the appropriate amenability of the Parliamentary Commissioner to judicial review and the appropriate protections for the Parliamentary Commissioner following the outcome of the current court action by the CJC.

17. OTHER LEGISLATIVE CHANGES

17.1 Amendments to the *Police Service Administration Act 1990* - Section 4.6 [Directions from the Minister to the Commissioner of Police]

17.1.1 Analysis and comment

The previous PCJC, the third PCJC of the 48th Parliament, in its Report No. 45, endorsed various recommendations of the QPSRC, including that:

- both the *Police Service Administration Act* and the *Criminal Justice Act* be amended to provide that the CJC should not exercise its power under section 23(h) of the *Criminal Justice Act* without first consulting with the Minister for Police, and the Minister should not issue directions under section 4.6(2) of the *Police Service Administration Act*, without first consulting with the CJC;⁸⁵⁵ and
- that all directions from both the Minister and the CJC should be reduced to writing and included in the register required by section 4.7 of the *Police Service Administration Act*.⁸⁵⁶

The Committee notes that these recommendations have not been implemented.

This issue is discussed in greater detail in Chapter 7 above.

17.1.2 Recommendations

Recommendation 128

The Committee endorses Recommendation 2 made by the Queensland Police Service Review Committee and the previous PCJC and recommends that the *Police Service Administration Act* be amended to provide that the Minister should not issue directions under section 4.6(2) of the *Police Service Administration Act*, without first consulting with the CJC.

Recommendation 129

The Committee endorses Recommendation 3 made by the Queensland Police Service Review Committee and the previous PCJC and recommends that all directions from both the Minister (and the CJC) should be reduced to writing and included in the register required by section 4.7 of the *Police Service Administration Act*.

17.2 Other legislative changes

17.2.1 Telecommunications interception

This aspect is discussed in more detail at paragraph 5.5.2 above.

⁸⁵⁵ PCJC, *A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, Legislative Assembly of Queensland, 1995, Brisbane, at 103. (Recommendation 22)

⁸⁵⁶ Note 855 at 104. (Recommendation 23)

Recommendation 130

The Committee recommends that the necessary Queensland legislation be introduced, so that the CJC can be given the power of telecommunications interception, with safeguards, as set out in the Committee's Report No. 50.

17.2.2 Resignation and retirement

This aspect is discussed in more detail at paragraph 4.12 above.

Recommendation 131

The Committee, subject to the continued existence of the office of Parliamentary Criminal Justice Commissioner, recommends that:

- **There be legislative amendment that would enable units of public administration, in their discretion, to regard an officer who has been charged with breach of discipline, or who had been informed that such a charge was about to be laid, but has subsequently resigned or retired, as continuing to be a holder of an appointment within that unit of public administration, for the purpose of disciplinary proceedings only.**
 - **The jurisdiction of the Misconduct Tribunals be changed, so that:**
 - **a Misconduct Tribunal has jurisdiction to hear disciplinary charges against an officer, regardless of the officer's resignation or retirement from a unit of public administration;**
 - **if such a charge is found proved, the Tribunal could make a declaration that, had the person not resigned or retired, the person ought to have been dismissed or reduced in rank or salary level; and**
 - **there would be no power for a Misconduct Tribunal to impose a monetary penalty in such circumstances;**
 - **Section 32 of the *Criminal Justice Act 1989* be amended to put it beyond doubt that the CJC can continue an investigation, notwithstanding the retirement or resignation of a subject officer.**
-

18. SUMMARY OF CONCLUSIONS

CONCLUSION 1 16

The Committee considers that there is no evidence that any problems or disadvantages arising from the CJC not having jurisdiction for the investigation of major and organised crime are so great as to warrant any detailed consideration of whether the function should again come under the CJC umbrella. 16

CONCLUSION 2 16

The Committee believes it is very important that the CJC cooperate to the fullest extent possible with the QCC..... 16

CONCLUSION 3 18

The Committee endorses the conclusion of its predecessor that in principle staff of private correctional centres should be within the jurisdiction of the CJC. It is of course imperative that the CJC be adequately funded so that it can discharge this additional responsibility..... 18

CONCLUSION 4 24

The Committee strongly supports the steps taken by the CJC to reassess its approach to investigations and to introduce initiatives aimed at improving service delivery and enhancing the emphasis on prevention and a proactive integrated approach. 24

CONCLUSION 5 24

The Committee endorses the CJC's endeavours to broaden its response to complaints beyond the investigative approach. .. 24

CONCLUSION 6 24

The Committee supports the CJC's initiatives in changing its structures and processes to reflect the changes in philosophical approach. 24

CONCLUSION 7 36

The Committee supports overall responsibility for investigation of complaints against police officers remaining with the independent body, the CJC..... 36

CONCLUSION 8 37

The Committee supports the gradual devolution of increasing responsibility for investigation of more matters to the Queensland Police Service itself, but overall oversight must remain with the CJC..... 37

Such oversight must be more than a mere audit role, and should include, as now, the power to audit, monitor, review, or take over, as appropriate, any investigation being conducted by the Queensland Police Service. 37

CONCLUSION 9 37

The Committee supports the increasing use of managerial resolution of matters, as trialed in Project Resolve. 37

CONCLUSION 10 37

The Committee is of the view that responsibility for the initial assessment as to by which entity any particular matter should be dealt with must remain with the CJC..... 37

CONCLUSION 11 37

The Committee is satisfied that there is no need for legislative change in this area..... 37

<i>The Committee believes such an approach strikes the appropriate balance between meeting public expectations and confidence in a clean police service and ensuring proper oversight and accountability on the one hand, and giving an apt degree of self-management and responsibility to the Queensland Police Service on the other.</i>	37
CONCLUSION 12	40
<i>The Committee concludes that the employment by the CJC of QPS officers as investigators is both necessary and desirable.</i>	40
CONCLUSION 13	44
<i>The Committee is satisfied that the CJC places a very high emphasis on the timely resolution of complaints, and that the CJC continues to take steps to improve its already good performance in this regard. The CJC must continue its endeavours to work towards an even better achievement in this regard.</i>	44
CONCLUSION 14	46
<i>The Committee concludes that it is inappropriate and not in the public interest, albeit probably legal, for CJC officers to record telephone conversations with members of the public without first proactively disclosing the fact of recording to the other party to the conversation.</i>	46
CONCLUSION 15	66
<i>The Committee believes that there is public support for the CJC's retention of its present coercive powers. The Committee is satisfied that there is a need for the CJC to have its present powers to be properly equipped to combat corruption and misconduct.</i>	66
CONCLUSION 16	68
<i>The Committee is not satisfied that the hearing power has been overused or abused by the CJC.</i>	68
CONCLUSION 17	71
<i>The Committee supports the continuation of the present role of the Public Interest Monitor in oversight of the CJC.</i>	71
CONCLUSION 18	73
<i>The Committee is satisfied that the CJC's ability to carry out its functions would be enhanced by giving it the power of telecommunications interception. The Committee is further satisfied that appropriate safeguards and controls on the use of such power are available.</i>	73
CONCLUSION 19	76
<i>The Committee believes that it is appropriate that the CJC have the power to use visual surveillance devices, under a similar regime to that which presently operates in respect of listening devices.</i>	76
CONCLUSION 20	82
<i>The Committee is satisfied that the Criminal Justice Commission ought to continue to have its own dedicated intelligence function, with its own discrete intelligence database.</i>	82
CONCLUSION 21	84
<i>The Committee is satisfied, on the available information, that there is nothing to suggest that the CJC is acting inappropriately in so far as co-operation and sharing of intelligence information with other agencies, and the avoidance of unnecessary duplication, are concerned.</i>	84
CONCLUSION 22	84
<i>The Committee believes that its ability to properly discharge its function of oversight of the CJC would be enhanced if the results of the annual audit of the Parliamentary Commissioner pursuant to section 61 of the Crime Commission Act 1997 were provided to the Committee.</i>	84

CONCLUSION 23 84

The Committee is satisfied that the present relationship between the CJC and other law enforcement agencies, specifically the Queensland Police Service and the Queensland Crime Commission, is working well, and has no evidence of any lack of co-operation by the CJC with the other agencies, nor of any inefficient duplication of resources or functions..... 84

CONCLUSION 24 99

The Committee agrees with the previous Committee that there remains a critical need for ongoing and independent research to be undertaken in relation to reform of the Queensland Police Service about appropriate crime prevention and policing methods. 99

CONCLUSION 25 99

The Committee considers that the CJC plays a vital role in providing independent research of issues affecting the Queensland Police Service..... 99

CONCLUSION 26 99

The Committee sees value in collaborative research being undertaken by the CJC and the Queensland Police Service for appropriate areas of research in order to maximise the effectiveness of resources devoted to research. 99

CONCLUSION 27 101

The Committee considers that the CJC has gone a long way towards implementing outstanding recommendations of the QPSRC report, and that in continuing this level of attention to monitoring the policing issues, the CJC has addressed criticisms levelled at it at the time of the establishment of the QPSRC..... 101

CONCLUSION 28 102

The Committee sees some value in an independent review of the QPS being undertaken, especially in relation to various issues including the accountability of the QPS, the adequacy of the CJC's annual report on the QPS and efficiency and effectiveness of efforts by the CJC to coordinate necessary reform of the QPS, and the disciplinary regime (including the appeal process) 102

CONCLUSION 29 102

The Committee notes, however, that the QPS has recently undergone a change in leadership and it is inevitable that any new administration will need some time to take stock of current policy issues affecting the service. The Committee also acknowledges that such a review would place a significant demand upon the time and resources of the QPS. Accordingly, the Committee accepts that at this time, an independent broad review of the QPS may, in all the circumstances, be premature.102

CONCLUSION 30 104

The Committee endorses the views of the Queensland Police Service Review Committee and the previous Committee that the production and publication of an annual Police Service Monitor is an important initiative..... 104

CONCLUSION 31 104

The Committee endorses the views of the Queensland Police Service Review Committee and the previous Committee that the proposed Police Service Monitor has the potential to play an integral part in the monitoring process of the Queensland Police Service by providing police management and the public with an independent analysis of the performance and effectiveness of the Queensland Police Service which will identify key areas requiring reform. 104

CONCLUSION 32 108

The Committee acknowledges, as the previous Committee did in June 1998, the preference, where possible, for a cooperative approach in achieving police reform. However, as the previous Committee concluded in June 1998, appropriate opportunities have arisen where the CJC could and probably should have utilised its directives power pursuant to section 23(h) of the Criminal Justice Act. 108

CONCLUSION 33 108

<i>The Committee endorses the recommendation made by the previous PCJC and recommends that the CJC immediately consult with the Minister for Police as to whether there is any reason why the.....</i>	108
<i>CJC should not issue a directive to the Commissioner of Police pursuant to section 23(h) of the Act, in the terms of Recommendation 41 made by the Queensland Police Service Review Committee.</i>	109
CONCLUSION 34	111
<i>The Committee endorses the views of the previous Committee that the information available from the complaints data base is critical to an effective research and prevention capacity.....</i>	111
CONCLUSION 35	111
<i>The Committee applauds the CJC's redevelopment of its revised complaints database, COMPASS.</i>	111
CONCLUSION 36	111
<i>The Committee is of the view that the CJC should give priority to completion of the second development phase of its revised complaints database, COMPASS.</i>	111
CONCLUSION 37	115
<i>The Committee is satisfied that the CJC's current research agenda sufficiently reflects the CJC's increased focus on corruption prevention.....</i>	115
CONCLUSION 38	115
<i>The Committee is satisfied that the CJC has an important law reform function in relation to matters which impact upon the CJC's jurisdiction.....</i>	115
CONCLUSION 39	118
<i>The Committee considers that the CJC's performance indicators for the research section of the Research and Prevention Division are appropriate.</i>	118
CONCLUSION 40	118
<i>The Committee considers that there is some scope to further explore the CJC's use of peer review for qualitative evaluations of work produced, to understand the procedures involved in the system and ascertain its value as a method of ensuring quality control of research.</i>	118
CONCLUSION 41	126
<i>The Committee is satisfied that the mechanisms put in place by the CJC will ensure that appropriate investigations which may benefit from a corruption prevention input are identified at the earliest possible stage.....</i>	126
CONCLUSION 42	126
<i>The Committee is of the view that the integrated corruption prevention approach adopted by the CJC appears to be working well. 126</i>	
CONCLUSION 43	126
<i>The Committee endorses a previous submission made by the CJC that the responsibilities of the CJC as set out in section 23 of the Act should be amended to give explicit recognition to the CJC's corruption prevention function.</i>	126
CONCLUSION 44	128
<i>The Committee is of the view that misconduct risk and systems reviews play an integral part in any corruption prevention strategy. 128</i>	
CONCLUSION 45	129

<i>The Committee accepts that the CJC can perform a key role in corruption prevention through education and training.</i>	129
CONCLUSION 46	129
<i>The Committee endorses the CJC's changed focus in respect of 'education and training' and agrees that the publication of 'train-the-trainer' and other resource kits is a more effective and less costly approach than an emphasis on training individuals.</i>	129
CONCLUSION 47	130
<i>The Committee accepts that the CJC can play a integral role in developing corruption prevention initiatives. However, the Committee also acknowledges that the CJC is a comparatively small.....</i>	130
<i>agency with a limited budget. The Committee is of the view that the Office of Public Service Merit and Equity is the lead agency with responsibility for corruption prevention activities in relation to ethical behaviour in the public sector, with the CJC providing advice and assistance as the occasion might require.</i>	131
CONCLUSION 48	132
<i>The Committee is of the view that the CJC, working cooperatively with the QPS, should give consideration to what further corruption prevention initiatives might appropriately be pursued in respect of the new police powers legislation including 'controlled operations' and the procedures and controls in respect of DNA evidence.....</i>	132
CONCLUSION 49	133
<i>The Committee is satisfied that the CJC has taken measures to increase public awareness of the CJC's responsibilities in relation to local government.</i>	133
CONCLUSION 50	133
<i>The Committee applauds the CJC for its proactive strategy prior to the recent local government elections in attempting to reduce the incidence of false, vexatious and frivolous complaints to the CJC.....</i>	133
CONCLUSION 51	134
<i>The Committee is satisfied that the CJC is undertaking appropriate corruption prevention measures in the area of corrective services. 134</i>	
CONCLUSION 52	135
<i>The Committee supports the retention of a strong corruption prevention focus at the CJC.</i>	135
CONCLUSION 53	135
<i>The Committee strongly supports the CJC's more strategic focus on corruption prevention by reducing emphasis on the provision of direct 'face to face' training and the greater emphasis on 'training the trainer' and developing appropriate resource kits.</i>	135
CONCLUSION 54	135
<i>The Committee accepts that assessing the performance of the corruption prevention division is not a precise science. The Committee is of the view however, that the current performance indicators are appropriate and sufficient measures of the CJC's corruption prevention strategies.</i>	135
CONCLUSION 55	136
<i>The Committee is satisfied that the CJC is alert to the potential for overlap and duplication and has established mechanisms to minimise the risk of such overlap.</i>	136
CONCLUSION 56	136

<i>As noted above in paragraph 8.4.5 the Committee is of the view that the Office of Public Service Merit and Equity is the lead agency with responsibility for corruption prevention activities in relation to ethical behaviour in the public sector, with the CJC providing advice and assistance as the occasion might require.</i>	<i>136</i>
CONCLUSION 57	150
<i>The Committee concludes that a whistleblower protection function is appropriately placed with the CJC. However, the CJC is limited in its jurisdiction.....</i>	<i>150</i>
CONCLUSION 58	150
<i>The Committee considers that there is a gap in oversight and coordination of whistleblower support across the public sector in Queensland but notes that many issues requiring attention are being recognised and addressed by the OPSME. The Committee is hopeful that these efforts will continue.</i>	<i>150</i>
CONCLUSION 59	150
<i>The Committee is cognisant of the restrictions on its own jurisdiction in relation to this issue but concludes that a full review of the Whistleblowers Protection Act and related legislation is required. In the interim, the Committee considers that the CJC should continue to liaise with the OPSME with a view to assisting the OPSME in the development of public sector wide coordination, monitoring, training, research and reporting of whistleblower issues. Some consideration of legislating for a formal liaison process, in order to fully utilise the expertise of each of these agencies, should be made.....</i>	<i>150</i>
CONCLUSION 60	155
<i>The Committee considers that the witness protection function continues to be an important and necessary function in Queensland and appears to be well utilised by both the CJC and other agencies. The Division continues to fulfil its main obligation of keeping protectees safe, which the Committee considers to be a vital measure of success.</i>	<i>155</i>
CONCLUSION 61	158
<i>The Committee recognises the 100 per cent success rate of the WPD in protecting those on the program as an indication that the function is operating well in its current location, and that the extra expense of relocating the function elsewhere is not justified. 158</i>	
CONCLUSION 62	158
<i>Co-location of witness and VIP protection has not been addressed in any submissions to this review. The Committee considers that there are no grounds for altering the status quo.....</i>	<i>158</i>
CONCLUSION 63	159
<i>The Committee considers that it is appropriate that police officers staff the Witness Protection Division as they have the necessary skills and training required for effective witness protection. The Committee further considers that, as long as appropriate officers are selected for appointment to the WPD, potential problems from not separating the investigation and witness protection functions should not arise.....</i>	<i>159</i>
CONCLUSION 64	159
<i>The Committee is uncertain about the extent to which the effect of serving in the WPD will affect a police officer's career when they return to mainstream policing but considers that, if such a problem does exist, it can be dealt with by establishing a system of seconding officers to the WPD.....</i>	<i>159</i>
CONCLUSION 65	166
<i>The Committee is pleased to note the new Witness Protection Act 2000 appears to adequately address the deficiencies in the existing legislative framework for witness protection. However, when the new regime commences, operational problems may be identified. The Committee would like to receive periodical updates as to any operational problems that arise under the new scheme. In the first instance the Committee believes it would be satisfactory to receive updates in the forum of its joint bi-monthly meetings with the CJC.</i>	<i>166</i>
CONCLUSION 66	166

<i>The Committee considers that the WPD has amended its policies and procedures to reduce the risk of harm coming to innocent third parties in their dealings with protectees, in situations where a duty of care to those parties would arise. The Committee agrees with the conclusion of the.....</i>	166
<i>Parliamentary Commissioner that it is not possible to envisage every situation that may arise in relation to a protectee. The Committee considers that the CJC has taken appropriate steps to deal with the issues that arose in relation to Melody.....</i>	167
CONCLUSION 67	167
<i>The Committee considers that, while the new provisions of the Witness Protection Act 2000 do not directly address any duty of care owed by the CJC to third parties in its dealings with protectees, the legislation directs the Chairperson to consider issues which may influence the behaviour of the protectee in dealing with third parties in deciding to admit a person onto the program.....</i>	167
CONCLUSION 68	167
<i>The Committee considers that the changes to the WPD procedures, combined with a solid legislative framework, will probably address outstanding concerns about third parties dealing with protectees. The Committee will continue to monitor the operation of the legislation and procedures and will seek updates from the CJC on problems arising in their operation.</i>	167
CONCLUSION 69	169
<i>The Committee is aware of the problem of making the Witness Protection Division accountable to the Committee and is appreciative of the necessity for restrictions to be placed on information provided to the Committee. At present, the Committee considers that this does not create any problems, and that the role of the Parliamentary Commissioner ensures that the Witness Protection Division can be monitored and made accountable to the Committee.</i>	169
CONCLUSION 70	170
<i>This Committee is of the view that the new witness protection legislation and revised constitution of the Witness Protection Advisory Committee will go a long way to addressing the tension that previously existed. The Committee believes that if a cooperative approach is adopted throughout the Commission, divisions will be in a position to provide expert services and advice to other divisions. However, it must be remembered that the WPD has important reasons for remaining independent of the other divisions and that the Official Misconduct Division should not simply see it as a service provider. It is only adherence to the policy and procedures of the WPD and the Commission that can prevent a recurrence of the events that led to the particular circumstances referred to above.</i>	170
CONCLUSION 71	171
<i>The Committee is pleased to note that the Witness Protection Act 2000 is formulated so that legal obligations cannot be avoided by a person's admission to the program.....</i>	171
CONCLUSION 72	171
<i>The Committee considers that the CJC's approach of dealing with matters on a case-by-case basis in relation to Family Court matters is appropriate.</i>	171
CONCLUSION 73	176
<i>The Committee is conscious that it would be impossible for the work done by the Office of General Counsel to be provided by external counsel at a comparable cost. While the Committee agrees with the third PCJC - that the cost of providing the service should not be an overriding consideration in arguing for the retention of in-house counsel - the Committee considers that it is an extremely important consideration if the level of service across the CJC is to be maintained.</i>	176
CONCLUSION 74	176
<i>Further, the Committee considers that the role of in-house counsel, in the provision of immediate advice and in dealing with day-to-day operational matters, could not be adequately undertaken by external counsel. The Committee also considers that in-house counsel is the most efficient means of obtaining consistent advice.</i>	176
CONCLUSION 75	176

The Committee has considered arguments about the independence of advice. The CJC has pointed out that the question of independence can be equally applied to external counsel. The CJC also pointed out that all legal practitioners are officers of the court and are expected to behave in an independent manner. The Committee considers that independent advice can be provided by in-house counsel...... 176

CONCLUSION 76 178

*The Committee considers that it is appropriate that certain matters be briefed out to external counsel, in order to ensure that no potential conflicts of interest arise in the provision of such advice and to maximise the efficiency of the Office of General Counsel.*178

CONCLUSION 77 178

The Committee considers that it is appropriate that briefing out be undertaken in a uniform way through the Office of General Counsel, in order to ensure that the use of external counsel is as efficient as possible. 178

CONCLUSION 78 179

It is difficult to quantify the effectiveness of the Office of General Counsel. However, the Committee considers that the available information demonstrates that in-house counsel is certainly more effective and efficient than a system of engaging external counsel for advice on every legal matter that arises within the CJC. 179

CONCLUSION 79 182

The Committee considers that generally, it is appropriate for the Office of General Counsel to be a primary liaison point with the Office of the Parliamentary Commissioner. 182

CONCLUSION 80 182

The Committee is of the view, however, in relation to complying with Notices to Produce, that the liaison and coordination role of the Office of General Counsel is incompatible with the Office of General Counsel's role of giving legal advice to the Commission. Although the CJC has stated its commitment to confidentiality being maintained, the contents of Notices to Produce will alert legal counsel to the existence and nature of investigations being conducted by the Parliamentary Commissioner. The Parliamentary Commissioner could potentially lose the 'forensic advantage' over the CJC in conducting investigations...... 182

CONCLUSION 81 182

As there is currently no alternative mechanism which allows the Parliamentary Commissioner to obtain CJC documents directly or discreetly, the Committee considers that a system needs to be devised whereby only one officer of the Office of General Counsel is to liaise, determine, coordinate and correspond with the Office of the Parliamentary Commissioner in answering Notices to Produce. The Committee is of the view that strict confidentiality must be maintained from all other CJC officers, particularly the General Counsel, who may later be required to give legal advice to the Commission about the matter. This will allow the General Counsel to provide advice without conflict between confidentiality relating to what the Officer has been alerted to by answering a Notice to Produce and the duty to the Commission to provide comprehensive advice. 182

CONCLUSION 82 183

The Committee considers that the activities of the Office of General Counsel have the incidental effect of acting as an internal accountability mechanism by checking the legality of the actions of the various divisions of the CJC. The Committee considers this to be an important and appropriate function of the Office of General Counsel. Such incidental functions provide further evidence to justify the retention of the Office of General Counsel. 183

CONCLUSION 83 184

The Committee considers that it is vital that the Office of General Counsel be maintained as a unit separate from the divisions and from the Executive of the CJC in order to ensure as far as possible that: 184

- *the Office of General Counsel can provide independent advice on information that may be provided to the Commission by other officers of the CJC; and,* 184
- *such advice is considered on a whole-of-commission basis.*..... 184

CONCLUSION 84 186

The Committee considers that the examples cited by the Queensland Law Society do not necessarily demonstrate that the CJC is unreasonable in its use of litigation. Further, the CJC's involvement in litigation is not of itself demonstrative of any bias in the provision of legal advice by the Office of General Counsel as external advice has been sought in decisions to appeal all of these matters. 186

CONCLUSION 85 193

The Committee considers that: 193

- *Contracts of employment for directors of the CJC should, in principle, be limited to a term of five years subject to possible extension with the approval of the Committee; 194*
- *in considering any extension of a contract of employment for a Director, the Commission should be required to consult with the Committee; 194*
- *unless any proposed extension of a contract of employment is vetoed by a bi-partisan majority of the Committee, the extension of contract should be affirmed; and 194*
- *in considering any extension of a contract, the Committee should be required to provide the officer with an opportunity to be heard. 194*

CONCLUSION 86 199

The Committee considers that the CJC should retain a dedicated media officer to coordinate and record the CJC's dealings with the media and to ensure a whole-of-Commission approach in the type and content of information released. 199

CONCLUSION 87 199

The Committee recognises the CJC's need to balance provision of information with confidentiality issues but believes that adherence to the principles espoused in the CJC's Policy and Procedures Manual ensures appropriate decisions are made. 199

CONCLUSION 88 199

The Committee considers that if the principle of "fair and equitable" dissemination of information is adhered to by the Media Manager, and the Media Manager acts appropriately in dealing with information that he or she has come across because of his or her position, no conflict of interest should arise. The Committee also considers that the CJC should give consideration to appointing a person from outside the profession of journalism and suggests that suitably qualified persons could be found in the marketing or public relations fields. 199

CONCLUSION 89 201

The Committee would like to see methods of counting maintained for a period so that meaningful benchmarks can be identified for use in future years. 201

CONCLUSION 90 205

The Committee is supportive of regular strategic reviews of the CJC, in addition to the PCJC's three yearly review. 205

CONCLUSION 91 205

The Committee considers regular strategic reviews of the CJC comprise an important part of the accountability process in that the issues addressed in a strategic review differ from those addressed by the Committee and such a review also provides an external review and assessment of the CJC's performance. The Committee has not been presented with any argument which would lead it to a different conclusion from the previous PCJC's recommendation. The Committee endorses that recommendation. 205

CONCLUSION 92 209

The Committee agrees in principle with the recommendations of the previous PCJC. The Committee considers that a requirement that the responsible Minister consult with the Committee in the formulation of the CJC's budget will make the

CJC's budget process more transparent and efficacious. While a commitment to an informal process of consultation is appreciated by the Committee, the Committee cannot differentiate between the QAO, the Ombudsman and the CJC to see justification for the different processes and considers that the same formal processes should be in place. 209

CONCLUSION 93 220

The Committee is of the view that a properly funded and empowered Parliamentary committee which has an on-going role in monitoring and reviewing the CJC, is the mechanism which best allows the Parliament and the public to be continually informed as to the activities of the CJC and as to any issues of concern that may arise. 220

CONCLUSION 94 220

The Committee is also of the view, as noted below in paragraph 14.6, that Parliamentary committee oversight, of itself, can not provide the detailed scrutiny of operational matters that is required to provide an appropriate level of accountability without compromising the operational integrity of the CJC and the confidentiality of witnesses and informants. 220

CONCLUSION 95 240

Having reviewed the various models in operation around Australia, it is clear that oversight by Parliamentary committees of anti-corruption and law enforcement agencies, of itself, has proved less than optimal. Parliamentary committee oversight of agencies which perform a similar role to that of the CJC is either presently supplemented by the creation of a further external oversight mechanism or such a mechanism has been recommended. 240

CONCLUSION 96 262

The Committee remains convinced of the value of the office of the Parliamentary Commissioner and the critical need to retain the office. 262

CONCLUSION 97 262

The Committee is of the view that the office of the Parliamentary Commissioner, (like the NSW Inspector of the PIC, the Commonwealth Inspector-General of Intelligence and Security, the proposed Commonwealth Inspector-General of the NCA, the proposed WA Parliamentary Inspector of the ACC, and the proposed NSW Inspector of the ICAC), represents the most effective way in which sensitive information relating to current operational matters and otherwise sensitive information held by the CJC can be examined so as to ensure the proper accountability of the CJC without compromising the confidentiality of such material. 262

CONCLUSION 98 262

The Committee is of the view that the office of Parliamentary Commissioner provides the community with a far greater depth of scrutiny of the CJC's activities than the Committee could appropriately provide by itself. 262

CONCLUSION 99 262

The Committee is of the very strong view that no basis has been put forward for the abolition of the office of Parliamentary Commissioner, and accordingly, the position ought be retained. 262

CONCLUSION 100 262

The Committee concludes that abolition of the position of Parliamentary Commissioner would be a regressive step and result in the Committee not being as effective in the watchdog role intended for it. Such a move would fly in the face of a unanimous recommendation of the previous bi-partisan Committee, which has been unanimously endorsed by this Committee, and would go against the strong recommendations by three Parliamentary committee's in the other jurisdictions all recommending that a similar office be established. 262

CONCLUSION 101 264

The Committee considers that the position of Parliamentary Commissioner should more appropriately be a part-time position.
264

CONCLUSION 102 269

<i>The Committee believes that the present scheme under which the Committee is the primary accountability mechanism of the CJC with the Parliamentary Commissioner acting as an investigatory arm of the Committee (and indeed only acting at the direction of the Committee) is the most appropriate model and should be retained.</i>	269
CONCLUSION 103	269
<i>The Committee endorses the views of its predecessor Committee, the third PCJC, that the activities of the Parliamentary Commissioner should be seen as merely an extension of the PCJC.</i>	269
CONCLUSION 104	269
<i>The Committee further believes that the Parliamentary Commissioner should not have an own motion power to investigate matters on his/her own initiative.</i>	269
CONCLUSION 105	271
<i>The Committee accepts the need for a ‘line of communication’ between the CJC and the Parliamentary Commissioner to permit the CJC to obtain advice from the Parliamentary Commissioner in respect of a matter.</i>	271
CONCLUSION 106	271
<i>The Committee does not accept that such a ‘line of communication’ need have a statutory basis. The Committee considers that such a ‘line of communication’ may be achieved through a standing reference from the Committee to the Parliamentary Commissioner.</i>	271
CONCLUSION 107	273
<i>The Committee concludes that auditing the records of the CJC is a vital tool in ensuring the CJC’s accountability.</i>	273
CONCLUSION 108	273
<i>The Committee endorses the views expressed by the previous Committee that the Committee, by itself, without the assistance of the Parliamentary Commissioner, cannot conduct an effective audit of the records of the CJC.</i>	273
CONCLUSION 109	273
<i>The Committee is of the view that an audit of the CJC’s records and files which is limited to an ‘after the event’ review, is, in a practical sense, of little assistance or comfort to a wronged party where there is a finding that the CJC has acted wrongly or inappropriately.</i>	273
CONCLUSION 110	274
<i>The Committee concludes that the audit of the CJC’s records should be on-going one. The Committee firmly believes that the audits by the Parliamentary Commissioner, on the Committee’s behalf, should include an audit of current operations presently being conducted by the CJC.</i>	274
CONCLUSION 111	275
<i>The Committee supports the logical approach suggested by the CJC.</i>	275
<i>The Committee is of the view, however, that as part of the Committee’s role to ‘monitor and review’ the activities of the CJC, the Committee should be provided with a copy of any report by the Parliamentary Commissioner on the results of the intelligence review, at least in so far as the report concerns the CJC.</i>	275
<i>Accordingly, the Committee supports the CJC’s suggested change. The Committee also recommends a further change, namely to include the Committee in the list of agencies which are advised by the Parliamentary Commissioner as to the results of the review. If accepted, such a reform could be achieved by amending:</i>	275
<ul style="list-style-type: none"> • <i>section 60(c) of the Crime Commission Act to insert after the words ‘management committee’ the words, ‘the Commissioner of Police, the Chairperson of the CJC, and the Parliamentary Committee’; and</i>..... 	275

<ul style="list-style-type: none"> • section 61(3)(b) of the Crime Commission Act to delete the phrase ‘give to the management committee’ and substituting ‘give the advice to the management committee, the Commissioner of Police, the Chairperson of the CJC and the Parliamentary Committee’. 	275
CONCLUSION 112	278
<p><i>The Committee sees little merit in amending the Act to insert, as suggested by the CJC, a provision in similar terms to section 18 of the Parliamentary Commissioner Act 1974 (Qld) to specifically provide that the Parliamentary Commissioner not be required to hold a hearing in every matter.</i></p>	279
CONCLUSION 113	283
<p><i>The Committee accepts that the full introduction of scanning by the CJC remains cost-prohibitive.</i></p>	283
CONCLUSION 114	283
<p><i>The Committee is of the view, however, that the CJC should give serious consideration to implementing a system whereby a copy of all CJC records received or generated by the CJC as at a set future date be stored electronically (and perhaps the scanning of all records as at a set past date, for example, the year 2001), with a view to providing in the long-term, the Parliamentary Commissioner with direct and discreet computer access to CJC records.</i></p>	283
CONCLUSION 115	283
<p><i>In the interim, the Committee has some concerns about the CJC’s move to engage the Office of General Counsel to perform the co-ordinating and liaison role with the Parliamentary Commissioner. The Committee also accepts, (on one view), that the CJC may consider it has good reasons to require its Office of General Counsel to vet or review this information provided to the Parliamentary Commissioner. However, the CJC should also be acutely aware of the ‘forensic advantage’ to an investigator in not disclosing, at least in the early stages of an investigation, the precise nature of the matter under investigation.</i></p>	283
CONCLUSION 116	283
<p><i>The Committee is of the view that ‘confidentiality’ of the Parliamentary Commissioner’s Notices must be strictly observed by officers of the CJC responsible for providing the relevant documents in response to any Notice to Produce, if that ‘confidentiality’ is to be something other than in name only.</i></p>	283
CONCLUSION 117	283
<p><i>Accordingly, the Committee is of the view that the officer within the Office of General Counsel who performs the ‘strictly confidential liaison’ role with the Parliamentary Commissioner must maintain that confidentiality including to other officers in the Office of General Counsel, particularly General Counsel, or an individual officer who may be required and indeed may feel obligated to give advice to the Commission in respect of any issue which may arise out of the Notice and/or the information provided.</i></p>	283
CONCLUSION 118	283
<p><i>The Committee is of the view that the next Parliamentary Committee should consult with the CJC and the Parliamentary Commissioner with a view to considering the issue of an appropriate protocol or guideline governing the provision of information from the CJC to the Parliamentary Commissioner.</i></p>	283
CONCLUSION 119	284
<p><i>The Committee is of the view that any such protocol or guideline should include an appropriate mechanism to safeguard the confidentiality of such requests for information from the Parliamentary Commissioner and the appropriate role for the CJC’s Office of General Counsel and Principal Information Officer.</i></p>	284
CONCLUSION 120	285
<p><i>The Committee is of the view that the clear intention of the Parliament is that the CJC and its officers not be entitled to claim legal professional privilege in relation to an investigation by the</i></p>	285

<i>Parliamentary Commissioner. It is arguable that by the express provisions of Part 4A of the Act, the Parliament has made it clear that in relation to an investigation by the Parliamentary Commissioner, the policy of improving the accountability of the CJC must override the policy behind legal professional privilege.....</i>	<i>286</i>
CONCLUSION 121	286
<i>The Committee is of the view that it would defeat the purpose and intent of enacting section 118Y, if an individual officer or officers could successfully claim privilege which the CJC is statutorily prevented from claiming, resulting in the Parliamentary Commissioner being refused access to relevant documents.....</i>	<i>286</i>
CONCLUSION 122	286
<i>Irrespective of the perceived present state of the law (being an issue upon which legal minds will no doubt differ) the Committee considers that effective scrutiny of the CJC requires that section 118Y of the Act be clarified to make it clear that an individual officer or officers of the CJC is not permitted to claim privilege which the CJC is statutorily prevented from claiming.....</i>	<i>286</i>
CONCLUSION 123	287
<i>The Committee is firmly of the view that the Parliamentary Commissioner's role should not be limited to simply conducting investigations, compiling the available evidence and presenting it to the Committee without the benefit of any conclusions.....</i>	<i>287</i>
CONCLUSION 124	287
<i>The Committee is of the view that section 118R of the Act should be clarified to confirm that in reporting back to the Committee in relation to 'the results' of carrying out investigations referred by the Committee, the Parliamentary Commissioner be permitted to advise the Committee, in appropriate cases, that the allegations and evidence raise a reasonable suspicion of misconduct, official misconduct or criminal offences.....</i>	<i>288</i>
CONCLUSION 125	291
<i>The Committee accepts that both the Parliamentary Commissioner and the Committee owe a duty of procedural fairness to the CJC, its officers, and others that might arguably be affected by their findings or reports. The Committee accepts that this duty arises because actions of both the Committee and the Parliamentary Commissioner, and in particular the publication of a report, can affect the reputation of the CJC and its officers.</i>	<i>291</i>
CONCLUSION 126	291
<i>The Committee is of the view, confirmed by independent legal advice, that the standard practice adopted by the Committee, as detailed above, is more than adequate to discharge the Committee's duty to provide procedural fairness to the CJC, its officers, and others.</i>	<i>291</i>
CONCLUSION 127	291
<i>The Committee does not accept the CJC's submission, as a matter of general principle, that reports by the Parliamentary Commissioner which contain adverse findings or opinions critical of the operations or procedures of the CJC (as opposed to findings of misconduct) should not be published.</i>	<i>291</i>
CONCLUSION 128	298
<i>The Committee does not accept the CJC's submission that the Parliamentary Commissioner's position 'is similar to that of CJC Commissioners'</i>	<i>298</i>
CONCLUSION 129	298
<i>The Committee is of the view, however, on balance, that given that the issue of the extent to which the Parliamentary Commissioner is amenable to the courts is presently the subject of an appeal before the courts, the Committee should appropriately await the outcome of that appeal before forming a concluded view in respect of these issues.</i>	<i>298</i>
CONCLUSION 130	298

The Committee is of the view that section 118 of the Act should be amended to clarify that in conducting its three year review of the CJC, the Committee may conduct a review of the office of the Parliamentary Commissioner. 298

CONCLUSION 131 299

The Committee is of the view that such an amendment may be achieved by the insertion of a provision in similar terms to section 38 of the Misconduct Tribunals Act 1997. 299

CONCLUSION 132 300

The Committee accepts, in principle, the submissions of the Parliamentary Commissioner and the CJC that the Parliamentary Commissioner should not provide an annual report directly to Parliament. 300

CONCLUSION 133 300

The Committee is of the view however, that the Parliamentary Commissioner should provide the Committee with an annual report detailing the activities of the office which the Committee will table as part of the Committee's annual report to the Parliament. 300

19. SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1..... 16

The Committee does not recommend any change in the present arrangements whereby the Queensland Crime Commission and not the Criminal Justice Commission has jurisdiction in respect of the investigation of major and organised crime..... 16

RECOMMENDATION 2..... 18

The Committee recommends that staff of private correctional centres be brought under the jurisdiction of the Criminal Justice Commission. The CJC must be adequately resourced for this extension of its functions..... 18

RECOMMENDATION 3..... 19

The Committee recommends that the next Parliamentary Committee give consideration to the complex issue of the extent to which if any, private bodies exercising public functions and the jurisdiction of the Criminal Justice Commission should be extended to cover such bodies. 19

RECOMMENDATION 4..... 24

The Committee recommends that its successor Committee monitor the effectiveness of the recent changes in the structure and processes of the Official Misconduct Division including the Complaints Section. 24

RECOMMENDATION 5..... 37

The Committee recommends that the CJC continue with its present policy of gradually devolving responsibility to the Queensland Police Service for the handling of complaints against police officers, with the CJC always to retain an oversight role. 37

RECOMMENDATION 6..... 37

The Committee further recommends that such oversight role is to continue to include the power to audit, monitor, review, or take over, as appropriate, any investigation being conducted by the Queensland Police Service..... 37

RECOMMENDATION 7..... 37

The Committee further recommends that the CJC should continue to make the initial assessment of how a complaint is to be dealt with. 37

RECOMMENDATION 8..... 44

The Committee, having particular regard to the very high degree of public interest in the timely resolution of allegations of misconduct, recommends that its successor Committee closely monitor the performance of the Criminal Justice Commission in relation to the time taken to finalise investigation of complaints..... 44

RECOMMENDATION 9..... 46

The Committee recommends that the CJC revise its practice in relation to the taping of telephone conversations with members of the public..... 46

RECOMMENDATION 10..... 46

The Committee further recommends that such conversations not be taped by CJC officers without first proactively disclosing the fact of taping to the other party..... 46

RECOMMENDATION 11..... 64

The Committee, subject to the continued existence of the office of Parliamentary Criminal Justice Commissioner, recommends that: 64

<ul style="list-style-type: none"> • <i>There be legislative amendment that would enable units of public administration, in their discretion, to regard an officer who has been charged with breach of discipline, or who had been informed that such a charge was about to be laid, but has subsequently resigned or retired, as continuing to be a holder of an appointment within that unit of public administration, for the purpose of disciplinary proceedings only.</i>..... • <i>The jurisdiction of the Misconduct Tribunals be changed, so that:</i>..... (a) <i>A Misconduct Tribunal has jurisdiction to hear disciplinary charges against an officer, regardless of the officer's resignation or retirement from a unit of public administration;</i>..... (b) <i>If such a charge is found proved, the Tribunal could make a declaration that, had the person not resigned or retired, the person ought to have been dismissed or reduced in rank or salary level; and</i> (c) <i>There would be no power for a Misconduct Tribunal to impose a monetary penalty in such circumstances.</i>..... • <i>Section 32 of the Criminal Justice Act 1989 be amended to put it beyond doubt that the CJC can continue an investigation, notwithstanding the retirement or resignation of a subject officer.</i>..... 	64
RECOMMENDATION 12	74
<i>The Committee recommends that the CJC be given the power of telecommunications interception, with safeguards, as set out in the Committee's Report No. 50.</i>	74
RECOMMENDATION 13	74
<i>The Committee recommends that the CJC be able to operate its own interception facility, and receive appropriate funding to allow it to do so.</i>	74
RECOMMENDATION 14	74
<i>The Committee recommends that the CJC should, in relation to any telecommunications interception activities, wherever appropriate co-operate with other agencies to the fullest extent possible, with a view to the maximisation of efficiencies and the minimisation of costs.</i>	74
RECOMMENDATION 15	76
<i>The Committee recommends that the Criminal Justice Act be amended so as to allow the Chairperson of the CJC to apply to the Supreme Court for approval to use visual surveillance devices.</i>	76
RECOMMENDATION 16	76
<i>The Committee further recommends that the same oversight mechanisms and controls that presently operate in respect of the CJC's power to use listening devices, in particular the role of the Public Interest Monitor, also apply to any power of the CJC to use a visual surveillance device.</i>	76
RECOMMENDATION 17	82
<i>The Committee recommends that the Criminal Justice Commission continue to have a dedicated intelligence unit, independent of other agencies, and maintain its own intelligence database.</i>	82
RECOMMENDATION 18	84
<i>The Committee recommends that section 61 of the Crime Commission Act 1997 be amended to provide that a copy of the written advice required by section 61(3) in respect of the Criminal Justice Commission is to be provided to the Committee.</i>	84
RECOMMENDATION 19	86
<i>The Committee recommends that the next Parliamentary Criminal Justice Committee take steps to carefully monitor the effects of the recent structural changes on the efficient and effective discharge of the intelligence function of the Criminal Justice Commission.</i>	86
RECOMMENDATION 20	99

<i>The Committee recommends that the 'police research, reform and monitoring' function should primarily remain independent of the Queensland Police Service as envisaged by the Fitzgerald Report.....</i>	<i>99</i>
RECOMMENDATION 21.....	99
<i>The Committee further recommends that the 'police research, reform and monitoring' function should remain with the CJC.</i>	<i>99</i>
RECOMMENDATION 22.....	100
<i>The Committee recommends that in establishing collaborative research projects between the CJC and the Queensland Police Service, consideration only be given to appropriate areas of research.</i>	<i>100</i>
RECOMMENDATION 23.....	102
<i>The Committee endorses in principle the views of the Queensland Police Service Review Committee and the previous PCJC and recommends that the next Parliamentary Committee give consideration during its term to raising with the Minister for Police, the need for a further independent review of the QPS which might include:-</i>	<i>102</i>
<ul style="list-style-type: none"> • <i>the accountability of the QPS;</i> • <i>the adequacy of the CJC's annual report on the QPS;</i> • <i>the efficiency and effectiveness of efforts by the CJC to coordinate necessary reform of the QPS; and</i> • <i>the disciplinary regime (including the appeal process).</i> 	<i>102</i> <i>102</i> <i>102</i> <i>102</i>
RECOMMENDATION 24.....	105
<i>The Committee recommends that the CJC, as a matter of the highest priority, expedite the finalisation and publication of the long-awaited first edition of the Police Service Monitor.....</i>	<i>105</i>
RECOMMENDATION 25.....	105
<i>The Committee further recommends that the CJC publish the Police Service Monitor on an annual basis.</i>	<i>105</i>
RECOMMENDATION 26.....	109
<i>The Committee endorses Recommendation 2 made by the Queensland Police Service Review Committee and the previous PCJC and recommends that both the Police Service Administration Act and the Criminal Justice Act be amended to provide that the CJC should not exercise its power under section 23(h) of the Criminal Justice Act without first consulting with the Minister for Police, and that the Minister should not issue directions under section 4.6(2) of the Police Service Administration Act, without first consulting with the CJC.</i>	<i>109</i>
RECOMMENDATION 27.....	109
<i>The Committee endorses Recommendation 3 made by the Queensland Police Service Review Committee and the previous PCJC and recommends that all directions from both the Minister and the CJC should be reduced to writing and included in the register required by section 4.7 of the Police Service Administration Act.</i>	<i>109</i>
RECOMMENDATION 28.....	109
<i>The Committee endorses the recommendation made by the previous PCJC and recommends that the CJC immediately consult with the Minister for Police as to whether there is any reason why the CJC should not issue a directive to the Commissioner of Police pursuant to section 23(h) of the Act, in the terms of Recommendation 41 made by the Queensland Police Service Review Committee.</i>	<i>109</i>
RECOMMENDATION 29.....	111
<i>The Committee recommends that the CJC give priority to completion of the second development phase of its revised complaints database, COMPASS.</i>	<i>111</i>
RECOMMENDATION 30.....	118

The Committee recommends that the next Parliamentary Committee seek further information from the CJC as to the processes and procedures of peer review for qualitative evaluation of the CJC's research work and in other areas where peer review is utilised. 118

RECOMMENDATION 31..... 126

The Committee recommends that the responsibilities of the CJC as set out in section 23 of the Act should be amended to give explicit recognition to the CJC's corruption prevention function. 126

RECOMMENDATION 32..... 127

The Committee further recommends that an appropriate amendment for insertion into section 23 of the Act could be, 'taking measures to assist in the prevention of official misconduct in the public sector and raising the standards of integrity and conduct in units of public administration'. 127

RECOMMENDATION 33..... 151

The Committee recommends that the Government give consideration to a full review of whistleblower protection in Queensland and the Whistleblowers Protection Act including review of, but not limited to, the following issues:..... 151

- *the formal role of the CJC; 151*
- *the formal role of the Office of Public Service Merit and Equity or equivalent agency; 151*
- *the need for an oversight body to supervise the implementation and operation of the legislation within agencies; ... 151*
- *the need for an inter-agency committee, to include agencies such as the Department of the Premier and Cabinet, the Office of the Public Service Commissioner and Public Service Merit and Equity, the CJC, the Ombudsman, the Queensland Audit Office and the Queensland Police Service; 151*
- *the need for training and support for public sector managers and who should be responsible for coordinating and monitoring the provision of such training across the public sector; 151*
- *the need for legislative requirements for training and education of public sector employees and who should be responsible for coordinating and monitoring the provision of such training across the public sector; 151*
- *whether there should be formal liaison between the CJC and the Office of the Public Service Merit and Equity; 151*
- *whether it is sufficient that currently no agency appears to be monitoring on any regular basis what individual agencies are doing, identifying deficiencies, such as in training for managers, or formally reminding agencies of their obligations under the Whistleblowers Protection Act; 151*
- *what type of research needs to be done in this area - whether there is a need in Queensland for research similar to that carried out by the ICAC in NSW and who should carry out such research; 151*
- *whether statistics about numbers of whistleblowers and substantiation rates across the public sector and in individual agencies would be useful for identifying areas that are particularly susceptible to corruption problems; 151*
- *the need for an annual report to parliament and the type of information that should be included in such a report; and 151*
- *whether there should be a legislative requirement that a parliamentary committee review the operation of the Act, as in NSW. 151*

RECOMMENDATION 34..... 152

The Committee recommends that, in the interim, the CJC continue to liaise with the Office of Public Service Merit and Equity with a view to assisting the OPSME in the development of public sector wide coordination, monitoring, training, research and reporting of whistleblower protection matters. 152

RECOMMENDATION 35..... 160

The Committee recommends that the Witness Protection Division remain as a separate Division within the CJC, and that it continue to be staffed by police. 160

RECOMMENDATION 36..... 160

<i>The Committee recommends that, if it appears that the calibre of police officers seeking to serve with the division is diminishing, the division should liaise with the QPS to second officers.</i>	160
RECOMMENDATION 37	167
<i>The Committee recommends that the CJC report to the Committee at its bi-monthly meetings on any problems which arise in the operation of the Witness Protection Act 2000.</i>	167
RECOMMENDATION 38	167
<i>The Committee recommends that the new Committee monitor the operation of the Witness Protection Act 2000 and, after an appropriate time from its commencement, conduct a review into the operation of the legislation, and the revised policies and procedures of the Witness Protection Division, with particular regard to protection for third parties dealing with protectees.</i>	167
RECOMMENDATION 39	177
<i>The Committee recommends that the CJC retain in-house counsel in the form of the Office of General Counsel.</i>	177
RECOMMENDATION 40	182
<i>The Committee recommends that, in the absence of an alternative mechanism which allows the Parliamentary Commissioner to have direct, confidential and discreet access to CJC documents and materials, the Official Solicitor be the sole officer of the Office of General Counsel to answer Notices to Produce from the Parliamentary Commissioner, and that confidentiality must be maintained by this officer in relation to the Notice. This leaves the General Counsel able to provide appropriate advice to the Commission without the Parliamentary Commissioner losing any 'forensic advantage.'</i>	182
RECOMMENDATION 41	182
<i>The Committee further recommends that the next Parliamentary Committee further discuss with the CJC the issue of the provision of information to the Parliamentary Commissioner with a view to giving consideration to issuing, following consultation with the CJC and the Parliamentary Commissioner as to its terms, a protocol or guideline governing the provision of information to the Parliamentary Commissioner including the confidentiality of such requests and the appropriate role for the Office of General Counsel.</i>	182
RECOMMENDATION 42	184
<i>The Committee recommends that the Office of General Counsel be maintained as a separate unit within the CJC, answerable to the Chairperson.</i>	184
RECOMMENDATION 43	194
<i>The Committee recommends that the Act should be amended to provide that:</i>	194
<i>(a) contracts of employment for 'Directors' of the CJC should, in principle, be limited to a term of 5 years, subject to possible extension with the approval of the Committee;</i>	194
<i>(b) in considering any extension of a contract of employment for a Director, the CJC should be required to consult with the Committee;</i>	194
<i>(c) unless any proposed extension of a contract of employment is vetoed by a bi-partisan majority of the Committee, the extension of contract should be affirmed; and</i>	194
<i>(d) in considering an extension of a contract, the Committee be required to provide the officer with an opportunity to be heard.</i>	194
RECOMMENDATION 44	199
<i>The Committee recommends that the CJC give consideration in the future appointment of Media Managers to appointing a person from outside the profession of journalism, such as a person qualified in the marketing or public relations fields. ...</i>	199
RECOMMENDATION 45	205

<i>The Committee endorses the recommendation of the third PCJC and recommends that a requirement for regular strategic reviews of the CJC be inserted in the Criminal Justice Act requiring, amongst other things, that:</i>	205
• <i>such reviews be conducted at least every three years;</i>	205
• <i>the reviewer should be an appropriately qualified person (who has cleared the requisite security standard) appointed by the Governor in Council;</i>	205
• <i>the terms of reference for the review should be determined by the Governor in Council;</i>	206
• <i>before a person is appointed to conduct a review, the Minister must consult with a quorum of the CJC Commissioners about:</i>	206
• <i>the appointment of the reviewer; and</i>	206
• <i>the terms of reference for the review;</i>	206
• <i>before a person is appointed to conduct a review, the Minister must seek the approval of a majority of members of the PCJC, unanimously or by a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Assembly, about:</i>	206
• <i>the appointment of the reviewer; and</i>	206
• <i>the terms of reference for the review;</i>	206
• <i>the remuneration and other terms of appointment of a person appointed to conduct a review are to be determined by the Governor in Council. However, all costs of the review, including such remuneration, are to be borne by the CJC;</i>	206
• <i>for the purposes of conducting the review;</i>	206
• <i>the reviewer is to have all powers that an authorised auditor has for the purposes of auditing an entity; and</i>	206
• <i>the CJC is to grant the reviewer full and free access to the CJC's premises, staff, processes and procedures;</i>	206
<i>However, nothing in this provision is to allow the reviewer access to any operational material held by the CJC;</i>	206
• <i>the PCJC should have the power to give directions to the reviewer in respect of any matter which the Committee considers relevant to the review and to call for the reviewer to give interim reports on the review as and when the PCJC determines fit;</i>	206
• <i>on completion of the review the reviewer must provide a written report to the Minister, PCJC and CJC Commissioners;</i>	206
• <i>if the reviewer proposes to include in the report a matter which in his/her opinion is a matter of significance, the reviewer must –</i>	206
(a) <i>give the Minister, the PCJC and the Chairperson of the CJC written advice of the matter; and</i>	206
(b) <i>include in the advice a statement to the effect that comments on the matter may be made in writing to the person within</i>	206
-	
(i) <i>21 days after the advice is received; or</i>	206
(ii) <i>such longer period as is specified in the advice.</i>	206
<i>Further, if such matter is included in the review report, any comments so given to the reviewer must also be included in the report;</i>	207
• <i>the Minister must lay the reviewer's report before the Legislative Assembly within three sitting days after the Minister receives the report; and</i>	207
• <i>the PCJC should review the reviewer's report and in its discretion determine to table its own report in Parliament on the review, including in its report any recommendations and comments which it sees fit and stipulating who should implement those recommendations.</i>	207

RECOMMENDATION 46..... 210

The Committee endorses the recommendation of the previous Committee and recommends that the Criminal Justice Act be amended to require that the Minister consult with the Committee in developing the budget of the CJC for each financial year.

210

RECOMMENDATION 47 262

The Committee strongly recommends the continued operation of the office of Parliamentary Criminal Justice Commissioner.
262

RECOMMENDATION 48.....265

The Committee recommends that, notwithstanding that the acting Parliamentary Commissioner has been appointed for two days per week, the next Committee give consideration to inviting submissions from the acting Parliamentary Commissioner as to his experience in the position and his views on whether two days per week is appropriate given the workload of the position. 265

RECOMMENDATION 49.....270

The Committee recommends that the present scheme under which the Committee is the primary accountability mechanism of the CJC with the Parliamentary Commissioner acting as an investigatory arm of the Committee is the most appropriate model and should be retained...... 270

RECOMMENDATION 50.....270

The Committee further recommends that the Parliamentary Commissioner should not have an own motion power to investigate complaints and concerns on his/her own initiative...... 270

RECOMMENDATION 51.....271

The Committee recommends that the next Parliamentary Committee issue a standing reference to the Parliamentary Commissioner to conduct an ongoing operational audit of current operations of the CJC to ensure, in broad terms, that the CJC is complying with the terms of the Act, that the CJC's policies and procedures are being followed, and that the rights of persons affected by the CJC are not infringed...... 271

RECOMMENDATION 52.....274

The Committee recommends that the next Parliamentary Committee request the Acting Parliamentary Commissioner to expedite the finalisation of the current audit of the records of the CJC...... 274

RECOMMENDATION 53.....274

The Committee recommends that the next Parliamentary Committee issue a standing reference to the Parliamentary Commissioner to conduct an ongoing operational audit of current operations of the CJC to ensure, in broad terms, that the CJC is complying with the terms of the Act, that the CJC's policies and procedures are being followed, and that the rights of persons affected by the CJC are not infringed...... 274

RECOMMENDATION 54.....276

The Committee recommends that the scheme for the annual review by the Parliamentary Commissioner of intelligence data in the possession of the QCC, the police service and the CJC, be changed by amending: 276

(i) section 60(c) of the Crime Commission Act to insert after the words 'management committee' the words, 'the Commissioner of Police, the Chairperson of the CJC, and the Parliamentary Committee'; and..... 276

(ii) section 61(3)(b) of the Crime Commission Act to delete the phrase 'give to the management committee' and substituting 'give the advice to the management committee, the Commissioner of Police, the Chairperson of the CJC and the Parliamentary Committee'.

RECOMMENDATION 55.....279

The Committee recommends that the Act not be amended to insert a provision in similar terms to section 18 of the Parliamentary Commissioner Act 1974 (Qld) to specifically provide that the Parliamentary Commissioner not be required to hold a hearing in every matter...... 279

RECOMMENDATION 56.....284

The Committee recommends that 'confidentiality' of the Parliamentary Commissioner's Notices must be strictly observed by the officers of the CJC responsible for providing the relevant documents in response to any Notice to Produce...... 284

RECOMMENDATION 57 284

The Committee further recommends that the next Parliamentary Committee give consideration to issuing an appropriate protocol or guideline governing the provision of information from the CJC to the Parliamentary Commissioner. 284

RECOMMENDATION 58 284

The Committee further recommends that any such protocol or guideline include an appropriate mechanism to safeguard the confidentiality of such requests for information from the Parliamentary Commissioner and the appropriate role for the CJC's Office of General Counsel and Principal Information Officer. 284

RECOMMENDATION 59 286

The Committee recommends that section 118Y of the Act be clarified to make it clear that an individual officer or officers of the CJC is not permitted to claim privilege which the CJC is statutorily prevented from claiming. 286

RECOMMENDATION 60 288

The Committee recommends that section 118R of the Act should be clarified to confirm that in reporting back to the Committee in relation to the results of carrying out investigations referred by the Committee, the Parliamentary Commissioner be permitted to advise the Committee, in appropriate cases, that the allegations and evidence raise a reasonable suspicion of misconduct, official misconduct or criminal offences. 288

RECOMMENDATION 61 291

The Committee recommends that the next Parliamentary Committee give consideration to finalising, in consultation with the Parliamentary Commissioner and the CJC, a set of protocols or guidelines governing: 291

- (a) the issue of procedural fairness to the CJC, its officers and others; 291*
- (b) reports by the Parliamentary Commissioner to the Committee; and 291*
- (c) the tabling of reports of the Parliamentary Commissioner in the Parliament. 291*

RECOMMENDATION 62 298

The Committee recommends that the next Parliamentary Committee give further consideration to the issues of the appropriate amenability of the Parliamentary Commissioner to judicial review and the appropriate protections for the Parliamentary Commissioner following the outcome of the current court action by the CJC. 298

RECOMMENDATION 63 299

The Committee recommends that section 118 of the Act should be amended to clarify that in conducting its three year review of the CJC, the Committee may conduct a review of the office of the Parliamentary Commissioner. 299

RECOMMENDATION 64 301

The Committee recommends that the Act be amended to provide that the Parliamentary Commissioner be required to provide the Committee with an annual report of the activities of the office which the Committee will table with the Committee's annual report to the Parliament. 301

RECOMMENDATION 65 302

The Committee recommends that section 2 of the Act be amended by inserting the following object: 302

- (vi) to take measures directed to the prevention of official misconduct in units of public administration. 302*

RECOMMENDATION 66 303

The Committee recommends that section 3A of the Act be amended by including in the definition of 'unit of public administration' privately managed correctional services. 303

RECOMMENDATION 67 305

The Committee recommends that section 3A(f) and (g) of the Act be amended to focus the CJC's jurisdiction on entities which 'collect revenues or raise funds under the authority of an Act or are funded or assisted by the State' or declared by regulation to be a unit of public administration. 305

RECOMMENDATION 68..... 305

The Committee further recommends that the drafting of any amendment should be carefully considered so as to ensure that the extended definition: 305

(i) is not too widely drafted; and 305

(ii) does not make the CJC a 'unit of public administration'. 305

RECOMMENDATION 69..... 308

The Committee endorses the views of its two predecessor Committees and recommends that the functions of the CJC should not be amended by removing from section 21 of the Act, the word 'continually'. 308

RECOMMENDATION 70..... 312

The Committee recommends that section 22 of the Act be amended to clarify that it applies to individual officers of the Commission as those officers are described in section 67 of the Act. 312

RECOMMENDATION 71..... 316

The Committee recommends that the responsibilities of the CJC as detailed in subsection (b) of section 23 of the Act should NOT be amended to alter the current obligation upon the CJC, to one of merely exercising a discretion to decide to undertake those responsibilities or not. 316

RECOMMENDATION 72..... 317

The Committee recommends that the responsibilities of the CJC as detailed in section 23(c) of the Act should NOT be amended to alter the current obligation upon the CJC, to one of merely exercising a discretion to decide to undertake those responsibilities or not. 317

RECOMMENDATION 73..... 317

The Committee recommends that the responsibilities of the CJC as detailed in section 23(e) of the Act should NOT be amended to alter the current obligation upon the CJC, to one of merely exercising a discretion to decide to undertake those responsibilities or not. 317

RECOMMENDATION 74..... 318

The Committee recommends that the responsibilities of the CJC as detailed in section 23(g) of the Act be reworded as follows: 318

'(g) undertaking research into, monitoring, and reporting on, matters relating to the incidence and prevention of crime; the methods of operation of the police service; the powers available to police and the use of those powers the recruitment, training and career progression of police officers and staff members of the Police Service; and reform of the Police Service; to ensure that the most appropriate and effective policing methods are being used' 318

RECOMMENDATION 75..... 318

The Committee endorses Recommendation 2 made by the Queensland Police Service Review Committee and the previous PCJC and recommends that section 23(h) of the Criminal Justice 318

Act be amended to provide that the CJC should not exercise its power under that section without first consulting with the Minister for Police..... 319

RECOMMENDATION 76..... 319

The Committee recommends that the responsibilities of the CJC as set out in section 23 of the Act should be amended to give explicit recognition to the CJC's corruption prevention function. 319

RECOMMENDATION 77	319
<i>The Committee further recommends that an appropriate amendment for insertion into section 23 of the Act could be ‘taking measures to assist in the prevention of official misconduct</i>	<i>319</i>
<i>in the public sector and raising the standards of integrity and conduct in units of public administration’</i>	<i>320</i>
RECOMMENDATION 78	321
<i>The Committee recommends that the Act be amended to provide for a mechanism to enable the CJC to table a ‘report of the Commission’ pursuant to section 26 of the Act during the period the Legislative Assembly is dissolved.....</i>	<i>321</i>
RECOMMENDATION 79	321
<i>The Committee further recommends that the provision be in similar terms to Standing Order 202 of the Standing Rules and Orders of the Legislative Assembly.</i>	<i>321</i>
RECOMMENDATION 80	322
<i>The Committee recommends that section 26(9) NOT be amended.....</i>	<i>322</i>
RECOMMENDATION 81	322
<i>The Committee further recommends that the next Parliamentary Committee give serious consideration to issuing, following appropriate consultation with the CJC, an appropriate</i>	<i>322</i>
<i>guideline to the CJC pursuant to section 118A of the Act, to require the CJC, prior to tabling a report pursuant to section 26, to provide the Committee, on an embargoed basis, with an advance copy of its report intended for tabling (other than a report on a hearing conducted by the CJC under section 25).</i>	<i>323</i>
RECOMMENDATION 82	323
<i>The Committee recommends that section 27 of the Act be amended to clarify that it is not intended to apply to research reports by the CJC that include recommendations about court procedures or processes so that research reports about the courts can be published without the authority of the courts.....</i>	<i>323</i>
RECOMMENDATION 83	325
<i>The Committee recommends that section 27(4) of the Act be amended to clarify that the confidentiality provisions of section 132 apply to information that has been the subject of a confidential report to the Committee under section 27(2) even after the CJC notifies that ‘strict confidentiality’ no longer needs to be maintained.</i>	<i>325</i>
RECOMMENDATION 84	328
<i>The Committee recommends that section 29 be amended to clarify the apparent drafting anomaly by deleting from section 29(3)(d)(ii) the words ‘by persons holding appointments in other units of public administration;</i>	<i>328</i>
RECOMMENDATION 85	330
<i>The Committee recommends that the Act should not be amended by inserting a provision in similar terms to section 33 of the Crime Commission Act.</i>	<i>330</i>
RECOMMENDATION 86	331
<i>The Committee recommends that section 33 of the Act be amended by.....</i>	<i>331</i>
<i>(a) including the Committee as one of several entities to which the CJC must report; and.....</i>	<i>331</i>
<i>(b) correcting a minor drafting error in section 33(7) of the Act by omitting ‘subsection (2)(a)’ and inserting ‘subsection (2)(a)’.331</i>	
RECOMMENDATION 87	332

The Committee recommends that section 39(1) of the Act be amended to provide that it is the duty of the CJC Chairperson to sign a charge of official misconduct against a prescribed person rather than the Commission as an entity. 332

RECOMMENDATION 88..... 332

The Committee recommends that section 39(2) of the Act be amended to provide generally that all persons who hold appointments in units of public administration are ‘prescribed persons’ for the purposes of the Act. 332

RECOMMENDATION 89..... 336

The Committee recommends that the Act should be amended to provide that:..... 336

(a) *contracts of employment for ‘Directors’ of the CJC should, in principle, be limited to a term of 5 years, subject to possible extension with the approval of the Committee; 336*

(b) *in considering any extension of a contract of employment for a Director, the CJC should be required to consult with the Committee; 336*

(c) *unless any proposed extension of a contract of employment is vetoed by a bi-partisan majority of the Committee, the extension of contract should be affirmed; and 336*

(d) *in considering an extension of a contract, the Committee be required to provide the officer with an opportunity to be heard. 336*

RECOMMENDATION 90..... 339

The Committee recommends that section 69 of the Act should be amended to provide the CJC with the ability to require that confidentiality be maintained by a person to whom a notice is served, provided that:..... 339

(i) *the obligation to maintain confidentiality should be specified in the notice authorised by the Chairperson (or Commissioner who is a lawyer), and; 339*

(ii) *the obligation to maintain confidentiality should only apply to wilful disclosure and should otherwise provide for an exception in cases where the person determines to seek legal advice in respect of the notice or in complying with the notice, the person considers it prudent to raise the matter with his or her superior; 339*

(iii) *the obligation to maintain confidentiality should cease on a defined event, either at the conclusion of the investigation or prosecution, or otherwise come to an end after the expiration of a defined period of time; and 339*

(iv) *the appropriate penalty which should attach to a breach of confidentiality in respect of a notice issued pursuant to section 69 of the Act should be 85 penalty units or imprisonment for one year (the same as that provided for in sections 132, 133, and 138 of the Act). 339*

RECOMMENDATION 91..... 339

The Committee further recommends that sections 70 and 71 of the Act should be similarly amended to provide the CJC with the ability to require that confidentiality be maintained by an occupier of premises or a person acting on behalf of an occupier (section 70) or a person found on premises (section 71), provided that: 339

(i) *in appropriate cases, a requirement that a person maintain confidentiality should be authorised by the Chairperson and specified in the authority of the Chairperson (section 70) or specified in the warrant issued by the judge (section 71); 339*

(ii) *the obligation to maintain confidentiality should only apply to wilful disclosure and should otherwise provide for an exception in cases where the person determines to seek legal advice in respect of the warrant notice or in complying with the notice, the person considers it prudent to raise the matter with his or her superior; 339*

(iii) *the obligation to maintain confidentiality should cease on a defined event (for example, at the conclusion of the investigation/prosecution) or otherwise come to an end after the expiration of a defined period of time; and 339*

(iv) *the appropriate penalty which should attach to a breach of confidentiality pursuant to sections 70 or 71 should be 85 penalty units or imprisonment for one year (the same as that provided for in sections 132, 133, and 138). 339*

RECOMMENDATION 92..... 340

The Committee recommends that section 71 of the Act be amended to clarify that the judge of the Supreme Court to whom an application is made may actually issue the warrant to enter, search and seize rather than being limited to ordering that a warrant be issued. 340

RECOMMENDATION 93..... 341

The Committee recommends that the CJC should have the power to install video surveillance and tracking devices, consistent with powers granted to the Queensland Police Service under the Police Powers and Responsibilities Act 2000 and the Queensland Crime Commission under the Crime Commission Act 1997. 341

RECOMMENDATION 94..... 345

The Committee further recommends that: 345

- (i) the ambit of section 82 (presently limited to listening devices) should be widened to cover all surveillance devices; 345*
- (ii) the term ‘surveillance device’ should be defined in identical terms to that definition in the Crime Commission Act 1997 and the Police Powers and Responsibilities Act 2000; and 345*
- (iii) consequential amendments should be made to section 84B (Responsibilities of the Public Interest Monitor) and section 123 (Applications pursuant to section 82) in relation to the existing references to listening devices..... 345*

RECOMMENDATION 95..... 345

The Committee further recommends that Parliamentary Counsel be asked to redraft the provisions of the Criminal Justice Act governing the use of surveillance warrants by the CJC in an attempt to achieve uniformity, as far as is possible, between the Criminal Justice Act and the Police Powers and Responsibilities Act 2000 and the Crime Commission Act 1997, consistent with the different tasks and functions each relevant agency undertakes. 345

RECOMMENDATION 96..... 346

The Committee recommends that section 83(2) of the Act should be redrafted in an attempt to achieve uniformity with section 146 of the Police Powers and Responsibilities Act 2000 and section 85 of the Crime Commission Act 1997. 346

RECOMMENDATION 97..... 346

The Committee further recommends that 83(3) of the Act should be retained. 346

RECOMMENDATION 98..... 348

The Committee recommends that on balance, in the absence of any practical evidence to the contrary as to specific cases where problems had occurred, the Committee does not consider that there is sufficient reason to warrant the amendment of section 90 to return the law to the original position that CJC hearings be prima facie open unless the CJC orders otherwise. 348

RECOMMENDATION 99..... 350

The Committee recommends that the term ‘finalised’ in section 98(4) be defined as follows: 350

‘An investigation is considered ‘finalised’ when all investigative steps have been finalised and the CJC has determined either to charge a person or advised the person that he/she will not be charged.’ 350

RECOMMENDATION 100..... 350

The Committee further recommends that the Act be amended to provide for a scheme by which the Committee may ask the Parliamentary Commissioner to: 350

- (i) determine whether the confidential or otherwise ‘sensitive’ information withheld from the Committee by the CJC pursuant to section 27 of the Act (or otherwise) should appropriately be forwarded to the Committee; or 350*
- (ii) examine the confidential or otherwise ‘sensitive’ information withheld from the Committee by the CJC and to report to the Committee, in a sanitised manner, in respect of the concerns held by the Committee. 350*

RECOMMENDATION 101..... 351

The Committee endorses, in principle, the recommendation of the third PCJC that section 116A be amended to enable, following a dissolution of the House and subsequent election, another member to sit as a temporary member of the PCJC until Parliament formally appoints a new Committee. 351

RECOMMENDATION 102 353

*The Committee recommends that consistent with the Committee's recommendation that the Queensland Crime Commission (QCC) be accountable to the Parliament through the Committee, section 118(1)(a) of the Act should be amended to provide the Committee with the additional function to 'monitor and review the level of cooperation between the CJC and the QCC'.
353*

RECOMMENDATION 103 353

*The Committee further recommends that a corresponding function be inserted in section 59A of the Crime Commission Act.
353*

RECOMMENDATION 104 353

The Committee further recommends that section 60 of the Crime Commission Act should be amended to provide that the Parliamentary Commissioner, in addition to advising the relevant agencies, also advise the Committee as to the results of her annual review of the intelligence data held by the QCC, CJC, and the QPS. 353

RECOMMENDATION 105 355

The Committee recommends that section 118 of the Act should be amended to clarify that in conducting its three year review of the CJC, the Committee may conduct a review of the office of the Parliamentary Commissioner. 355

RECOMMENDATION 106 357

The Committee recommends that section 118R of the Act should be clarified to confirm that in reporting back to the Committee in relation to the results of carrying out investigations referred by the Committee, the Parliamentary Commissioner be permitted to advise the Committee, in appropriate cases, that the allegations and evidence raise a reasonable suspicion of misconduct, official misconduct or criminal offences. 357

RECOMMENDATION 107 358

The Committee recommends that section 118Y of the Act be clarified to make it clear that an individual officer or officers of the CJC is not permitted to claim privilege which the CJC is statutorily prevented from claiming. 358

RECOMMENDATION 108 359

The Committee recommends that section 118Z of the Act should be amended to refocus the ambit of the section on 'hearings' conducted by the Parliamentary Commissioner rather than the broader term of 'investigations' which is presently used. .. 359

RECOMMENDATION 109 360

The Committee recommends that the next Parliamentary Committee give further consideration to the issues of the appropriate amenability of the Parliamentary Commissioner to judicial review and the appropriate protections for the Parliamentary Commissioner following the outcome of the current court action by the CJC. 360

RECOMMENDATION 110 364

The Committee recommends that section 132 of the Act NOT be amended (as submitted by the CJC) to provide protection from prosecution to CJC Commissioners, officers and persons engaged by the CJC under section 66 of the Act, in the case of the disclosure of information that is publicly available. 364

RECOMMENDATION 111 364

The Committee further recommends that section 132 of the Act be amended by extending the current limitation period (currently one year) to two years from the time when the matter of complaint arose and that provision be made for extension of that two year period in appropriate cases, with the consent of the Director of Public Prosecutions. 364

RECOMMENDATION 112 365

The Committee recommends that sections 132A, 132B and 132C of the Act should be deleted. 365

RECOMMENDATION 113 366

The Committee recommends that section 137 of the Act should be amended by providing that a false complaint made to the QPS, and forwarded by the QPS to the CJC for its investigation, which is investigated by the CJC, is for the purposes of the section deemed to be a false complaint to the CJC, whether or not the person who made the complaint intended it to be forwarded to the CJC. 366

The Committee further recommends that the amended section also cover 'false information' 366

RECOMMENDATION 114 366

The Committee further recommends that section 137 of the Act should also be extended to cover false complaints made to persons (other than police) who hold an office in a 'unit of public administration' or persons who 'constitute a corporate entity that is a unit of public administration' under section 37 of the Act. 366

RECOMMENDATION 115 367

The Committee recommends that section 139A of the Act be amended to enable the Commission to delegate to the Chairperson the following additional powers:..... 367

(a) section 29(3) [the power to issue directions and orders to the OMD] 367

(b) section 33(8) [the power to give directions to the director of the OMD] 367

(c) section 38(9) and (10) [the power to give orders and directions about complaint matters] 367

(d) section 58(2) [the power to approve the dissemination of intelligence information] 367

(e) section 64(1) and (3) [the power to employ staff, and approve contractual officers or classes of officers] 367

(f) section 65 [the power to arrange for the secondment of public service officers] 367

RECOMMENDATION 116 369

The Committee endorses the recommendation of the previous Committee and recommends that section 147 of the Criminal Justice Act be amended to require that the Minister consult with the Committee in developing the budget of the CJC for each financial year. 369

RECOMMENDATION 117 370

The Committee endorses the recommendation of the third PCJC and recommends that a new section 147C be inserted into the Criminal Justice Act requiring regular strategic reviews of the CJC including the requirements that, amongst other things:370

• *such reviews be conducted at least every three years;..... 370*

• *the reviewer should be an appropriately qualified person (who has cleared the requisite security standard) appointed by the Governor in Council;..... 370*

• *the terms of reference for the review should be determined by the Governor in Council; 370*

• *before a person is appointed to conduct a review, the Minister must consult with a quorum of the CJC Commissioners about: 370*

• *the appointment of the reviewer; and..... 370*

• *the terms of reference for the review; 370*

• *before a person is appointed to conduct a review, the Minister must seek the approval of a majority of members of the PCJC, unanimously or by a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Assembly, about: 371*

• *the appointment of the reviewer; and..... 371*

• *the terms of reference for the review; 371*

• *the remuneration and other terms of appointment of a person appointed to conduct a review are to be determined by the Governor in Council. However, all costs of the review, including such remuneration, are to be borne by the CJC;..... 371*

• *for the purposes of conducting the review: 371*

- the reviewer is to have all powers that an authorised auditor has for the purposes of auditing an entity; and 371
 - the CJC is to grant the reviewer full and free access to the CJC's premises, staff, processes and procedures; 371
- However, nothing in this provision is to allow the reviewer access to any operational material held by the CJC; 371
- the PCJC should have the power to give directions to the reviewer in respect of any matter which the Committee considers relevant to the review and to call for the reviewer to give interim reports on the review as and when the PCJC determines fit; 371
 - on completion of the review the reviewer must provide a written report to the Minister, PCJC and CJC Commissioners; 371
 - if the reviewer proposes to include in the report a matter which in his/her opinion is a matter of significance, the reviewer must – 371
- (c) give the Minister, the PCJC and the Chairperson of the CJC written advice of the matter; and 371
- (d) include in the advice a statement to the effect that comments on the matter may be made in writing to the person within - 371
- (iii) 21 days after the advice is received; or 371
- (iv) such longer period as is specified in the advice 371
- Further, if such matter is included in the review report, any comments so given to the reviewer must also be included in the report; 371
- the Minister must lay the reviewer's report before the Legislative Assembly within three sitting days after the Minister receives the report; and 371
 - the PCJC should review the reviewer's report and in its discretion determine to table its own report in Parliament on the review, including in its report any recommendations and comments which it sees fit and stipulating who should implement those recommendations. 372

RECOMMENDATION 118 373

The Committee recommends that, consistent with the Committee's recommendation that the Queensland Crime Commission (QCC) be accountable to the Parliament through the Committee, as the CJC is, section 16 of the Crime Commission Act be amended to require consultation with the Committee in the appointment of the Crime Commissioner and Crime Commission members. 373

RECOMMENDATION 119 373

The Committee further recommends that the scheme for the selection of the Crime Commissioner and Crime Commission members replicate the scheme in section 11 of the Criminal Justice Act in respect of the appointment of CJC Commissioners, namely that the Crime Commissioner or a Crime Commission member may only be appointed if the appointment is supported by a bi-partisan majority of the Committee. 373

RECOMMENDATION 120 374

The Committee recommends that section 39 of the Crime Commission Act should be amended to restructure the Management Committee by removing the Chairman and Deputy Chairman of the Parliamentary Criminal Justice Committee. 374

RECOMMENDATION 121 375

The Committee recommends that the accountability and governance arrangements for the QCC be restructured and simplified by making the QCC directly accountable to the Parliament through the Committee. 375

RECOMMENDATION 122 376

The Committee further recommends that in the interests of consistency of approach in terms of the accountability of the CJC and the QCC, that the Committee's role in respect of the QCC mirror those functions presently undertaken by the Committee and the powers presently available to the Committee in respect of the CJC. 376

RECOMMENDATION 123 377

The Committee recommends that the Crime Commission Act be amended by inserting a provision to provide that the Committee is to receive and consider complaints or concerns against officers of the QCC...... 377

RECOMMENDATION 124..... 377

The Committee further recommends that section 60 of the Crime Commission Act be amended to require the Parliamentary Commissioner, in addition to advising the QCC, to report to the Committee in respect of the results of the annual review of the intelligence data held by the QCC, CJC, and the QPS. 377

RECOMMENDATION 125..... 378

The Committee recommends that consistent with the Committee's recommendation that the Queensland Crime Commission (QCC) be accountable to the Parliament through the Committee, that the Crime Commission Act be amended by inserting a new provision replicating sections 118A-D of the Criminal Justice Act, to provide for a scheme pursuant to which the Committee can formulate policies and issue general guidelines to the QCC that must be adhered to by the QCC. 378

RECOMMENDATION 126..... 379

The Committee recommends that the scheme for the annual review by the Parliamentary Commissioner of intelligence data in the possession of the QCC, the police service and the CJC be changed by amending: 379

(i) section 60(c) of the Crime Commission Act to insert after the words 'management committee' the words, 'the Commissioner of Police, the Chairperson of the CJC, and the Parliamentary Committee'; and..... 379

(ii) section 61(3)(b) of the Crime Commission Act to delete the phrase 'give to the management committee' and substituting 'give the advice to the management committee, the Commissioner of Police, the Chairperson of the CJC and the Parliamentary Committee'. 380

RECOMMENDATION 127..... 380

The Committee recommends that, consistent with the recommendation made by the Committee under section 118ZA of the Criminal Justice Act, the next Parliamentary Committee give further consideration to the issues of the appropriate amenability of the Parliamentary Commissioner to judicial review and the appropriate protections for the Parliamentary Commissioner following the outcome of the current court action by the CJC...... 380

RECOMMENDATION 128..... 381

The Committee endorses Recommendation 2 made by the Queensland Police Service Review Committee and the previous PCJC and recommends that the Police Service Administration Act be amended to provide that the Minister should not issue directions under section 4.6(2) of the Police Service Administration Act, without first consulting with the CJC. 381

RECOMMENDATION 129..... 381

The Committee endorses Recommendation 3 made by the Queensland Police Service Review Committee and the previous PCJC and recommends that all directions from both the Minister (and the CJC) should be reduced to writing and included in the register required by section 4.7 of the Police Service Administration Act. 381

RECOMMENDATION 130..... 382

THE COMMITTEE RECOMMENDS THAT THE NECESSARY QUEENSLAND LEGISLATION BE INTRODUCED, SO THAT THE CJC CAN BE GIVEN THE POWER OF TELECOMMUNICATIONS INTERCEPTION, WITH SAFEGUARDS, AS SET OUT IN THE COMMITTEE'S REPORT NO. 50. 382

RECOMMENDATION 131..... 382

The Committee, subject to the continued existence of the office of Parliamentary Criminal Justice Commissioner, recommends that: 382

- *There be legislative amendment that would enable units of public administration, in their discretion, to regard an officer who has been charged with breach of discipline, or who had been informed that such a charge was about to be laid, but has subsequently resigned or retired, as continuing to be a holder of an appointment within that unit of public administration, for the purpose of disciplinary proceedings only.*..... 382

- *The jurisdiction of the Misconduct Tribunals be changed, so that: 382*
- *a Misconduct Tribunal has jurisdiction to hear disciplinary charges against an officer, regardless of the officer's resignation or retirement from a unit of public administration; 382*
- *if such a charge is found proved, the Tribunal could make a declaration that, had the person not resigned or retired, the person ought to have been dismissed or reduced in rank or salary level; and 382*
- *there would be no power for a Misconduct Tribunal to impose a monetary penalty in such circumstances; 382*
- *Section 32 of the Criminal Justice Act 1989 be amended to put it beyond doubt that the CJC can continue an investigation, notwithstanding the retirement or resignation of a subject officer. 382*

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21. APPENDICES

21.1 Appendix 1 - Submissions

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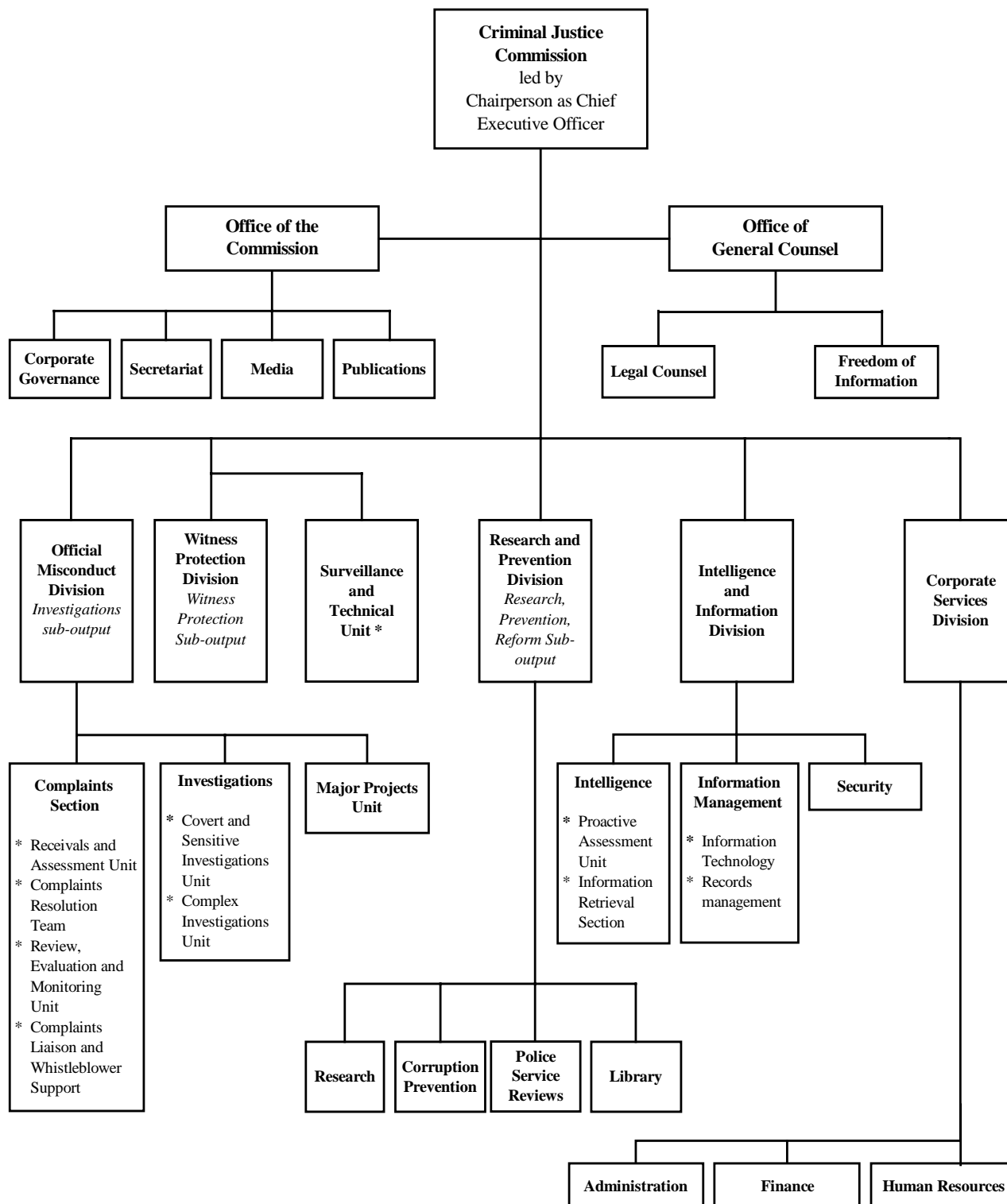
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21.2 Appendix 2: Organisational structure of the CJC

Organisational structure of the CJC



21.3 Appendix 3: CJC Strategic Plan 2000-2004

Strategic Plan

2000–2004

July 2000

A major issue in criminal justice is what controls there should be over the administration, and to whom the controls should be entrusted ...

The administration of criminal justice should be independent of Executive controls. It is an apolitical, vital public function. However, it should be open to public review and accountable to Parliament ...

A new entity is recommended, to be known as the Criminal Justice Commission (CJC). It will permanently be charged with monitoring, reviewing, coordinating and initiating reform of the administration of criminal justice. It will also fulfil those criminal justice functions not appropriately carried out by the police or other agencies.

Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct 1989, Report of a Commission of Inquiry Pursuant to Orders in Council (Chairperson: G E Fitzgerald QC), Goprint, Brisbane.

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Foreword

The Criminal Justice Commission enters its second decade of operations with the confidence that its presence is now recognised and accepted by the broader community as significantly contributing to high ethical standards and behaviour in the Queensland Public Sector.

During 1999–2000, the Commission undertook a major internal project which reviewed the CJC's business processes and organisation, taking account of the Strategic Plan 1999–2002.

This project was undertaken by an internal working party, the Strategic Implementation Group (SIG), which comprised three Commission officers. The results of the project have been endorsed by the Commission and implementation has commenced.

The 2000–2004 Strategic Plan represents a finetuning of the Commission strategies to accord with the findings of SIG.

In addition, the Performance Measures have been re-examined in an attempt to focus on outcomes rather than outputs. The continuing focus on performance measures will ensure that the Commission remains accountable and will assist in the pursuit of excellence within the organisation.

The CJC is acutely aware of its important role in overseeing the conduct of the Queensland Public Sector and the goals and strategies contained in this plan have been developed with that responsibility in mind.

The 2000–2004 Strategic Plan will support the evolution of the Commission and assist it to help create an environment in the State that is conducive to a better place to live and do business.

BRENDAN BUTLER SC
Chairperson

Overview of the CJC

Mission

To promote integrity in the Queensland Public Sector and an effective, fair and accessible criminal justice system.

Values

Justice

Integrity

Accountability

Operating principles

The CJC:

- acts in the public interest
- operates within the high standards of its Code of Conduct
- is committed to fairness, impartiality and accountability
- operates using modern management practices, including Equal Employment Opportunity principles, that ensure administrative and operational integrity
- places emphasis on an integrated approach, utilising investigation, research, intelligence and prevention.

Purpose

To contribute to the achievement of an accessible system of justice and administrative services which protects rights and engenders community confidence in the rule of law.

Role

The CJC is a permanent, independent body established by the *Criminal Justice Act 1989* in the wake of the Fitzgerald Commission of Inquiry.

The role of the CJC is to:

- investigate misconduct in the police service and official misconduct in all units of the public sector
- monitor the performance of, and oversight the reform of, the police service
- conduct research of the administration and the resourcing of criminal justice systems and report on the effectiveness of criminal justice administration
- develop and maintain a database of intelligence information to support activities concerning misconduct and official misconduct matters
- undertake activities, by way of education or liaison, with law enforcement agencies, units of the public sector and the community generally to reduce instances of corruption and official misconduct
- provide protection to witnesses and their associates who require it.
- Meeting the community's expectation of the CJC's role
- Communicating to all Queenslanders, the importance of the CJC function
- Implementation of recent organisational reviews

- Ensuring the CJC has the skills and resources necessary to meet future challenges
- Meeting the CJC's objectives in a time of high demand on the public purse.

Over the last six months, the Commission has significantly increased its exposure through the marketing of its services and successes. This will continue for the life of this plan as part of the organisation's marketing strategy.

A structured implementation process has been adopted to ensure that the results of recent organisational reviews are in place as soon as possible. It is accepted, however, that implementation will extend into the early stages of this plan.

The Commission has recently implemented a more rigorous approach to budget management to maximise the use of Government funding and resources. In the same vein, a move back to public service conditions for the Commission's employees will assist in attracting skilled staff from the greater public sector.

Future directions

The CJC undertook a major review of its strategic directions during 1999 and the goals and strategies reflect the outcome of that process.

The key outcome objectives for the duration of this plan are:

- adopt a more proactive approach to Commission business
- become more client focused in complaints handling
- look for multiple outcomes, including:
 - prosecutions
 - prevention
 - education
- better control over the cost of achieving outcomes
- a greater ownership of decision making.

Output and reporting structure

The CJC is a statutory authority constituted by the *Criminal Justice Act 1989* which is accountable to the Parliament through the Parliamentary Criminal Justice Committee. Being responsible to Parliament rather than Executive Government provides a level of independence for the CJC whilst it remains accountable to the people of Queensland.

The Parliamentary Criminal Justice Committee is responsible for monitoring and reviewing the discharge of the functions of the CJC and to report to Parliament where appropriate. In undertaking its functions, the Committee may utilise the services of the Parliamentary Criminal Justice Commissioner to conduct audits or investigate matters or issues relating to the activities of the CJC or its employees.

Government priority

Safer and more supportive communities

Output title

Criminal Justice Commission

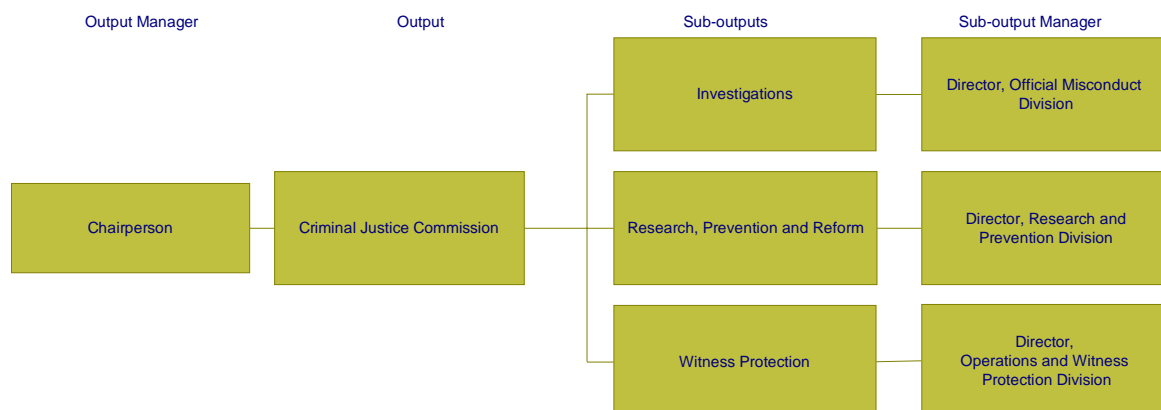
Description

The establishment and maintenance of high level of community confidence and trust in the systems of criminal justice and in the accountability and integrity of the public sector of Queensland through activities related to Investigations, Research, Prevention and Reform, and Witness Protection.

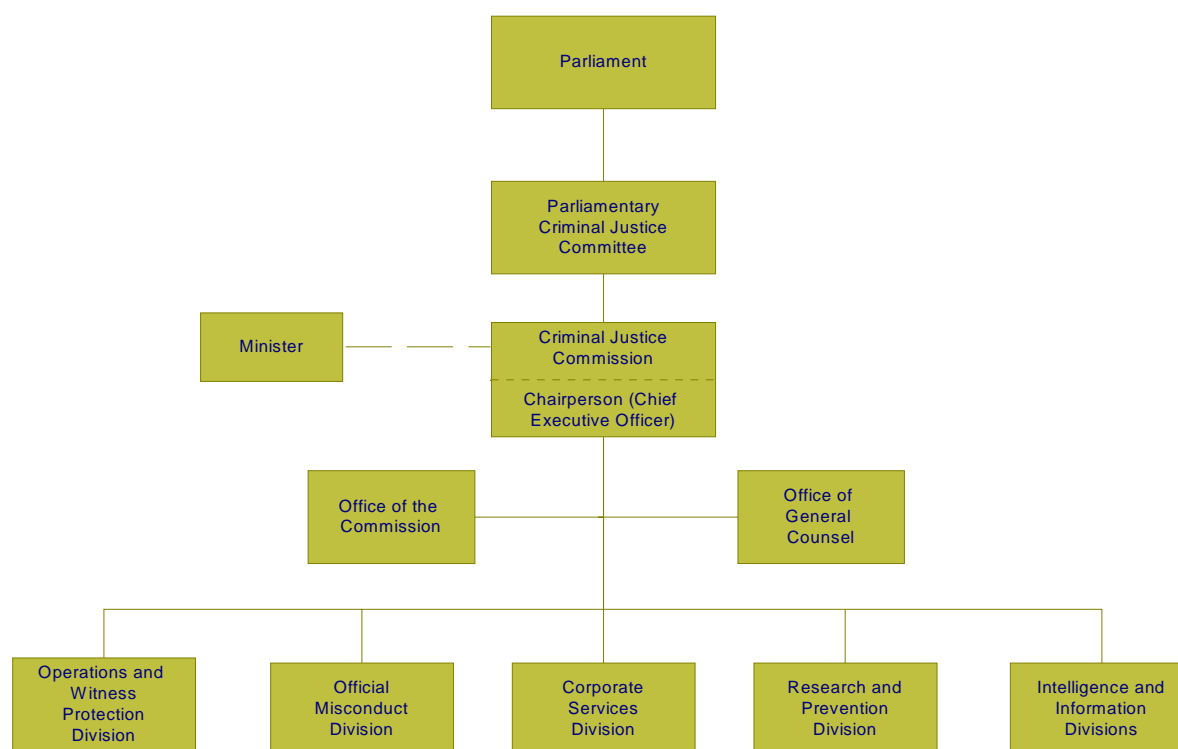
Sub-outputs

- Investigations
- Research, Prevention and Reform
- Witness Protection

Output structure



Reporting structure and organisation of the CJC



Goals and strategies

Corporate goals

1. To reduce the incidence of official misconduct in the public sector and official misconduct and misconduct in the Queensland Police Service.
2. To contribute to the effectiveness and integrity of the criminal justice system.
3. To increase public awareness of the role and services of the Commission.
4. To promote excellence in management of the Commission.
5. To provide a safe, fair, productive and satisfying workplace.

Corporate strategies

Goal 1: To reduce the incidence of official misconduct in the public sector and official misconduct and misconduct in the Queensland Police Service.

Targeting

- Implement the recently developed strategies to:
 - change the way work is selected by the Commission
 - proactively investigate corruption, misconduct and official misconduct.
- Identify and respond effectively to emerging corruption risks.
- Resource a strategic intelligence function for the Commission.
- Analyse complaints, intelligence and research data to identify priority areas for prevention initiatives.
- Implement the findings of the review of the operation of multidisciplinary teams in the Commission.

Resolution of complaints

- Develop ways of resolving complaints constructively other than through a full investigation.

Quality assurance

- Audit the capability of public sector agencies to handle and investigate complaints.

Preventive action

- Ensure a greater proportion of investigations result in prevention recommendations and advice.
- Increase contact with senior administrators in order to identify causes and possible remedies of official misconduct.
- Adopt a strategic and selective approach to systems reviews.
- Apply a strategic and selective approach to the provision of training assistance to public sector agencies.
- Pursue collaborative opportunities with external agencies to integrate corruption prevention initiatives within other programs.
- Review, analyse and report on major issues relevant to the prevention of misconduct and official misconduct.

Goal 2: To contribute to the effectiveness and integrity of the criminal justice system.

Outreach

- Select key research priorities in consultation with external stakeholders and other areas of the Commission, for agreement by the Commissioners.
- Monitor audience reaction and use of research findings.
- Follow up on previous Commission inquiries and research to monitor and increase implementation of recommendations.
- Increase contact with the legal profession, the judiciary and other stakeholders to identify shortcomings with operation of the criminal justice system.
- Pursue opportunities for collaborative projects with the QPS, other areas of the criminal justice system and academic research centres.

Support systems

- Increase marketing of the witness protection service.
- Provide independent and specialist witness protection advice to the Chairperson.
- Broaden the strategies to protect and support persons giving assistance to law enforcement agencies.

Goal 3: To increase public awareness of the role and services of the Commission.

Marketing and promotion

- Develop a comprehensive marketing strategy, targeting key audiences.
- Publicise recommendations and investigation outcomes to deter misconduct and promote reform.
- Promote the Commission based on specific outcomes and achievements.
- Promote understanding of the complaints process among the public, public sector and the QPS, acknowledging multicultural issues.

Service delivery

- Adopt and implement a client service focus in all interactions.
- Develop and implement service standards for interactions with all sections of the community.
- Re-conceptualise the use of the web page and Internet technology as both a point of contact and for service delivery.

Goal 4: To promote excellence in management of the Commission.

Coordination

- Implement the recommendations of the report of the Strategic Implementation Group.
- Monitor the effectiveness of the Corporate Support Service Agreement.
- Consult and involve corporate support at an early stage of project development.
- Institute a practice of the Commissioners setting a budget of time or money for major investigations or projects.

Leadership

- Continue to strengthen the role of the Commissioners in policy and resourcing decisions to drive directions of the Commission.
- Increase delegations to line managers and staff.
- Develop and implement a leadership program.
- Monitor the effectiveness of the new performance management system.
- Continue to support the Commission Consultative Committee.
- Improve two-way communication within the Commission.

Evaluation

- Implement performance indicators across all levels of the CJC.

Management practices

- Develop effective project management processes.
- Initiate quality management processes.
- Review and broaden selection processes at the Criminal Justice Commission.
- Provide education and training on the new code of conduct and associated ethical issues.

Information management

- Develop a strategic information management plan.

Goal 5: To provide a safe, fair, productive and satisfying workplace.

Work environment

- Develop a reward and recognition system.
- Provide ongoing support to the Workplace Health and Safety Committee.
- Foster a supportive work environment through:
 - social club
 - peer support officers
 - equity officers
 - sexual harassment officers.

Training

- Provide an ongoing induction program.
- Continuously enhance access to training and development for all staff.

Equal Employment Opportunity

- Develop a new EEO management plan and continue to support the EEO Committee.
- Provide skills training on EEO and multicultural issues for directors and staff.

Enterprise bargaining

- Align remuneration rates to the public service through the enterprise bargaining process.

Performance measures

Sub-output 1: Investigations

Success	Performance measure	Basis for comparison
Quantity <i>Reasonable level of output</i>	<ul style="list-style-type: none"> number of matters assessed number of complaints investigations conducted number of reviews of investigations conducted by other agencies number of proactive investigations conducted 	trends over time trends over time trends over time trends over time
Quality <i>High stakeholder satisfaction</i> <i>Reasonable substantiation levels</i> <i>Reasonable level of prevention initiatives</i>	<ul style="list-style-type: none"> percentage of complainants satisfied with CJC service delivery qualitative evaluation using surveys of CEOs and liaison officers substantiation rate of CJC complaints investigations proportion of investigations in which a preventive recommendation is made 	trends over time trends over time trends over time trends over time
Time <i>Timely resolution of complaints</i>	<i>Complaints</i> <ul style="list-style-type: none"> median time taken to assess matters median time taken to finalise complaint investigations percentage and number of complaints completed within: <ul style="list-style-type: none"> 3 months 6 months 9 months 12 months more than 12 months median time taken to undertake reviews 	trends over time trends over time trends over time trends over time

<p>Cost</p> <p><i>Reasonable costs</i></p>	<ul style="list-style-type: none"> • average cost per matter assessed • average annual cost per complaint investigation 	<p>trends over time</p> <p>trends over time</p>
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Sub-output 2: Research, Prevention and Reform

Success	Performance measure	Basis for comparison
Quantity <i>Reasonable level of contributions</i>	<ul style="list-style-type: none"> number of projects number/proportion of investigations where prevention input provided 	trends over time trends over time
Quality <i>High stakeholder satisfaction</i> <i>Work results in change</i> <i>Positive assessment by independent experts</i>	<ul style="list-style-type: none"> qualitative evaluation using surveys of CEOs and liaison officers documented case studies of research and prevention work contributing to changes in policies and/or practices qualitative evaluation using peer review 	trends over time trends over time trends over time
Time <i>Priority projects are on time</i>	<ul style="list-style-type: none"> percentage and number of projects completed that are delivered by the required time, categories according to priority 	trends over time
Cost <i>Reasonable costs</i>	<ul style="list-style-type: none"> cost of the sub-output 	trends over time

Sub-output 3: Witness Protection

Success	Performance measure	Basis for comparison
Quantity <i>All persons who qualify for and accept witness protection are protected</i>	<ul style="list-style-type: none"> number of persons who apply for protection number of persons who decline an offer of protection number of persons who are admitted to the Witness Protection Program 	trends over time trends over time trends over time
Quality <i>All persons admitted to the program are safely protected</i> <i>A reasonable number of witnesses give evidence in court</i> <i>High program integrity</i>	<ul style="list-style-type: none"> percentage and number of persons admitted to the Witness Protection Program whose safety is preserved percentage and number of witnesses who have court commitments and meet those commitments qualitative evaluation using annual feedback from client agencies 	target 100% trends over time trends over time
Time <i>Timely assessments</i> <i>Timely witness protection</i> <i>Duration of protection</i>	<ul style="list-style-type: none"> percentage and number of threat assessments completed with eight weeks average time taken to place identified witness in interim protection number of persons under protection for: 0-3 months 3-12 months 12 months over 12 months 	trends over time trends over time trends over time
Cost <i>Reasonable costs</i>	<ul style="list-style-type: none"> average annual cost per operation 	trends over time