CRIMINAL JUSTICE COMMITTEE

MEMBERS PRESENT: **Mr P. T. LUCAS, MP** (Chairperson)
Mr J. J. HEGARTY, MP
Hon. V. P. LESTER, MP
Mr R. J. QUINN, MP
Ms K. L. STRUTHERS, MP
Mr G. J. WILSON, MP

STAFF PRESENT: **Mr D. K. GROTH** (Research Director)
Mr S. FINNEMORE (Senior Research Officer)
Ms S. LIM (Senior Research Officer)

THREE YEARLY REVIEW OF CRIMINAL JUSTICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Thursday, 14 December 2000
Brisbane

APPEARANCES

The Committee commenced at 9.02 a.m.

The CHAIRMAN: Good morning and welcome. I am pleased to declare open this public hearing of the Parliamentary Criminal Justice Committee into the Committee's three-yearly review of the Criminal Justice Commission.

The Parliamentary Criminal Justice Committee is a bipartisan committee of the Queensland Parliament. One of the primary functions of the Committee, as set out in section 118(1)(a) of the Act, is "to monitor and review the discharge of the functions of the Criminal Justice Commission".

More specifically, this hearing is held pursuant to the provisions of section 118(1)(f) of the Criminal Justice Act 1989 which requires the Committee near to the expiry of three years from its appointment: one, to review the activities of the commission during such three years; and two, 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.

These hearings follow a number of actions taken by the Committee. In mid May this year, 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-year review of the CJC. On 26 May 2000, the Committee advertised in the Courier-Mail newspaper calling for submissions in relation to this review. 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" calling for further written submissions from interested individuals and organisations. The Committee gave careful consideration to each and every submission received by the Committee and that consideration will be ongoing.

On 8 December 2000, by resolution pursuant to the Parliamentary Papers Act, 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 a few submissions which were tabled, one or more excerpts from those submissions were excised as falling into one or more of the following categories: one, irrelevant to the Committee's review pursuant to section 118(1)(f) of the Criminal Justice Act 1989 which requires the Committee to review the activities of the commission during such three-year period and to report to the Legislative Assembly and to the Minister as to the further action that should be taken in relation to this Act or the functions, powers and operations of the Commission; two, confidential and/or not suitable for public tabling; or three, more appropriately dealt with as a complaint to the Committee; or four, has previously been processed as a complaint by the Committee and been finalised.

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 its review. The Committee would like to particularly acknowledge the assistance of Mr Butler, 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 its operations 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 2000, a supplementary submission in relation to the Committee's issues paper on dealing with complaints against police and a further detailed response to several of the key submissions received by the Committee.

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.

The Committee is determined to take evidence at public hearings only from officers of the CJC and from representatives of various community and professional organisations. The Committee made this determination in view of two major factors. First, if individual members of the community had been permitted to make representation, the hearings could have proceeded

for an indeterminable period. If the Committee had permitted some individuals to give evidence, then it would have been difficult to refuse others. The Committee wished to avoid a situation where it was perceived to be favouring any particular member of the community. The purpose of these hearings is 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 proceedings over the next two days will take the following form: each invitee will have an opportunity to elaborate upon any written submissions they have made to the Committee. There will be an opportunity for those representatives to answer questions put by members of the Committee.

The public hearings will commence with representatives of the CJC. Firstly, the Committee will hear from the CJC Chairperson, Mr Brendan Butler, SC, and the available part-time commissioners of the CJC: Ms Sally Goold, Mr Ray Rinaudo and Associate Professor Margaret Steinberg. The Committee will then hear from the senior officers of the CJC: Mr Graham Brighton, Executive Director, Corporate Services Division and Office of the Commission; Mr David Bevan, Director, Official Misconduct Division; Ms Helen Couper, Deputy Director, Complaint Services, and Chief Officer, Complaints; Mr Paul Roger, Director, Intelligence and Information Division; Dr David Brereton, Director, Research and Prevention Division; Assistant Commissioner Andrew Kidcaff, Director, Witness Protection Division; and Ms Theresa Hamilton, General Counsel.

The Committee will also hear from Commissioner Bob Atkinson, Commissioner of Police, Queensland Police Service and Assistant Commissioner John McDonnell, Ethical Standards Command, Queensland Police Service; Mr Richard Perry, Public Interest Monitor; Mr Tim Carmody, SC, Crime Commissioner; Mr Terry O'Gorman, Vice-President, Queensland Council for Civil Liberties and President, Australian Council for Civil Liberties; Mr Tony Glynn, SC, Vice-President, Bar Association of Queensland; Mr Gary Long, Presiding Member, Misconduct Tribunal; and Dr Tim Prenzler, Senior Lecturer, School of Criminology and Criminal Justice, Griffith University.

The Committee will also hear from representatives from the Department of Aboriginal and Torres Strait Islander Policy and Development; the Aboriginal and Torres Strait Islander Corporation for Legal Services; the Queensland Police Union of Employees; the Office of Public Sector Merit and Equity; the Queensland Public Sector Union; the Queensland Teachers' Union; the Youth Advocacy Centre and other members of the commission—part-time commissioners.

The hearings will conclude tomorrow with final submissions from the CJC Chairperson, Mr Butler, SC—an address in reply, as it were—who will have an opportunity to respond to any submissions made by the Committee's other invitees and to wrap up any additional issues which have not been covered. Finally, if any agency or interested member of the public wishes to forward a submission or a supplementary submission to the Committee, whether commenting on the evidence before the Committee or otherwise, they are most welcome and encouraged to do so.

It is worth noting that it is 10 years since the Criminal Justice Commission was established. The Committee believes that its three-year review is a timely opportunity to make a considered examination of the activities of the CJC and of the Criminal Justice Act.

I should add at this point in time that a number of other members of the Committee, in particular Mr Wilson and Mr Lester, will be attending today. They are delayed due to other business. Mr Quinn will also be available tomorrow.

I would now invite Mr Butler and other members of the Commission who are available today to come forward. The Committee notes an apology from Mrs Dina Browne AO who is presently overseas and not able to be with us today. Mr Butler?

CRIMINAL JUSTICE COMMISSION

Mr Butler: Thank you, Mr Chairman. The commission welcomes this process which, of course, is required under the relevant provisions of the Criminal Justice Act for a public process or review of the Criminal Justice Commission every three years. That is a process that we believe is constructive. It is an opportunity both for the CJC to publicly indicate and communicate its achievements and changes that have been made. It is also an opportunity, of course, for constructive suggestions and criticism of the organisation to be made. All of that is healthy and we will endeavour, as we have in our continuing relationship with the Committee, to be frank and open about the CJC, its role and address—without, I hope, any defensiveness—proposals for change and criticisms that might arise.

This is the 10th anniversary year of the CJC as you indicated, Mr Chairman. The CJC is a relatively small organisation, but I doubt that anyone would dispute that in those 10 years it has had a major impact on public life in Queensland. I believe that has been an impact for the better, an impact which has resulted in a public sector, both at the Public Service level and at the political level, which is committed to issues of integrity in this State.

We can point to examples. One example is the Police Service. The Police Service today is very much a different organisation than it was 10 years ago. The CJC cannot take all of the credit for those changes. Of course, a committed Police Commissioner and police management have been involved in those changes. But the CJC, both in terms of the impetus that its existence provides and also in terms of its proactive role in conjunction with the Police Service, has been part of that change. The same is true of local government where, 10 years ago, codes of conduct and other integrity-type mechanisms were unknown. Today we have a very different situation in local government. So, too, in the Public Service.

Of course, all of that does not mean that there are not further changes that can be made. The issue of maintaining an ethical public sector is one that continues. We know that if the mechanisms are removed, if the commitment is removed, then both individual agencies and also more generally systems of government can slip backwards fairly easily. That is why an organisation like the CJC that is committed to both assisting the units of the Public Sector in achieving best practice in areas of integrity and is also there to deal with cases of corruption that might arise is very necessary.

Of course, all of that cannot happen without criticism. An organisation like the CJC, by the very nature of the job it does under its statutory charter, will impact upon influential bodies and persons from time to time. It will as a result attract detractors from both sides of the argument. On the one hand, there will be those who say that the CJC is lacking in power and is ineffective. They are often people seeking a change within the system. On the other hand, there will be those who say that it is too powerful and unnecessary. Often those will be agencies with an interest in avoiding criticism—a natural bureaucratic response.

The CJC can best deal with criticism by itself being flexible, being prepared to change, to listen and to take guidance and advice where that is provided through the statutory mechanisms. It would be hard to imagine an organisation that has more accountability mechanisms. There are the commissioners themselves—and I will come back to that—and there is this Committee, of course, which has quite comprehensively monitored the activities of the CJC in the period since the last three-yearly review. The CJC provides comprehensive reports every two months. It responds to requests in relation to complaints. I believe that we have tried to be open and frank with the Committee and to assist in that oversight process.

There is the Parliamentary Commissioner, who at the request of this Committee is able to exercise all the powers of a commission of inquiry to deal with complaints or allegations against the CJC or its staff. There are all the other mechanisms that apply to law enforcement bodies and Government bodies, such as Auditor-General's audits and the role of the Public Interest Monitor.

I will just return to the role of the CJC commissioners as part of that accountability process. It is often forgotten, I think, that there are five persons who as commissioners are responsible for the actions of the CJC. We five people did not know each other before our appointments here. We are appointed from different walks of life. We are appointed after careful scrutiny by a multiparty parliamentary committee. I believe each of the commissioners has distinguished herself or himself in their particular walks of life and each of us is appointed for limited terms. The concept that five such people could somehow or other together form an

inappropriate or misguided approach which lacks in independence or lacks in commitment to due process, I think, would be very speculative indeed. I think that is a great safeguard in terms of the organisation—a safeguard in terms of its ability to be independent and to be fair and cautious in the approach it takes. That is the first step, I suppose, in that whole hierarchy of accountability mechanisms.

I said that the CJC needs to be flexible, prepared to listen and prepared to change. I believe that it has done that in the period since the last three-year review. Indeed, I think the CJC today is a rather different organisation than it was at that time. I have said elsewhere that the last review in 1998 marked a point at which the organisation was clearly primed for change. There had been a number of events prior to that, such as Mr Carter's groundbreaking inquiry into the involvement of police in drugs and the recommendations he made in respect of the investigative side of the CJC. There had been the Connolly/Ryan inquiry and the necessity that placed upon the CJC to look to itself and, of course, the last three-yearly review report by this Committee's predecessor. As well as that, there has been significant personnel change in the CJC itself. All but one of the commissioners has changed, including me, in the last two years, and there has been a change in the position of Director of the Official Misconduct Division and a change in the Chief Officer, Complaints position. As well as that, the CJC itself entered into a series of reviews to set about a process to change the way in which it looked at its role. There was an initial organisational review that occurred before I arrived a little over two years ago. Following that, there have been program evaluations carried out of specific areas, a specific process aided by a consultant in redrafting our strategic goals, an extensive review of the multidisciplinary teams carried out by a distinguished consultant in that area and a major internal review called the Strategic Implementation Group Review, which determined changes in direction in line with the changed strategic goals of the organisation. Also, there have been some structural changes in managerial responsibility—changes primarily, though, about how we would focus on what we should do. In short, it is about a focus on problems. It is about the CJC proactively identifying and responding to emerging problems, looking for patterns and trends in official misconduct. It is about the CJC using a broader range of strategies to address those problems. It is about the organisation becoming more flexible in order to be able to implement that approach, and it is about seeking out opportunities to work collaboratively with other agencies and community groups.

Overall, the CJC has worked to increasingly recognise its total jurisdiction and to place emphasis on that. Our focus has increasingly recognised our jurisdiction over the Public Service, local government and corrections in addition to the traditional emphasis on the police jurisdiction. In conjunction with all of that, we looked at ways to renew our systems to improve our effectiveness and efficiency.

No organisation is ever perfect and it is almost trite these days to say that continuous improvement and a commitment to change is what should mark good management. The CJC has those commitments and this Committee would be aware from the reports we have provided and from our annual reports of our achievements in those regards.

In respect of the various submissions that have been made by people who will be giving evidence at these hearings, many of those submissions were made without the benefit of our most recent annual report and also made without the benefit of the detailed understanding of the CJC's work and the way in which we have been changing that this Committee would have. I would ask the Committee, in considering statements made in some of the submissions, to bear that in mind and to view those statements in the light of your own knowledge of the CJC. To some extent, some of the submissions are addressing issues from the past rather than from the present.

There can be, I suppose, in these sorts of processes a temptation to look for recommendations for change and to look in particular for legislative change; in other words, there is a temptation to feel that one must tinker with the basic legislative structure in order to achieve improvements. As a lawyer, I tend to be a little sceptical of legislative change as the be-all and end-all of improving systems or organisations. Ultimately what matters are people and the way in which they go about what they do. Very often, more effective change can occur at the administrative level than by simply trying to change the legislative structure.

Hopefully, the Committee and the public of Queensland can be comfortable with the people who have been chosen to do the job for the CJC. As I said, the CJC, like any other organisation, is not perfect, but it has shown a real commitment in the period since the last report to make changes and to make them at an administratively within the existing legislative structure.

There are some limited legislative changes that the CJC has asked for over a long period of time. One of those has happened quite recently. The CJC has for some time pointed to the illogical nature of the publicly run prisons in Queensland falling under our jurisdiction but not the privately run but publicly owned prisons. The recent legislation has changed that situation, and I acknowledge the Government's recognition of that.

Our submission will be that, with the exception of a few limited matters where we have made recommendations for legislative change, by and large the present legislative structure is one that will be effective into the future—that is capable of providing the framework for an effective anti-corruption agency in this State and also for an effective, positive, preventive process that could be guided by that agency. I will not move on to specific issues at this stage but leave my general comments at that. There will be some opportunity to deal with specific matters as the day goes on.

The CHAIRMAN: We might take some questions now if that is okay. At page 9 of the commission's submission you discuss the issue of private entities exercising public functions. That is quite topical these days because, for example, once upon a time building certification was done only by local authorities. Clearly, they are within jurisdiction in terms of complaints. Now, for example, private certifiers exist for the purpose of certifying certain building approvals and those sorts of matters. Could you elaborate on the commission's view as to what extent you believe it may or may not be desirable for the commission to have jurisdiction over those sorts of functions? It would appear perhaps there is a question of degree. One could perhaps go all the way to bodies that are receiving public moneys. That might be the local darts club that gets a grant from the Gaming Machine Community Benefit Fund. One might argue that is an extreme view. What does the commission see as the various competing arguments in that area?

Mr Butler: 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 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.

The CHAIRMAN: Perhaps it is more a question for Dr Brereton, but one could imagine the enormous resources required if, for example, the CJC had to exercise jurisdiction over, say, a complaint about how a Gaming Machine Community Benefit Fund grant was spent by a local darts club or whatever. On the other hand, maybe there is some scope—I do not know how this would be for the jurisdiction—for ethics education and integrity education in relation to any bodies that receive Government funding. Perhaps that is something that ought be made available—that if you understand you are in receipt of Government funding then there are various rules with respect to conflict of interest. Maybe that is something we might ask Dr Brereton to comment on when he gives evidence.

Mr Butler: I think that is a good point. As the members of the Committee would realise, good corporate governance, which involves these integrity mechanisms, is really commonplace now for well-run private companies. One would expect the board of any efficient private company to have in place good corporate governance mechanisms—audit processes—to avoid conflicts of interest, codes of conduct and so on. Presently, under the Public Finance Standards there is an obligation on Government bodies in Queensland to have that range of mechanisms in place. There is obviously a scope for some extension by way of requiring Government service deliverers, for example, to perhaps have in place what would be good practice in the private sector in terms of integrity mechanisms and ensuring that those sorts of standards are met.

Ms STRUTHERS: It can be difficult to have appropriate performance measurement processes for a body like the CJC, but can you briefly describe what sorts of processes the CJC has in place and in your view how well you think you are stacking up against some of those measures?

Mr Butler: We have a range of performance measures which are structured to meet our requirements in terms of managing for outcomes—the budgetary requirements within the Queensland public sector. Those measures at the moment tend to be very much a matter of monitoring—I suppose you could call it—the workload levels, monitoring the productivity of the organisation in terms of the number of matters it deals with in certain areas, the time frames in which it deals with matters and so on.

One of the things that we have been doing, though, in the change process I spoke about is looking to see whether for an organisation such as ours those sorts of measures, which are necessary, are the only ones or the best ones that we might find. We have been talking to similar bodies Australiawide. This is an issue for bodies like ourselves, like the ICAC and the Police Integrity Commission in New South Wales, ASIC and other Commonwealth bodies in determining how regulatory bodies can measure their success, I suppose.

Ultimately, a body like the CJC is set up in order to minimise corruption and misconduct within the public sector, and success for us ultimately is in achieving that. Linking the work we do with those achievements, of course, sometimes can be methodologically difficult. We are looking for ways to do that and we have been looking for ways to try to indicate, as we now specify projects, what we see as successful outcomes for those projects. If one looks at our latest annual report you will see that we try to indicate what the measure of success will be for the particular operation or project that we are moving towards.

We have been looking for a much broader range of outcomes to reflect success. There is a bit of a tendency for regulatory bodies generally and for law enforcement bodies in particular to see prosecutorial action, for example, as the major mark of success. There is a lot of evidence to suggest that that might not be and should not be the sole measure of success. The CJC has been trying to achieve change within the public sector that furthers the integrity objectives through what it does. Prosecuting and convicting one person might have some deterrent effect, but will not necessarily mark a significant success in terms of achieving a change within the public sector. Ultimately, it is about avoiding problems in the future, not about constantly retrospectively trying to dole out retribution for things that have happened in the past. I suppose the answer to the question is: yes, we have in place a structure of performance indicators. Generally, we have been meeting those indicators but we are actively looking at a more comprehensive process of measuring and reporting on our success.

Ms STRUTHERS: Just in the area of timeliness, how are you going in regard to, say, the processing of complaints? Are you confident that the systems you put in place—I think you talked about these earlier in the year—are actually creating more timely processing and delivery of outcomes with regard to complaints?

Mr Butler: We have done a good deal of work in that area, as you indicated. The chief complaints officer will be able to give you more detail of that a little later. It is a matter of bringing together a number of different initiatives to impact on issues such as timeliness. Timeliness is a very significant issue for us. It is one that relates not only to our performance but also to associated bodies' performance. For example, many of the matters that are the subject of complaints to us are referred to, investigated and dealt with within the particular agency. It is particularly so within the QPS.

Often comment about the CJC's timeliness also relates to those parts of the period when the complainant's matter is in the hands of other agencies. Also where prosecution action is involved, of course, there is a period of time beyond which it is out of the CJC's hands. Naturally enough, people who are interested are still measuring the time until the final completion of any legal action. There are some things, therefore, we cannot control. But in the area where we can control, 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. I am sure that Ms Couper will give you much more detail on that.

The CHAIRMAN: One of the things raised in the Queensland Police Service submission at page 18 relates to the issue of tenure. The Police Service say—

> "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 (e.g. research). However, the work for the CJC itself, in particular the Carter Inquiry, highlights the need for tenure of officers in an agency to be reviewed."

Would you care to comment on what the commission's view would be in relation to that particular issue?

Mr Butler: Yes. 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 the 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. As I have said, in terms of the major investigative area, there has been a relatively recent change in the director.

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 the directors' 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. Looking at comparable organisations throughout Australia such as ICAC, PIC, the various Commonwealth bodies and so on, none of those have a situation where directors are not eligible for reappointment.

The CHAIRMAN: I now turn to the Office of the Parliamentary Criminal Justice Commissioner. The model that this Parliament has adopted, with the exception of the Connolly/Ryan material, is that references to the Parliamentary Criminal Justice Commissioner are made through this Committee. Would you care to comment on whether the commission is of the view that there is merit or otherwise in relation to direct complaints to the Parliamentary Criminal Justice Commissioner to the exclusion of the current method of making complaints through the parliamentary Committee?

Mr Butler: 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.

The CHAIRMAN: I have two questions about provisions of the Criminal Justice Act. Section 22 of the Act indicates that the commission must, at all times, act independently, impartially, fairly and in the public interest. I understand that in the past it has been argued that that relates to commissioners as distinct from commission staff. Could I have your view as to whether it would be appropriate to amend that section to indicate that the duty is on the commission and all of its staff?

Mr Butler: The nature of this particular section—

The CHAIRMAN: Sorry to interrupt you, but by presupposing that I am not suggesting that commission staff are not acting independently and impartially at the present time, but I ask the question in order to clarify a statutory obligation.

Mr Butler: It depends what you are proposing. 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 apply.

The CHAIRMAN: One other section that comes into play from time to time is section 26 of the Criminal Justice Act. In relation to that section, certain reports of the commission are required to go before the parliamentary Committee prior to their being published. A recent case in point was the report in relation to teachers, which was tabled just this week. It seems that that section is somewhat anomalous because it is an independent report of the commission even though it goes to the parliamentary Committee for approval. As I said, it is not really a report of the Committee. Would you care to indicate the commission's view in relation to the operation of that section and whether it is redundant or useful? Could it be refined in different ways?

Mr Butler: 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.

The CHAIRMAN: Thanks very much, Mr Butler.

Mr McMahon: I was wondering whether I could ask a question on behalf of Whistleblowers Australia through you, Mr Chairman.

The CHAIRMAN: No, I am sorry. There is no facility for public questions in this hearing. It is a hearing for members of the Committee, but any group is able to make a submission to the parliamentary Committee in relation to the matter.

Mr McMahon: Could the National Director of Whistleblowers Australia be added to your list of people giving evidence tomorrow?

The CHAIRMAN: No, the Committee determines who gives evidence. We will consider any request in due course at a Committee meeting.

Ms Hamilton: Could I just say firstly in relation to the work of the Office of General Counsel of the commission, this Committee is probably in a better position than most members of the community through its oversight role to judge some of the advice and work that is done by the Office of General 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 widely 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 that is done in-house.

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.

Because external counsel have to be briefed, say, for litigation matters, this can be quite costly, but the commission only takes these sorts of actions where there is no alternative. 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. 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.

As I said, these are the sorts of matters which most people get to hear about but, as this Committee would probably be aware, apart from the matters where external counsel are briefed there are many matters which the commission deals with on a daily basis where the Office of General Counsel provides legal advice. For the chairperson and the commissioners, these include considering proposed legislative amendments which will affect the commission and various reports which the commission has to consider. I am sure the Committee would appreciate that somebody in the chairperson's position is faced every day with decisions which have to be made which involve legal issues, operational issues and policy issues. It would be totally impractical, of course, for the chairperson to have to refer to external counsel every time he needed high-quality legal advice on the sorts of issues that arise on a day-to-day basis within the commission.

In relation to the Research and Prevention Division, the Office of General Counsel reviews proposed public reports by the research division to ensure that procedural fairness has been followed. Presentations are often given to various community bodies and they often wish to refer to case studies, so the Office of General Counsel is required to ensure that those sorts of presentations comply with the rules of procedural fairness also.

The Official Misconduct Division has a number of in-house lawyers and can normally deal on a day-to-day basis with most of the legal issues that arise. However, sometimes there are statutory interpretation problems or problems which may have an impact commission-wide on which the Office of General Counsel is briefed to provide in-house advice. Also, the OMD prepares a number of public reports on issues which require vetting for procedural fairness.

Recently the Intelligence Division received advice on matters to do with its policy and procedures in relation to policies on the storage and use of telecommunications information and informant management. In relation to corporate services, as you would expect there is a large range of matters involving contracts with outside bodies, staff matters, tax matters, privacy issues, personal injury liability—all sorts of matters that any large corporation is going to need advice on on a day-to-day basis.

Finally, the Witness Protection Division, which has no in-house lawyers itself, relies to a large extent on legal advice from the Office of General Counsel. It often requires urgent advice on matters which arise in respect of protected witnesses, involving perhaps Family Court disputes or subpoenas which are going to require it to give evidence about sensitive operational matters, and it needs advice about whether it can resist.

In addition to that role, the Office of General Counsel lately has played a leading role in the CJC's response to external oversight. That carries through all the way from the Connolly/Ryan inquiry to the Parliamentary Criminal Justice Commissioner, some liaison with this Committee on legal issues and of course the Supreme Court's role in reviewing the work of the commission. It also in the beginning involved legal issues which arose with respect to the role of the Public Interest Monitor, but lately a cooperative role has developed with the Public Interest Monitor which balances the accountability and the operational sensitivities.

Finally, 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.

They are the general areas in which the Office of General Counsel provides assistance. I finally just wanted to say something briefly about the recent Witness Protection Act. I know that this Committee and past committees have been very supportive of the commission's attempts to have introduced complementary witness protection legislation. The witness protection function is an important function of the commission because unless witnesses are protected the information to a body like the commission will dry up. It is very important that the witnesses be protected. It has been a problem area in the past, not so much at an operational level, where the level of protection provided has always been excellent—I do not believe there have been any complaints about that—but just in terms of the legal rights, determination of protection and the introduction of protection. Because all of that area was previously governed by only three sections in our Act, there had been a lot of uncertainties.

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. They are the matters I wished to bring to the Committee's attention, but I would be happy to answer any questions about the role of the Office of General Counsel.

Ms STRUTHERS: You have rightly covered some of the criticisms or concerns in relation to the Office of General Counsel and also some of the very positive work that is done through that area. The Committee is aware that there is currently a review of the Office of General Counsel. What sorts of issues is that review canvassing and picking up on and what sorts of results do you anticipate from the review?

Ms Hamilton: That might be a question better answered by Mr Butler.

Mr Butler: It is intended to review the role of the office, but that has not commenced as yet. Might I say this about the Office of General Counsel from my point of view: although there are lawyers within the CJC in the operational areas, particularly the Official Misconduct Division, and in terms of the operational issues they will give advice and consider matters there, it seems very important to me, as the person responsible for making legal decisions within the organisation very often, that I have access to advice which is independent and which is at arm's length from the operational area. That does not reflect upon the lawyers who are conducting operations, but it simply means that it is important, if the CJC is going to be able to properly consider and weigh these factors that we talked about in section 22—independence, fairness, public interest and so on—one can bring a separate and fresh view to these matters, particularly in relation to the exact legal limits of processes and so on.

So I regularly find myself utilising the Office of General Counsel—which is now structured in such a way that it has no direct involvement in the operational committees or operational involvement—to provide, if you like, independent advice to inform difficult decisions in these areas. Very often these decisions have to be made quite quickly—sometimes in a matter of minutes—because things are happening and that advice needs to be at hand and one needs to be confident that there is somebody who has a full understanding of all the legislation, all the processes to be able to provide it.

So I believe that the Office of General Counsel—and in particular the position of general counsel, that is, a very experienced and capable lawyer to provide that sort of advice—is another effective accountability mechanism within the CJC to ensure that what we are doing is fair and lawful and carefully done.

The CHAIRMAN: Next we are scheduled to hear from Mr Bevan and Ms Couper. Rather than have them for 15 minutes and then have a break, we might have our morning tea-break now and come back at 10.30 with them, if that is suitable.

Mr Butler: Yes, thank you.

The Committee adjourned at 10.15 a.m.

The Committee resumed at 10.30 a.m.

The CHAIRMAN: We might reconvene. Mr Butler, we will hear from Mr Bevan and Ms Couper.

Mr Bevan: The issue I have chosen to address the Committee on primarily relates to the commission's jurisdiction to investigate misconduct of Queensland Police Service officers. That, of course, is an issue which was raised in the Committee's issues paper titled "Dealing with complaints against the police".

I ask this question: what level of involvement should the CJC have in the investigation of misconduct by QPS officers? Should the CJC conduct the investigation? Should it actively monitor investigations conducted by QPS? Should it review the investigations conducted by QPS? Should it audit the investigations conducted by QPS, or should it do all of those things? Or alternatively, should it have no involvement at all?

The views expressed in the submissions received by the PCJC are largely polarised. On one side we have what could be termed the purist view of civilian oversight of law enforcement, namely, that the CJC should do all misconduct investigations. At the other extreme we have the QPS submission, supported by the submission of the Queensland Police Union of Employees, limiting the CJC's role to one of audit only.

If I can deal firstly with what I have termed the purist view, and that view was contained in the submissions of Dr Prenzler, the Aboriginal and Torres Strait Islanders Corporation for Legal Services, the Youth Advocacy Centre and the Department of Aboriginal and Torres Strait Islander Policy and Development submissions. In support of this view—that all investigations of police misconduct should be conducted by the CJC—Dr Prenzler argues—

> "Virtually every significant review or commission of inquiry in English-speaking countries in the last few years has condemned the record of police investigations, often in extremely strident language, and the pattern is increasingly repeated throughout the world."

Dr Prenzler cites numerous authorities in justification of this assertion, such as the report of the Australian Law Reform Commission in 1995 on the handling of complaints against the National Crime Authority and the Australian Federal Police. That report states at one part—

> "The record of internal units is generally inadequate in terms of the effective conduct of investigations, and there are extensive delays. A siege-like mentality of police officers and their own police culture means that there are strong risks that they will not be able to conduct thorough and fair investigations."

On the other hand we have the QPS view, supported by the submission of the Queensland Police Union of Employees, to the effect that all misconduct investigations conducted should be conducted by the QPS and the CJC should not have the power to conduct, monitor or review those investigations. The first point I would make is that this submission is based on a number of incorrect assumptions: firstly, that a neat distinction can be drawn between conduct classified as misconduct and conduct classified as official misconduct. The reality is that improper conduct by a QPS officer often fits both definitions.

The CHAIRMAN: Sorry to interrupt you, but for the sake of the record, you might give a very brief summary of what is the difference between misconduct and official misconduct.

Mr Bevan: In general terms, misconduct is defined in the Police Service Administration Act. It is improper conduct by a police officer, conduct which falls below the standard the community would expect of its police officers, or conduct which shows unfitness to be or to continue as a police officer. On the other hand, official misconduct is defined in the Criminal Justice Act as conduct involving dishonesty, lack of impartiality, a breach of trust or the improper dissemination of information. In each such case, to amount to official misconduct, the conduct must be serious enough to warrant dismissal or to be a criminal offence.

As I say, the reality is that the improper conduct of a QPS officer often fits both definitions. Furthermore, misconduct is not necessarily less serious than official misconduct. Criminal conduct may amount to misconduct or official misconduct or both, and I will demonstrate this with examples a little bit later on.

The second incorrect assumption in the QPS submission is that it cites a system of civilian oversight of the New South Wales Police Service as support for the QPS proposal. However, the New South Wales legislation does not give the New South Wales Police Service sole

responsibility for the investigation of misconduct. To the contrary. New South Wales has an extremely complex system for external review of all complaints of misconduct by police. The system involves the New South Wales Ombudsman and the Police Integrity Commission. Under that system, the Commissioner of the Police Service in New South Wales must refer copies of all complaints to the Ombudsman. He must also refer copies of all serious complaints—which are termed category 1 complaints—to the Police Integrity Commission. Category 1 complaints are classes of complaints which the Ombudsman and the chairman of the PIC agree belong in this category.

The commissioner must also provide to the Ombudsman copies of any finalised investigation report and advise whether the complainant was satisfied with the way the complaint was treated. The Ombudsman can review the investigation of any complaint conducted by the Police Service, require the Police Service to investigate a complaint, review inadequate decisions, report on any complaint where dissatisfied with the police investigation, monitor the investigation by having staff sitting in during interviews, directly investigate a complaint or investigate the Police Service's investigation of a complaint. The Police Integrity Commission, on the other hand, receives copies of all category 1 complaints from the Ombudsman and from the Police Service. The Police Integrity Commission can take over an investigation, can refer complaints to the Police Service for investigation and, in doing so, indicate that it will manage the investigation, monitor the investigation or audit the investigation. Furthermore, its jurisdiction is not restricted to category 1 complaints. It can also treat any other complaint—which are referred to as category 2 complaints—as a category 1 complaint and so investigate itself.

The third point I wish to make about the QPS submission is that it is internally inconsistent, in that on the one hand it acknowledges that the CJC should retain responsibility for dealing with serious corruption and official misconduct, but on the other hand it suggests that the CJC should not retain its own technical support unit. As the Committee is aware, technical support is needed primarily in the investigation of serious corruption and other criminal conduct constituting official misconduct in relation to the use of listening devices and other covert techniques. Any arrangement whereby the CJC had to ask the QPS for access to technical personnel would seriously compromise the CJC's independence and its operational effectiveness.

If I can move now to the CJC's view. In formulating its position, the CJC has been mindful of two conflicting considerations, neatly summarised in the report of His Honour Mr Justice Wood, where he said—

> "It cannot be gainsaid that virtually every Police Service in the world has had difficulty in establishing satisfactory or effective systems for internal investigations. It similarly cannot be gainsaid that every Police Service must retain a real role in policing itself. To pass the problem entirely to an external body is only to guarantee disaster. Absent responsibility, vigilance and pride in the job will collapse."

The CJC has worked hard to find the right balance between those two competing considerations. 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 trialled 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. This can best be understood by some examples.

If a complainant alleges that, when he was arrested, the officer intentionally overtightened the handcuffs, the commission would assess the matter and would consider that the officers are authorised by law to use force when executing an arrest but only if that force is reasonably necessary. Therefore, the complainant is alleging an unlawful assault. The conduct occurred allegedly in the course of the officer's official duties and could fall within the definition of official

misconduct. However, the conduct also falls within the definition of misconduct. The CJC currently refers such matters to the QPS and reviews the investigation report. In future—and this is subject to evaluation during Project Resolve—it is likely that the CJC will audit these matters and not review them individually.

If I can take a second example. A complainant says that, after he was arrested and handcuffed, an officer kicked him several times resulting in bruising to his ribs. Under Project Resolve, the commission would be likely to refer that matter to the QPS for investigation and ask to review the investigation report before the matter is finalised. However, if the officer is a commissioned officer or has been the subject of several similar complaints in the past, it may be that the commission would decide to investigate the matter itself.

A third example: a complainant says that he was systematically beaten by several off-duty police officers outside a nightclub, suffered broken ribs and a ruptured spleen. The CJC would conduct the investigation even though the offices were off duty and the conduct would not amount to official misconduct. The CJC must retain jurisdiction for police misconduct for these reasons: jurisdictions all over the Western World are moving towards civilian oversight of police misconduct processes.

The model proposed by the QPS would be unique in placing the largest body of improper conduct of police outside the effective scrutiny of the oversight body. I say "effective" because the QPS submits that the CJC's only involvement in these matters should be the least effective form of civilian oversight, namely, periodic audit.

Secondly, there is extensive research and authority, some of which is referred to in Dr Prenzler's submission and the report Dr Prenzler attached of the liberty group, supporting the view that the public will not have confidence in such a scheme as proposed by the QPS. This view is also supported by surveys conducted by the CJC in 1999 which showed that, while the public strongly supported the police investigating complaints of incivility, it was almost equally divided on who should investigate allegations of assaults by police officers. That split probably is consistent with the break-up of responsibility in relation to the seriousness of assault complaints, which I mentioned a little while ago. Thirdly, the survey showed that members of the public strongly supported the CJC investigating complaints of bribery.

The third point I would like to make is that some misconduct of police officers involves serious criminal conduct and should be investigated by an external body. 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 as I have referred to. That system, as I have said, is presently being trialled in Project Resolve.

Project Resolve is about effective management and effective management-based response to less serious complaints. This is not the first initiative which has been taken in this area. In 1993, the CJC and the QPS worked together to introduce informal resolution as a method for dealing with minor complaints. Subsequent surveys conducted by the CJC of the informal resolution process revealed that a significantly higher percentage of complainants whose complaints were dealt with by informal resolution were satisfied with the outcome than complainants whose complaints were formally investigated.

However, informal resolution has only four possible outcomes: firstly, an apology by or on behalf of the subject officer; secondly, an apology by the authorised member, that is, the member conducting the informal resolution who gives the apology on behalf of the service; thirdly, the complainant accepts the explanation that the officer's conduct was lawful and reasonable; and finally, the parties agree to disagree.

As can be seen from those outcomes, there is no outcome whereby the supervising officer takes appropriate managerial action against an officer who has transgressed. Although such action has been taken unofficially in instances, it is not a recorded outcome of the informal

resolution process and the informal resolution process does not actively encourage managerial action.

Operation Resolve is designed to encourage managers to take appropriate managerial action in relation to officers the subject of these less serious complaints. For example, an officer who is found not to have followed correct exhibit handling procedures may be required to undergo further training as part of performance management rather than simply being chastised for having done the wrong thing. Or an officer accused of using excessive force during an arrest might be required to attend a course on alternative dispute resolution techniques.

Secondly, Resolve is designed to encourage officers who conduct internal investigations to conduct those investigations speedily, without the requirement of recording the investigative process to the same extent as they would if it were a criminal investigation. As I have mentioned, as part of the project the CJC is employing the tiered approach to its oversight role which I have described. In each of the two regions where the trial has been conducted an inspector has been appointed as the regional complaints manager to promote the new approach and provide a consultation service to supervisors responsible for dealing with individual complaints.

Programs for officers whose complaints histories indicate problematic techniques in dealing with members of the public are being devised—for example, verbal judo. Verbal judo is a conflict management and avoidance technique based on clear verbal communication. As a situation escalates, the officer has a series of verbal options to consider before having to resort to the use of force. It is being used in other Police Services in Australia and overseas. 25 QPS officers have now attended a train the trainer course on verbal judo.

If I can summarise my submission on this point. The QPS already has a substantial role in the investigation of misconduct of officers. There is also considerable scope for it to increase its proactive role in this area. For example, the QPS could conduct random and targeted drug and alcohol testing of its officers and conduct integrity tests to identify officers who display racist attitudes in their dealings with members of the public. 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 police have responsibility for such investigations.

Mr Chairman, if there is time, there were two other issues I was going to touch on somewhat briefly.

The CHAIRMAN: It is your time, so you can either speak or answer questions.

Mr Bevan: This is further to a question which was asked—I am not sure by which member of the Committee—of the chairperson earlier. It relates to our enhanced focus on identifying problem areas or hot spots and developing an effective commission-wide response to those issues. Here I am referring mainly to examples which are provided in the commission's submission to the Committee.

First of all, at page 16 of our submission—and this is a submission received on 11 September—we refer to complaints about improper use of Internet and email facilities in State departments. In that instance, we investigated several serious cases which identified the problem to be escalating across the entire public sector. The Official Misconduct Division and the Research and Prevention Division brought the problem to the attention of the Department of Communication and Information and recommended a preventive program to address the problems. Corruption prevention officers then worked closely with the department to produce guidelines on the issue of communication and information devices and released a prevention pointer highlighting the issue. The issue was also highlighted in a session on Internet misuse with liaison officers.

A second example of this approach is provided at page 24. It is the example about prison industries. Once again, the Official Misconduct Division investigated serious corruption in a prison industry. The investigation highlighted corruption risks across the whole area of prison industries. Research and Prevention officers then conducted a risk review of prison industries and a public report was issued containing recommendations to address the identified risks.

The third example is Project Piper, which is at page 28 of our submission. An OMD investigation was conducted following an allegation that a cleaner at the Nerang Police Station was obtaining confidential police information and passing it to a private inquiry agent for whom he worked part-time. The investigation revealed that a large number of officers at the station were involved in unlawfully providing this information.

We were simultaneously investigating other complaints of computer misuse by police officers. The nature of the allegations indicated the problem may be widespread throughout the Police Service. All investigations were then brought under the umbrella of one project codenamed Project Piper.

The commission determined that it was in the public interest to investigate and highlight the problem by way of public hearings. The public hearings were composed of an investigative bracket and a bracket in which submissions were taken for proposals to address the problems identified. A public report was then prepared by the Official Misconduct Division and the Research and Prevention Division officers and this has now been issued. It contains details of the investigations and extensive recommendations for preventive measures to reduce the incidence of officers' improper use of official information.

The final point I would like to raise with the Committee this morning relates to the jurisdiction of the CJC over private prisons. At page 25 of our submission we submit that the CJC should be given this jurisdiction. We made a similar submission to the parliamentary committee at the last three-year review and the Committee in its report agreed that inmates' avenues of redress should not be dependent upon the correctional facility in which they are housed. The Committee recommended that the situation should be reviewed and that staff in private prisons should be brought within the CJC's jurisdiction and I quote "in the absence of insurmountable obstacles".

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.

The effect of these amendments is to significantly increase the commission's jurisdiction and operational responsibility. As the Committee is aware, the investigation of staff within correctional facilities is extremely difficult and resource intensive. Therefore, it is expected that the CJC will request an increase to its base funding for the next financial year to conduct its activity in this new area of responsibility.

I am happy to answer any questions of the Committee. There are some matters which Ms Couper would wish to bring to the attention of the Committee in respect of the Complaints Section as well.

The CHAIRMAN: We might ask Ms Couper to deliver her address in relation to the Complaints Section first and then we will take general questions. I should add that, Ms Hamilton, you are excused if you wish to be excused. If you do not wish to be excused, you can stay.

Ms Hamilton: Thank you, Mr Chairman.

Ms Couper: Thank you, Mr Chairman. I would like to speak about the Complaints Section's focus for the immediate future and then deal with the issue of timeliness.

Primarily, the Complaints Section is currently focusing on the enhancement of service delivery to our stakeholders, which includes not only complainants but subject officers, the Police Service, departments and agencies and the management and staff of workplaces which are impacted upon by commission investigations, amongst others. In that regard, significant progress is being made in the implementation of recommendations made by the commission's strategic implementation group. The positions in the restructured Complaints Section have now all been filled.

Early in the new year, the revised policy and procedures for the Complaints Section will be completed, as will a revised protocol between the commission and departments and agencies concerning the discipline regime. Most importantly, the cornerstone for the section's new strategies is the charter of service. In developing the charter of service there will be consultation with representatives of the various stakeholders, including, for example, departmental liaison officers and the Queensland Police Union of Employees. As indicated in our written submission, the charter will address issues, concerns and expectations of our stakeholders and clearly outline the obligations of the Complains Section. It will describe a process for dealing with grievances about decisions and actions of the Complaints Section. It will also identify various constructive ways for resolving complaints beyond the traditional investigative approach, for example, actively participating in facilitating or brokering the resolution of a concern between a complainant in an agency or department. It is intended that various parts of the charter will be repackaged in brochure form for distribution in various quarters, such as inclusion in letters to complainants and subject officers. It is also proposed to develop a brochure which specifically explains the jurisdiction of the commission and the parliamentary committee.

There are a number of other examples of strategies that we are implementing to enhance service delivery. It is proposed to also develop a protocol between the commission and local governments in consultation with the Local Government Association of Queensland and representatives of the councils, both councillors and staff. A number of strategies has been implemented to enhance our service delivery to Aboriginal and Torres Strait Islander complainants, and 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.

In the new year, 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.

Working in partnership with the Police Service and departments and public sector agencies and other stakeholders is essential to the achievement of the Complaints Section goals. Regular meetings are held between officers of the Complaints Section and CJC liaison officers from various departments to discuss current issues and operational concerns relevant to that particular department or agency. In recent months, the chairperson and the directors of the Official Misconduct Division and the Research and Prevention Division and I have been meeting with directors-general of various departments. The feedback from these meetings has been positive in relation to the service delivery from the Complaints Section. It is anticipated that in March of next year the Complaints Section, in conjunction with the Corruption Prevention Unit of the Research and Prevention Division, will launch a CJC handbook for the public sector. That handbook will include, amongst other things, copies of the charter of service, the revised protocol, complaints handling and investigative standards and publications such as answers to frequently asked questions and how to manage the impact of an investigation in the workplace.

The Complaints Section will continue to focus on producing broader based outcomes in all aspects of its work, from receivals and assessments, through investigations to reviews, audits and monitoring of complaints matters. In that regard, there has been an increased emphasis in the section on the multidisciplinary approach, with the inclusion of two financial analysts, two intelligence analysts, a corruption prevention officer and a research officer position dedicated to complaints. Information sharing throughout the section and with other areas of the commission has been enhanced through more regular liaison and the functionality of our complaints system. There will be briefing sessions for staff after the completion of investigations and other major matters so we can learn from those matters for future reference.

All of this is being achieved against the background of a continual increase in the number of complaints being dealt with by the section. Three hundred and three standard complaints were registered in November this year, which is the highest monthly total ever—a 17% increase over

November of last year. This calender year has included the three highest monthly totals and five of the 10 highest monthly totals ever. The progressive total for this financial year shows an increase of 19% over the same months in the last financial year. These figures do not take into account the other types of matters that the section deals with, including reports of major incidents and other general issues. Last month those matters totalled 338, giving a total of 641 matters we dealt with last month. Currently, there are 90 investigations being conducted by the complaints resolution team. The review, evaluation and monitoring team has reviewed 205 reports to date this year, with another 260 that it is awaiting receipt of.

I would now like to address the issue of timeliness, which I notice in particular has been raised in a number of submissions, including that of the Queensland Police Union of Employees and the Queensland Law Society, in terms of the length of time taken to complete complaints investigations. 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, 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 overviewing.

In any event, the Complaints Section has been working to reduce time frames for completion of assessments and investigations and reviews. 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 refocusing 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 identity 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 overviewing of progress of matters, senior management in the division—the director and I—also oversight 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 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.

It has been suggested in the submission of the Queensland Police Union of Employees that there would be a distinct reduction in time taken to finalise any complaint if the service deals with all matters of misconduct. 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.

Statistics for November also reveal high figures and finalisation rates for complaints, which continues the performance trend in recent months. 65.5% of matters received in October were finalised within two weeks; 77.5% of matters received in October were finalised within four weeks; 85.1% of matters received in September were finalised within eight weeks; and 84.7% of matters received in October were finalised within 12 weeks.

Finally, I would like to note some statistics relevant to the issue of dealing with complaints against police. Some 804 complaints against police have been received in the first five months of this year—the highest total for that period in the last six years. 61% of the complaints of misconduct made against police are made directly to the commission. I am happy to answer any questions.

Ms STRUTHERS: Thank you for going through that issue of timeliness so well. I had raised that earlier. Your answer clarifies the issue I raised. More broadly—this question may be better asked of Dr Brereton later on—public confidence in the CJC can often depend on the level of resources expended and what outcomes are achieved. I am not sure that I am expressing this in correct conceptual terms, but is there a way of assessing the relationship between the level and nature of proven misconduct with the level and nature of penalties and outcomes that are achieved and in that the level of resources expended? That is a bit messy.

Ms Couper: I think that might well be a question for Dr Brereton.

Ms STRUTHERS: I will pick up on that later on.

Mr WILSON: Mr Bevan, do you have an opinion on the argument I have heard put from time to time that it is important for the QPS as an organisation to take responsibility for the investigation of complaints made against its members for it as an organisation to develop in the long run a corporate culture/awareness and as an integral mode of daily operation the ability to address issues of integrity within its own ranks? I have heard that argument put in support of the QPS having responsibility if not for all but the lion's share of all complaints made against its officers. Is there any research, in addition to your opinion on the argument, that discloses the connection between the level of long-term responsibility an organisation like the QPS will take if it has the job to do itself as against if an external agency is always doing the investigation of complaints; the organisation being investigated never really comes to grips with its own responsibility as an organisation to manage itself well from an integrity point of view?

Mr Bevan: Certainly, that was one of the considerations which, as I have mentioned, has been at the forefront of the commission's consideration of this issue. On the one hand we say, yes, there must be civilian oversight of the Police Service. On the other hand, we cannot do it all for the Police Service. The Police Service must take responsibility for its own internal discipline processes. But we say that that should be subject to proper external oversight. I am not sure about the survey that you are referring to. I am not sure if I have any information on that. Can you just clarify?

509 **Mr WILSON:** I am just wondering whether it is actually in the research, because it discloses the connection between a higher level of day-to-day integrity of functioning of an organisation when it takes responsibility itself for managing complaints against it and against an external body, being the one that primarily investigates complaints.

Mr Butler: Perhaps if I could come in on that. I am being impressed by the Wood royal commission report in New South Wales. Commissioner Wood considered these sorts of issues. As his investigations indicated, there were serious problems in the New South Wales Police Service when he delivered his report in, I think, 1998. Nevertheless, he came to the view that it was not sufficient to merely deal with that by a completely independent, external oversight agency approach, but a real effort should be made to improve the quality of management within that Police Service. Part of that involves management being involved in reacting quickly and effectively to discipline staff and to maintain standards. A lot of this depends upon exactly what you are talking about in terms of investigation. Clearly, if you are entering into criminal investigations or the adversarial type of investigation that law enforcement is traditionally familiar with, then it is not going to be possible for that to be done by the manager. You end up having to have an investigative team to do it.

I do not see much advantage for the Police Service in simply shifting the job of that full sort of effective investigation from an independent agency like the CJC to a similar sort of investigative group within the QPS located in Brisbane, or whatever, and investigating somebody in Cairns. It is not going to make much difference to the officer or the officer's manager. It will still be a distant, centralised approach. There are disadvantages with the distant, centralised approach because, obviously, it adds time to the process and it tends to remove from managers the ability to respond effectively and quickly.

With those matters that do not require the full investigative approach, we need to look for solutions that involve managers. That is what the CJC has been seeking for in Project Resolve—not about moving our role to some centralised QPS role, but moving those complaints that can be dealt with in that way back to the managers at the regional location and saying to managers, "You manage and we're going to place both the ability to do that and the responsibility that goes with it on you." That is what Wood talked about in New South Wales.

The CHAIRMAN: Because it is a cop-out, is it not, to have an organisation to say, "We don't accept responsibility for our own conduct"? If you go to Woolworths and you have a complaint and the manager says, "Go and talk to Fair Trading," that is not an adequate response in the interests of your customers.

Mr Butler: Exactly. I have a commitment to advancing that approach, and the CJC has been working to do that. There are dangers. One of the dangers, of course, is that, if managers are not properly trained, if they are not up to taking on the responsibility, if there is not a proper process and monitoring whether they are succeeding in those regards, you might devolve the function to them and, instead of properly managing their staff or properly disciplining them, they will just shrug their shoulders at the complaints and there will be some sort of local process that glosses over it. It is about ensuring that the service is able to take on these new management responsibilities and, of course, that involves skilling the managers throughout the whole of the QPS, an organisation that has in it 10,000 staff, 7,000 sworn members. So it is a big management ask.

The CJC would like to continue to work in conjunction with the QPS to advance that approach but to do it in a way that ensures that, where real problems arise, the CJC has got the ability to realise that and to step in and to solve the problems or to respond to the particular issue—a system which is similar to the New South Wales one; not as it is painted in the police submission, which really does not properly describe it, but as it actually exists in the legislation—which provides the oversight body with the full range of ability to, as we said, choose to investigate if it feels it is necessary or to take that over, to monitor in the sense that it can actually guide the investigation, or to review in the sense that it can make a judgment about the standard of an internal investigation before it is finalised, before the disciplinary action occurs, or whatever, or, alternatively, to carry out audit process—spot audits or targeted audits—at a later stage to monitor how managers are going. We are looking to maintain that range of responsiveness.

Our Act does not give us that specific responsiveness in the way that the New South Wales Act gives it to those bodies. We get it because we have jurisdiction over misconduct. If the legislation were to be changed to remove jurisdiction over misconduct without specifically providing the CJC with that range of responsiveness to have effective oversight, then you would be throwing the baby out with the bathwater. It is a bit more complex than it is being presented in some of the submissions.

The CHAIRMAN: So it would appear that the QPS is suggesting that they have primary responsibility with you doing an audit role. It is a little bit like the role of this Committee as with the CJC in relation to complaints against CJC officers. What you are suggesting is the appropriate role is that you are notified of everything and then you may indeed audit some things but you give them full information in the first instance. So it is not a matter of finding out ex post facto that there may have been a problem with an investigation. I would have thought that would aid in public confidence in the outcome of any internal police investigation, anyway, if they could have the protection of saying, "The CJC have examined this matter. They have deemed that it is appropriate to refer on."

Mr Butler: Yes, that is true. Public confidence is important in this. One of the dangers is that, if the public or certain groups of the public do not have confidence, they may well just not complain. Your complaints might drop off, but the problem might not, if there is a lack of confidence in the system to deal with complaints. That element of independence that the CJC can provide, even if the complaint is being investigated or managerially resolved—which is what we are really seeking; to move from just a mere investigative process with these more minor complaints to a process that involves managerial resolution—can be more timely and more effective, hopefully, at the end of the day than a formal investigation that is more adversarial and perhaps, at the end of the day, will result in an unsubstantiated result and perhaps police offers who are disaffected. Sometimes it is better for everybody—both the complainant and the subject officer—to get the thing on the table and sorted out quickly if you have got strong management. The big if is making certain that management are doing their job effectively, and the CJC would want to play a role in that—a continuing role.

Mr WILSON: Could I ask a supplementary question? What we have been discussing is really an issue to do with heightened levels of corporate governance in a way and we have been focusing on the QPS. I wonder what view you have if you translate that concept over to the public sector generally and the CJC's role to collaborate with public sector agencies to bring about the internal changes that may need to be made so that managers in those agencies actually take responsibility for managing, including the managing of behaviour and processes that may produce conduct that is misconduct or official misconduct?

Mr Butler: The CJC's jurisdiction, of course, is more limited in relation to the Public Service; it is only official misconduct. Nevertheless, many matters come to us as potential official misconduct. When we assess them and we find that they are not or we find that they are sufficiently minor, they can be referred back to the department. We have been working very hard to try to develop a better relationship with Government departments in terms of dealing with complaints. Once again, it is about working in partnership with the body to ensure that they have good management processes in place and that we can satisfy complainants' concerns—those members of the public who are coming to us—that their complaints have been dealt with fairly and effectively.

We have got quite good liaison now with the major departments. We have a protocol in place that describes how that relationship will occur. We are trying to encourage them to improve their investigative capabilities. We are putting in place a process to assist in that and to allow an auditing of investigative capabilities within the department so that they can proceed independently and have their own responsibility in that area. So it is rather similar.

The police are different in a way because police all over the world have exceptional powers and a great deal of public contact. It means that it is accepted worldwide that there has to be a higher level of oversight of police activities. That is not to be critical of police; it is about the job they do. They are dealing with a difficult job often with particular groups in society who are often involved in criminal behaviour and they have to use force on a fairly regular basis. All of these circumstances create that potential for complaints to arise, for excessive use of power or

force. An additional jurisdiction is justified in relation to police over the ordinary public servants where typically misconduct often has more to do with misuse of funds and those sorts of issues.

Mr HEGARTY: Mr Bevan, I think I heard you correctly when you pointed out that the police submission objected to your retention of the technical section for investigative powers for investigations. Approximately how many would be employed in that section and what would be the break-up of police personnel to others?

Mr Butler: It is not entirely clear from the submission what is meant by the 'technical section". From reading the submission it seems that they were talking about our surveillance capability and technical officers. I would not like to publicly state exactly what the size of that is. Most of the members are members of the Queensland Police Service, but they operate in an environment where they are cocooned, I suppose, from the service and where the activities they carry out are carried out completely independently and without the knowledge of anybody, even at the highest level within the service, outside the CJC.

The difficulty would be that, if the CJC had to outsource its ability to carry out surveillance activity and covert activity to the Police Service, the ability of the CJC to be sure that our activities were confidential when we are investigating Queensland police officers would be very limited indeed. Obviously enough, from time to time we find ourselves investigating those officers in those very areas of the Police Service where their surveillance capability is provided. The other alternative would be for the CJC to outsource interstate or whatever, but that means we could not react quickly and effectively.

I believe there are two aspects to the CJC. One is its complaints function which, as Ms Couper has been saying, is very service oriented, and we are responding to complainants and to public concerns there. The other side is that ability of an effective anti-corruption agency to seek out and actually locate and destroy real and serious corruption within the agencies of Government.

510 Unless you have that independent and effective investigative capability which includes, where necessary, a surveillance capability, then it just cannot be done. If you look around the world at complaints bodies that do not have that capability, you find that their annual reports make no mention of corruption. It just never seems to arise in their jurisdictions. However, in those parts of the world where you have complaints bodies or anti-corruption bodies that have that effective investigative and covert capability, you find that they are the ones unearthing corruption in the Police Service and elsewhere. That is not to say that these days in Queensland one would expect to find high levels of corruption in the Police Service or any other agency of Government. However, human nature being what it is, the sad fact is that the evidence from all over the world is that one has to continue to be vigilant because there are some individuals whose morality or ability to avoid temptation is low and they will try to take the opportunity.

The CHAIRMAN: We have discussed before the extent to which the Police Service is responsible for the conduct of its investigations. On one side of the coin, as indicated by Justice Wood, as well as Marshall Irwin in a paper we have referred to before, it is important for an organisation to accept responsibility for the conduct of its members. The other side of the coin is the importance of public confidence in any outcome, particularly when the organisation is investigating it. We have had a number of submissions before us, as the commission has referred to, of organisations with quite legitimate concerns with respect to ensuring that investigations against police are independently dealt with.

You indicated to us in this meeting, in other discussions and generally in your reports the real benefits of things like Project Resolve where the police accept some responsibility. The other side to that coin is that, if you accept there are benefits, the CJC also has a responsibility to ensure that the public has confidence that the mechanism you are a part of gives them satisfaction that the police are appropriately investigating it. What do you do to ensure that the public knows—and you have told us what you do to ensure it happens—when matters are dealt with by resolution by the Police Service, whether by Project Resolve or otherwise, so the public has confidence that it is being dealt with in a manner that is in the public interest both generally and individually?

Ms Couper: On an individual basis, that is explained at the outset when complaints are received. On a broader basis, it is education.

Mr Butler: One of the fundamental tenets of Project Resolve is that there must be responsiveness to the complainant. One thing we would be looking at is that the Police Service is responding to the complainant. Part of the evaluation that we are presently carrying out, and Dr Brereton might be able to expand on it, is surveying complainants in the trial to see their level of satisfaction with the process. In relation to the way it has been dealt with in New South Wales in the legislation—I notice everyone quotes Justice Wood—the result of Justice Wood's report has been a structure in New South Wales that has clearly given effective oversight powers to both the New South Wales ombudsman, who carries out the complaints receival function of the CJC, and the Police Integrity Commission, which carries out the higher level investigative function of the CJC in Queensland.

In New South Wales there is an obligation upon the Police Commissioner at the end of an investigation to determine, wherever practicable, from the complainant whether the complainant is satisfied with the investigation and to notify the ombudsman of the complainant's response. So there is a process built into it in the way it operates in New South Wales which ensures that individual complainants' concerns are properly addressed. So there is an oversight as to whether or not the complainant is satisfied. In a broader sense, if we get beyond the trials it will be necessary to work on mechanisms from both the point of view of people coming to the CJC with complaints and also people going to the Queensland Police Service to fully inform the public about how this process works. Some of the things that Ms Couper spoke about in terms of the way in which we are trying to improve the way we communicate with complainants through the charter of service, information brochures and other processes would assist that.

Mr Bevan: During Project Resolve the complainants are contacted by the police, but the police are also responsible for advising the complainant of the action taken and why that action was appropriate. Complainants who are dissatisfied also have the option of referring their dissatisfaction to the commission, and that has happened on a few occasions but not many.

Mr WILSON: I have a question following what Mr Butler said. It may not be the level of knowledge that the general population has about the conduct and operation of the CJC, to the extent to which it can be disclosed, but opinion makers and commentators. Outside the explanation that may be given about the outcome of particular complaints, what ideas might the commission have to improve the knowledge of the media generally and commentators so that they can better contribute to public debate about important issues? They make contrary comments about the CJC from time to time, and I believe that is because they do not really understand the way the CJC is statutorily set up to function. There are important sections of the community who are influence makers and opinion makers. It seems to me that that is where there is sometimes less than a desirable level of sound knowledge about the role of the CJC.

Mr Butler: Yes. It is very important for a body like the CJC to communicate generally and with important stakeholders. We understand that. We have been trying to improve our communication. There might have been a time when the CJC was viewed as remote, perhaps. We have endeavoured in more recent times to modify that and to be a more accessible and open organisation. We obviously try to do that through a whole range of things. We obviously publish a lot of publications which try to address these things. Some of the issues are complex and hard to explain in a simple way. We have quite an effective web site which has a very large amount of information on it which is readily available to the public. We have been trying to build our liaison and partnerships with particular groups. For example, one partnership in one area of our jurisdiction is with the Local Government Association of Queensland. We have put on combined seminars for councillors with them and worked in conjunction with them in relation to some of our projects.

We are looking for those opportunities all the time and are taking those opportunities. I recently gave a speech to the Brisbane Institute which addressed some of these more general issues and misconceptions in an attempt to use that as an avenue to raise the level of debate. The CJC would welcome debate. It recognises that there is no such thing as a perfect system or a perfectly operating organisation and that in a society such as ours an independent body like the CJC needs to be constantly listening to people and communicating with them about how it is going.

The CHAIRMAN: Thanks very much. We have questions we want to ask about the resignation of public servants, so we will stand Mr Bevan and Ms Couper down for the time being.

We are going to ask that of Mr Butler at the end, but he might want to refer to them. Mr Roger is next.

Mr Roger: I am the Director of the Intelligence and Information Division. Earlier this morning Mr Butler mentioned the CJC's ability to be flexible and respond to change. Since the last three-year review by the parliamentary committee, the CJC's intelligence and information functions have undergone considerable change. The drivers of these changes have been the loss of the organised crime function, a number of reviews, both external and internal, which have impacted on the CJC's organisational structure and strategic direction, the need to keep pace with technological advancements and the more recent move by the CJC to its new premises in the CBD. I want to spend a few minutes this morning discussing these changes and the impact they have had on the division. Following that, I want to talk more specifically in brief terms about the actual work of the Intelligence and Information Division.

The establishment of the QCC by changes to the Criminal Justice Act in 1998 saw the CJC's jurisdiction in respect of organised crime passed to the QCC. The CJC's previous intelligence function, which related more broadly to matters of criminal intelligence, was refined at that time to become more specific to the CJC's official misconduct jurisdiction. At that time, the CJC took steps to make all the intelligence it had previously collected in respect of organised criminal activity available to both the QCC and the QPS. This was done by electronically transferring all relevant intelligence holdings to ABCI's ACID database and removing caveats to enable the material to be accessed by ACID users. Both the QCC and the QPS are using ACID for their intelligence holdings.

The CHAIRMAN: You had better identify what that is.

Mr Roger: It is the Australian Criminal Intelligence Database. It is a national database operated by the Australian Bureau of Criminal Intelligence in Canberra. I want to mention a number of reviews that the CJC has undergone, and Mr Butler also touched on those briefly in his presentation this morning. One such review in 1998 was an organisational review of the commission conducted by external consultants specifically to examine the CJC's structure given the changes in its jurisdiction. That review resulted in a significant change to the CJC's intelligence establishment, which fell from 27 positions to 17 positions. That reduction was achieved through a number of redundancies and also the transfer of some officers to the QCC.

Mr Butler also mentioned the review in 1999 by a well respected and independent member of the Australian law enforcement community who was engaged by the CJC to review the CJC's multidisciplinary team structure and its investigative methodologies. During that review, the consultant observed the value of the CJC's intelligence analysts as an integral part of its multidisciplinary team structure and indeed commented that in certain areas of the CJC's work, other than the police jurisdiction, additional analytical personnel may prove advantageous to the investigative process.

511 The recommendations from that review were incorporated into the commission's own strategic review that it conducted in 1999. That internal review was fairly vigorous. It resulted in a significant number of changes in the way the CJC conducts its business. The report from that review, known as the SIG report or the Strategic Implementation Group report, has previously been made available to the Committee and the Committee is aware of the recommended changes.

From the intelligence and information management perspectives, that review resulted in considerable change. I will highlight a couple of the major changes. A number of intelligence analysts were permanently situated on the multidisciplinary team establishments within the Official Misconduct Division. A new multidisciplinary team, known as the Proactive Assessment Unit, was established within the establishment of the intelligence area. The Information Management and Information Technology Sections were relocated from the Corporate Services Division and combined with the intelligence area to form a single organisational unit known as the Intelligence and Information Division. The CJC's security functions were located within this new organisational unit.

I would now like to turn to the creation of that unit and discuss the responsibilities of the division. Taking into consideration the changes in the CJC's role and the importance of intelligence and information management to the success of CJC initiatives, the SIG report recommended that all information resources be centralised in a central organisational unit. It was

anticipated that this new unit would provide a stronger focus on the total picture of information management and the value adding to information by analysis and assessment. This change was implemented in January 2000 and took full physical effect with the relocation to the new premises in July.

In essence, the CJC has taken steps to become more of a learning organisation, with its information management and intelligence practices integrated into everything it does. This approach has started to take the CJC away from the more narrow view of intelligence and is moving the organisation towards a more problem-solving, information-driven environment. The division itself has several integrated responsibilities, namely, records management, information technology and telecommunications management, the Proactive Assessment Unit, information retrieval, intelligence support and security. I would like to touch on each of those very briefly.

The Records Management Section provides a corporate-wide service in respect of the receipt, registration, storage and disposal of records and property in both electronic and hard copy form. The registries that had previously existed as separate entities in the investigation, intelligence and corporate areas are now all centrally managed.

The Information Technology and Telecommunications Section provides corporate-wide services in the areas of network support, application support, desktop services and telecommunications. This particular section has been responsible for considerable and successful enhancement of the commission's IT & T facilities over the past two years, with the implementation of a new standard operating environment, the completion of all Y2K activities, the introduction of the new Compass and IRS databases and the move to the CJC's new premises, which was done fairly transparently to all staff.

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

In addition to those specific functions I have described, the division as a whole is making a significant contribution to a number of key strategies within the CJC. The division has played a major role in the implementation of risk management and fraud prevention within the CJC. The commission now has an active risk management and fraud prevention committee which oversees the implementation of strategies covering these two important areas. Annual strategic risk assessments are completed and the committee monitors the implementation of recommended control improvements by various work areas. The fraud prevention and control plan has also been developed, and training is currently being delivered to all staff in this respect.

The division has also been given the responsibility for developing a new information management strategic plan, which will cover the period 2001 to 2005. It is expected that this plan will be completed by June 2001 and will give the CJC clear direction for the future development of information management and related information systems.

The newly established Proactive Assessment Unit has commenced a number of projects being conducted in conjunction with other agencies in order to advance strategic outcomes for both the CJC and the agencies concerned. Current projects in this area which have preventive objectives include work with Corrective Services, local government and the QPS.

The division also continues to have the responsibility for the dissemination of intelligence on behalf of the CJC to other agencies where such dissemination is considered relevant to the other jurisdictions. This remains an important function as the CJC regularly comes across information which is more appropriately dealt with by another agency, for example, the QPS, the QCC or one of the Commonwealth law enforcement agencies located within Brisbane. Such information is disseminated in a timely fashion.

This latter aspect of the division's work is subject to audit by the Parliamentary Commissioner under the provisions of the Crime Commission Act. The Crime Commission Act requires the Parliamentary Commissioner to consider whether the intelligence data held by each agency—the QPS, the QCC and the CJC—is appropriate having regard to the agency's functions and to consider whether there is any unnecessary duplication of intelligence held by those agencies. I am pleased to be able to advise the Committee that in the last two annual audits conducted by the Parliamentary Commissioner the CJC's holdings have been found to be appropriate, with no unnecessary duplication. That brings my brief presentation to an end this morning, but I would be more than happy to answer any questions that you have.

Ms STRUTHERS: Mr Roger, the QPS has obviously had a good look at the CJC's intelligence capability and the capability of the QCC and tend to feel that they are the poor cousins in all of this with their own intelligence capability. Given the costs, as you have mentioned, of acquiring intelligence data and maintaining that and of staffing intelligence units, do you see that there are better ways of coordinating or having cooperation amongst the existing bodies? Do you have any thoughts on whether the current arrangements between the three bodies work well, given that there are obvious sensitivities and a need to maintain independent processes and activities?

Mr Roger: There are a number of issues there. First of all I might say that I disagree with your observation that the QPS may have had a good look at our intelligence function. The content of their submission tends to suggest that they are slightly misinformed. I think Mr Butler mentioned in his opening remarks that some of the submissions had been prepared without the benefit of our annual report and perhaps without the benefit of knowledge of the changes that have occurred since our Strategic Implementation Group recommendations were put into place.

Mr Butler: Could I interrupt there? The QPS submission in this regard is quite confusing. It seems to refer to some employees in the Ethical Standards Command and somehow or other compare that with the CJC's role in this area. Of course, the QPS has a very significant commitment to intelligence gathering and usage. I think there are some 200 officers around the State who are involved in gathering intelligence and disseminating it to their databases and so on. It has a large number of officers in the BCI—40 or so. They have officers in Canberra who are dedicated to the national intelligence database. So it is not as though somehow or other the CJC has a greater intelligence capacity than the QPS.

There might have been a time, when the CJC was dealing with organised crime, when the focus of intelligence was gathering information, names and details, putting them in the database and hoping one day you would be able to use it. Really, the CJC's role has changed since it lost

organised crime. Our statutory duty is to maintain a database in relation to official misconduct information, and we do that. We do it effectively. We have an excellent computer program to do it and we have some people who manage it.

Basically, the CJC's approach to intelligence, if you want to call it that, is really much broader now. As you have noticed, we now call the division Intelligence and Information. We are really trying to drive the CJC as an information-driven learning organisation. It is really just good management practice for most organisations these days.

What we are trying to do is very much what the Police Service and others are trying to do as well. I sit on many selection panels for police officers at the highest levels and I constantly get told by the applicants about the importance of intelligence-driven policing or problem-oriented policing, or POP as they call it. That is what it is about. That is what the CJC is about, too. It is about not just letting the things come randomly through the door but also driving your investigations, informing them, by utilising the information effectively. We do not do that by gathering things in a big database, really.

If we have people, typically graduates these days, who are in the investigative team, they are working with the investigators; they are part of a multidisciplinary team. As things are happening as part of an investigation they are gathering that data, assembling it for the investigators and providing it to them. They are analysing it so that only the relevant bits are useful. In major investigations you can imagine how useful that is. A current example would be the electoral fraud investigation, where there are huge amounts of data about electoral records. You need people who can analyse that, compile it and provide it to the interviewers and so on. So that is what we are talking about. We are not talking about some sort of isolated thing. Of our eight intelligence analysts, five of them are in the investigative teams doing that sort of practical stuff. Three of them are in a multidisciplinary team, which is about focusing on developing strategic issues, assisting driving our investigations at a more strategic level. It is about working in conjunction. We have, as Mr Roger said, a project with Corrective Services that is looking at the screening of newly recruited officers in Corrective Services in conjunction with the department—working with them in partnership. We have a project in the QPS that is working in conjunction with the QPS on a specific project in relation to a risk area for officers.

So it is probably better to think of our intelligence function as part of a broad, proactive information-utilising function.

Ms STRUTHERS: I understand what you are saying there, and it has been a good explanation of the integration of those functions into the whole operations of the CJC, but is there any merit in the argument from the QPS that this whole area ought to be under some sort of review, including the three bodies, with a view to improved cooperation? You have not really commented on the cooperation between the other bodies. Is that adequate, or in your view, is there scope for improvement there?

Mr Butler: One of the roles of the Parliamentary Commissioner under the QCC legislation—which refers to all three law enforcement bodies in Queensland, that is, the CJC, the QCC and the QPS—is to ensure that there is proper information sharing between the bodies. She has the role of carrying out an audit of the intelligence functions of each of those bodies under the QCC legislation annually to ensure that that is happening. There have been two of those audits now, and as Mr Roger said, the result is positive in terms of that sharing.

We are obviously aware of our obligations to disseminate information to both the QPS and the QCC where that is necessary. For example, if in our official misconduct investigations we come across information that might be relevant to organised crime investigations, we disseminate that, and typically these days to both bodies. There was a process of handover two to three years ago where the organised crime databases of the CJC were handed to the QCC. Some of the staff went to the QCC. There has been a process of developing that liaison but I think, as of today, that liaison is quite good. Of course, there are other links between the organisations. We have high-level regular links with the QPS, with weekly meetings, for example, between the assistant commissioner in relation to Crime Operations Command and the director of the Official Misconduct Division. So it is happening at that level. I sit on the management committee of the QCC, so I have close involvement with that body as well.

Mr Roger: Could I just add to that? I mentioned in my earlier comments two aspects of the Parliamentary Commissioner's requirements under the Crime Commission Act. The

Parliamentary Commissioner is also required to consider whether the agencies are working cooperatively as partners to achieve optimal use of available intelligence data and the resources used to collect, collate and record the data, and to consider whether an agency is placing any inappropriate restrictions on access to intelligence data by other agencies. The results of her audit have been the same in both of those areas as well—that 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 through communication and liaison and discussion. The ESC, for example, only formed its intelligence cell in July this year, if I am correct. That is when I became aware the officers were being appointed. They approached us fairly quickly and set up an established liaison mechanism. We have been meeting on a regular basis since and we have commenced a joint intelligence project with them. So from my perspective, since that intelligence cell was established, it is working very well together. Likewise, with the QCC, we meet on a monthly basis, or more frequently if necessary, to discuss matters of mutual interest.

As I have mentioned, we disseminate information quite regularly. Since January this year, for example, we have disseminated 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. I support that every agency needs its own analysts and needs its own intelligence capabilities.

The CHAIRMAN: Just a quick question, Mr Butler. Section 58 of the Criminal Justice Act provides that—

> "The Intelligence Division can disseminate information to such persons, authorities and agencies and in such manner as the Commission considers appropriate."

Obviously that is the head of power by which you can distribute information, for example, to the Queensland Crime Commission. On the other hand, the Crime Commission Act, which obviously is a far newer piece of legislation, requires at section 33(1)—

> "If the QCC has evidence of official misconduct, the QCC must advise the CJC of the official misconduct as soon as practicable."

So that is, in fact, a mandatory provision. Is there any scope, do you think, perhaps in the Criminal Justice Act to reflect a mandatory requirement on the CJC—notwithstanding that we presume it is being done at the moment anyway—that if it has evidence of organised crime, then it must refer that intelligence to the Queensland Crime Commission?

Mr Butler: I had better look at the Act. It is more 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. On the other hand, if you took it the other way, 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.

Mr WILSON: Can I just pick up on a point you mentioned in passing at the early part of your contribution just now? Is it the case that not very often does organised crime activity that is being investigated by the Crime Commission also involve conduct that is official misconduct?

Mr Butler: 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. But it is true that, from time to time, as a result of organised crime investigations, there might be a specific allegation that a particular police officer, for example, has received bribes or something. Where that occurs, it would be disseminated to the CJC by the QCC or the NCA or the body involved.

Mr WILSON: I have no research basis for this—others might be in a better position to comment—but I would have thought there is a high likelihood that organised crime has as an aspect to it corruption of a significant and serious level within the Public Service.

Mr Butler: Yes.

Mr WILSON: I would have thought there would be a degree of correlation there, and that the public sector does not exist in isolation from the broader community, and particularly the business community, in which circles there might also be organised crime. One only has to think of the ACCC and its investigations into particular corporations within the building industry in the last several years, which might be close to organised crime, one might think. It seems to me that there would be, from time to time, an interconnection.

Mr Butler: Yes. I agree entirely with that. In fact, 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. But I suppose if you are looking at it overall in terms of the passage of information, it is not a constant thing that we are going to be receiving the information from a body like the QCC.

The CHAIRMAN: Thank you very much, Mr Roger. Commissioner Kidcaff, you could identify yourself, please?

Asst Comr Kidcaff: Thank you, Mr Lucas, members of the Committee. My name is Andrew Kidcaff. I am an Assistant Commissioner of Police currently assigned to the police group at the Criminal Justice Commission. In my role there I am the Director of Witness Protection.

The CHAIRMAN: Thank you.

Asst Comr Kidcaff: Witness protection came into being in Queensland as a result of the Fitzgerald inquiry back in around about August 1987. It was formally passed over to the Criminal Justice Commission and the division was formed through the Criminal Justice Act and came into being in around about October of 1989.

Going right back to 1987 since the division has been operating, there have been considerable numbers of people come onto the witness protection program and applications made for witness protection, and we have had considerable success in the division with those people who have been on the program. But that is not to say that it has not had its difficulties. What I want to do here this afternoon is just touch on four of those areas and then I will field any questions that the Committee wishes to ask of me.

The first question relates to operational difficulties that the division has encountered with the 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.

The other area of concern is civil litigation and how it affects the Witness Protection Division. The division itself remains open to civil litigation and within this process highly protected documents—and you must appreciate that whatever Witness Protection does, it operates in a highly protected environment—can be open to the public domain. This is potentially dangerous and poses a real and constant threat with the potential to compromise the integrity of the witness protection program. We need somehow to try to address that matter.

Up until recently we operated under the Criminal Justice Act in the provision of services for witness protection. It is pleasing to report that the new Witness Protection Act 2000 passed through Parliament during the last week of its recent sittings and it is awaiting royal assent with a proclamation date for commencement It is anticipated that that commencement date will be sometime after 1 February 2001.

Since 1993 the commission has been seeking specific witness protection legislation beyond the limited number of provisions that are contained within the Criminal Justice Act available for witness protection. 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 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.

The implementation of this legislation will require the creation of new forms and operational procedures, and the witness protection division is currently well under way with its activities in creating the new forms package for use with QPS and also our operational procedures. It is intended to implement throughout the State an awareness program for those people who need to utilise witness protection.

The fourth area is the professionalism of the Witness Protection Division and how it operates. Early on this year the Witness Protection Division put forward a proposed witness protection course to the Queensland Police Service for approval. The course itself was drafted in compliance with the national competencies for witness protection which are standard right across Australasia. The course has been approved by the Queensland Police Service with work currently under way to complete the details for necessary implementation and we are confident that in the

year 2001 there will be a series of courses run for officers desirous of becoming witness protection members. That is all I have to say on those issues. I am open to questions.

The CHAIRMAN: Thank you. Just a quick question: would you like to comment on the appropriateness or otherwise of the CJC? It has a function. Comparing things perhaps to other States, what do you see are the advantages or disadvantages?

Asst Comr Kidcaff: 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 QPS it may be said that the QPS puts people on the witness protection program and favours them to the detriment to others. We have had instances where people are put on programs who maybe should not be on programs. That is what I am trying to get at.

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 that it operates the program, and our services are sought after.

The disadvantages in having it 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 QPS, there may be ways that you could shift them around. But 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.

The CHAIRMAN: Thank you very much, Mr Kidcaff. You are excused now. We are running a little bit late. Mr Carmody, the Crime Commissioner, is booked in for 12.25, so I might seek the indulgence of the commission if they would not mind me putting Mr Carmody in at the present time.

Mr Butler: Not at all. Thank you.

TIMOTHY CARMODY, examined:

The CHAIRMAN: Good afternoon, Mr Carmody. Could you identify yourself, and I invite you to address the Committee.

Mr Carmody: I am Tim Carmody. I am the Queensland Crime Commissioner. Are you going to ask me questions or do you want me to say something?

The CHAIRMAN: Would you like to make an opening statement at all?

Mr Carmody: No, not really. I would be happy to field any questions.

Mr WILSON: Could I ask you a question, Mr Carmody.

Mr Carmody: Yes.

Mr WILSON: The connection between organised crime and official misconduct—we were just exploring that earlier in some discussion with Mr Butler—and I was wondering to what extent, and to the extent that you can say so here, is there a correlation between organised criminal activity falling within your jurisdiction and parallel activity or integral activity that also constitutes official misconduct?

Mr Carmody: 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.

Mr WILSON: My question really was not taking into account the argument that can be run and the contrary argument about the separation of the jurisdiction. I was really responding from an expectation that there would be a certain incidence of organised criminal activity that must go hand in hand with corruption in the public sector. The public sector does not operate separate from the business community or in some respects separate from the criminal community.

Mr Carmody: That is true.

Mr WILSON: I was just wondering what the level of incidence was.

Mr Carmody: I have not kept any figures about the extent to which the Crime Commission and the Criminal Justice Commission cooperate on investigations. But it is close. Where we need to, we do. As for statistics, I do not have any about how many organised crime investigations have also had a corruption dimension to them.

The CHAIRMAN: When the CJC had jurisdiction over organised crime, that function was also still accountable broadly to this Committee. The way the Crime Commission was set up, it has parliamentary representation—myself as chair and the Honourable Vince Lester as deputy chair—on the management committee of the Crime Commission. But we do not sit there as members of the Parliamentary Criminal Justice Committee in the sense that there is no direct line of accountability or report to this Committee. Might it not be more appropriate in terms of Parliament not to be on the management committee of the Crime Commission but indeed for the

Crime Commission to be accountable to the Parliamentary Criminal Justice Committee on an oversight basis in the same manner as the CJC is? Would you care to comment on that?

Mr Carmody: I would like to say a couple of things about that. One is that 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.

The CHAIRMAN: Thank you very much, Mr Carmody. You are excused. Dr Brereton?

CRIMINAL JUSTICE COMMISSION

Dr Brereton: My name is David Brereton. I am the Director of the Research and Prevention Division at the Criminal Justice Commission. I have a couple of brief observations to make and then I will be happy to answer any questions. Since the last three-yearly review, a significant development in my particular area of responsibility has been the merging of the Research and Corruption Prevention Divisions, an arrangement which is now some two years old. I think this has had two significant benefits. Firstly, it has provided a stronger research base to support some of our corruption prevention activities. I refer as an example of that to a project that is currently under way in collaboration with Griffith University to investigate corruption in corrections and ways to prevent it. Secondly, the merger has enabled additional resources to be directed towards the corruption prevention area, both because of managerial efficiencies achieved by the reduction of one director's position, which was able to support an extra position, and also because it has been easier to move research staff across to work on prevention-type projects. An example of that is two recent reports that have been released—the review of prison industries and the report out this week on safeguarding students. They were both principally written by research staff, but they have a very strong prevention focus.

The other important development from my perspective is that commission-wide there has been a greater integration between the Research and Prevention Division and others areas of the CJC. My colleague Mr Bevan referred to some practical examples of the ways in which the Research and Prevention area now works much more closely with the Official Misconduct Division so I do not think there is any need to repeat those points. They are detailed in the written submission.

As to the only other matters I will refer to in these introductory comments, I direct the Committee again to chapter 10 of the submission, which provides an overview of the current priorities in the corruption prevention and research areas. I will run through those very briefly. In the corruption prevention area, clearly, 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.

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.

On the research side of the division, the priorities are, firstly, to focus on areas which are of greatest concern to the CJC and which have the greatest potential to stimulate organisational change. That is an overarching principle. We try to focus on conducting our research on significant criminal justice issues that are unlikely to be effectively addressed by other criminal justice agencies. We are certainly very careful to avoid duplication. We are continuing to do research of a general monitoring nature as we are required to do by the Act. We are putting increasing resources into providing follow-up to CJC reports after they have been issued to ensure that recommendations do not sit there and are not acted on. We are also devoting increasing resources to using research to support the activities in the other areas of the CJC. So that is a very brief overview of what has been happening in the division and where it is heading.

The CHAIRMAN: Thank you, Dr Brereton.

Ms STRUTHERS: I will leave alone the issue I raised earlier, which was conceptually a bit clumsy and complex. Are there ways of measuring and providing public information on the achievements through the work done within the commission? For instance, you would be very familiar with crime prevention research work that talks about, in very simple terms, for every dollar

spent on crime prevention X amount being saved for the public purse. Now and into the future, are there research and evaluation tools and methods that can give the public simple ways of understanding the sorts of activities and particularly the achievements and benefits of the work of the CJC?

Dr Brereton: I think the chairman touched on some of that in his earlier comments. It is very difficult to do that in a global way—to say there is 20% less corruption in Queensland than there was before the CJC was established and this equates to $X million. I do not think you could do that in a way which was methodologically defendable. I think what we are able to do is to take particular priority areas which have been identified by the commission, to document the strategies that the commission has implemented, and then to report on whether or not there is evidence of progress in relation to those areas. The way to do that is to ensure that on significant projects there are built into those projects evaluation criteria. We are starting to do that.

Again, the chairman referred to our annual report this year. There is a section of the annual report which refers to significant initiatives. Each of those is documented as an example of that approach. One way to illustrate that might be to say that an area of continuing concern to the commission has been the high numbers of assault complaints against police. We have a series of strategies in place to try to address that. I think we should be able to both document that those strategies were implemented, and we would expect to see over time indicators of fewer complaints in relation to alleged assaults. We also should be able to pick that up by other measurement devices, such as the periodic defendant surveys that we run. We can do that in relation to particular priority areas and initiatives. It would be very bold and not very methodologically reputable to just give an overarching statement about corruption and misconduct in general.

The CHAIRMAN: Dr Prenzler makes some criticisms in his submission with respect to the research role of the CJC and seems to suggest that the CJC ought not to conduct research and then also perhaps criticises the area of the research that it undertakes. Would you care to comment on that at all?

Dr Brereton: I do not think Dr Prenzler, as I read his submission, was commenting on the quality of the research that is being done out of the commission. I thought he was fairly complimentary about that. His two points were, firstly, that performing a research role which was associated with an investigative role created a potential conflict of interest. In academic circles, it is a version of what is known as the regulatory capture theory. I think the second point he made almost in passing in his submission was the suggestion that the research was not being acted upon or taken notice of.

515 I will take the first of those points, which is the suggestion that somehow or another this is a conflict of interest to undertake criminal justice research because you might also be investigating criminal justice agencies. I say with absolute certainty that, in relation to the way that the commission's internal processes operate in terms of both the selection of matters for investigation and the way they are conducted, there really is no scope—even if I was foolish enough to try to do it—to in any way jeopardise the way an investigation is being run on the grounds that this would complicate your difficulty to undertake research. You can ask Dr Prenzler, but I would be very surprised if he could point to any example of where that would happen.

The CHAIRMAN: I would have thought—and no doubt we will discuss it with Dr Prenzler—having your officers now as part of investigative teams would actually give them a unique insight and enable them to produce research that is actually very valid, timely and, indeed, useful.

Dr Brereton: To be fair to him, I do not think his argument is that the CJC should not have a research capability, but that the research activity should be restricted to issues about misconduct prevention rather than broader criminal justice research. Some of that sounds okay in theory, I suppose, but it seems to me there is also the point about how narrowly you define the research role. If we take the police service, which really has been the focus of a lot of our research activity, it is very hard to know what you might broadly term "organisational issues" are very tangled up with misconduct issues.

We did a major research exercise where we worked with the police to review recruit selection processes. That looked at a whole raft of issues. Included in that was a chapter or two which focused particularly on the integrity issue. It seems to me that the best way to address

those issues was really a comprehensive review of the whole process. Issues about reviewing police powers, assessing how they are being used and so on may not be narrowly defined as about preventing corruption and misconduct, but clearly the way in which police generally do their job, the frustrations that they experience and all of those things are related to the kinds of powers that are in place.

I think even if you accept his point to say that principally the CJC's role there is to investigate and prevent misconduct, you would still want to be having a reasonably broad research brief so that you can understand the organisations and how they operate and understand the levers that you can pull, because in corruption prevention the lever that you pull to address a corruption risk may be something to do with personnel practices, the way in which work is designed and allocated and so on. It is not just a narrow matter of addressing that particular behaviour.

The CHAIRMAN: On the other side of the coin is that the Queensland Police Service in their submission indicate—

> "The danger with the CJC's recent focus is that there has been a tendency to try to micromanage the QPS without being accountable for the Service's budget of management or the difficult day-to-day operational decisions that the senior executive has to make."

Would you care to respond to that?

Dr Brereton: Again, I was a little puzzled to read that by the Police Service. I was wondering which reports and reviews they had in mind there. Certainly the commission writes reports which make recommendations on how practices and processes be approved. I would have thought that is what we are there for; that is our statutory role. There is quite extensive consultation with the service in the process of preparing those reports about what is workable and what is not. We are very careful about not proposing things that might be impractical to implement. The other point to make there is that these are ultimately always recommendations. If the service is firmly of the view that this is going to conflict with budgetary priorities and there are other things that are more important, the service can and does on occasion decline to follow the recommendation.

Having said that also—and it goes back to your earlier point I raised about Dr Prenzler suggesting that perhaps the research was not acted upon—particularly as far as the Police Service is concerned, there has been a range of reports where they have actually acted on most of the recommendations. I think the service has picked up all of the recommendations in relation to the review of recruit selection processes. I understand that virtually all of the recommendations of the strip searching report have also been accepted by the service. I think when you drill down into those comments a bit more, there are probably two or three areas where there have really been continuing differences between the commission where they have a different view—and as an organisation, they are entitled to have a different view.

The CHAIRMAN: I would compliment the commission in relation to its emphasis these days on taking an early view in relation to corruption prevention by having officers from your division involved with investigations and then with a view to taking a proactive approach in the future. Can you tell me a little bit about to what extent you have had dealings, or ought to have better dealings if you have not had many already, with the Ethical Standards Command of the police to ensure that they have that sort of focus in their undertakings as well?

Dr Brereton: We have fairly good liaison with the Ethical Standards Command, particularly in relation to its research activities. We have also approached the command about being involved in a couple of projects addressing what we think are some significant policy issues, and the command has indicated a willingness to be involved in that. I think in relation to the particular matters about trying to develop a more preventive focus, they are moving towards that approach. Indeed, part of what Project Resolve is about is trying to get people 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.

The CHAIRMAN: We would like to ask you some questions about whistleblowers. In the three-year review of the last PCJC, they considered whether it was appropriate that whistleblower

support be maintained as a function of the commission or whether it was more appropriate to transfer it to an independent agency separate from the commission. Do you or perhaps Mr Butler have any comments on the appropriateness of the whistleblower function being maintained by the commission?

Dr Brereton: Mr Butler, I am sure, would want to comment on that. I could perhaps make a couple of preliminary observations. In fact, that office has been retitled as Whistleblower and Complainant Liaison rather than just "Whistleblower". It is always going to be the case that some whistleblowers will be coming directly to the CJC. That is the first point. So there has to be some function to deal with complainants.

The second point is that certainly it would be very difficult for the CJC—and probably inappropriate—to try to provide the comprehensive whistleblower support for the entire public sector. It has never sought to do that. That has been a gap in the system. I see that this afternoon you will have someone from the Office of Public Service Merit and Equity coming to talk to the Committee, and you may be able to ask them about that. I understand that there are now some moves afoot to perhaps strengthen the role of that agency in the broad area of whistleblower support. The Police Service has what seems like a very effective internal witness program. I would think that the broader approach of the commission is essentially about looking at ways of building that capacity elsewhere in the public sector than trying to do it for the public sector.

Mr Butler: I do not think I really need to add anything to what Dr Brereton said.

The CHAIRMAN: I understand that in the commission's submission the commission indicates it is planning to undertake research to identify and assess alternative models for providing whistleblower protection in order to address concerns about the adequacy of current legal and organisational support. Could you fill the Committee in a little bit more about what perhaps some of the alternative models are? Perhaps the second aspect of that question is clearly there is amongst some people ongoing concerns about whistleblower issues that, in fact, relate back many years. Is there something that we can do to address those issues which are of some long standing? Is it something that really needs to be done up front or is it that some are insolvable? Would you care to comment on that?

Dr Brereton: I might answer the first part of that and let the chairperson deal with the more difficult second part. In terms of the issues of research, we have flagged that. I would have to say that we have not commenced a substantial project on that. That is for the good reason that we have recently met with the OPSME to compare what each organisation is doing in terms of its research program and other initiatives. They have a project under way which is in fact addressing that question and they have a research officer working on it. We have indicated that we will be keen to liaise with them and have input into that. I think it is a better use of resources to let that process run, particularly given the responsibilities of that agency within the public sector.

Mr Butler: This is a difficult area. Clearly it is very important for the CJC that there be public confidence that people who want to make disclosures who are within the public sector can do so without retribution. I think it is important that the CJC works in conjunction with the Office of Public Sector Management to look at how we can strengthen the whole system approach to this. One of the difficulties in this area is that sometimes minds will differ on who is a whistleblower. Very often individuals who are unhappy with some administrative decision might view themselves as whistleblowers, but perhaps under the legislation from the point of view of whether or not they have actually disclosed information and suffered because of it they may not be.

It will continue to be the case that there are people who are disaffected because of decisions that have been made in the past. I suppose judgments have to be made as to whether or not there is substance in the issue that is of concern. There are just limits upon the ability of the system generally to continue to reapproach matters that are distant in the past from time to time when concerns are raised about matters that happened a decade or so ago.

Sometimes where clear criminal offences are involved and where the matters have not been investigated previously and resolutions determined, it will be necessary to deal with matters that are old and to pursue them. Generally, one of the considerations that most organisations like the CJC or other investigative bodies apply in determining whether or not there is a reasonable justification for proceeding with an investigation, along with a number of others, is how old the allegations are. Clearly, the further back in time the allegations are, the harder it is to gather

evidence to determine where the truth lies to test the credibility of informants and so on. You reach a point where, from an investigative point of view, it is just very hard to deal with allegations in the distant past.

The CHAIRMAN: Perhaps a number of the issues that are from the past did not have the advantage of the Office of the Parliamentary Commissioner, which essentially has the ability in appropriate circumstances for an independent review. Maybe that might be of some assistance in the future.

Mr Butler: That may well be the case. I think judgments will have to be made in each individual case. It is a difficulty that applies just in the general criminal area, leaving aside this issue of official misconduct. It would typically be the case that both police and prosecution authorities normally would be fairly reluctant to deal with matters that are quite old. Sometimes old matters like murders and sexual offences are prosecuted in the courts, but even then there is a danger that the courts themselves might consider that it is an abuse of process to proceed with a matter if it is unduly old simply because it becomes increasingly hard to determine the facts in the matter. That is an issue generally. It needs to be grappled with in each particular instance.

The CHAIRMAN: Thanks very much, Dr Brereton. I know we are overdue for lunch and I do not want to throw our timetable out, but we might continue if that is all right. Mr Brighton?

Mr Brighton: I am the Executive Director of the Criminal Justice Commission. In the role of Executive Director, I am responsible for the Corporate Services Division and the Office of the Commission. The Corporate Services Division provides the CJC with administration, finance and HR services. The Office of the Commission provides a secretariat for the commission, corporate governance activities, publications and media and communications. I will run through a few points for the benefit of the Committee and then I am happy to respond to any questions.

As a statutory authority, the CJC is bound by the provisions of the Financial Administration and Audit Act 1977 and the Financial Management Standard 1997. For the purpose of the budget, the Criminal Justice Act provides for the Minister responsible for the commission—in this case, the Honourable the Premier—to approve the commission's budget. For this current financial year, the Minister has approved an operating budget of $25.5m. The Queensland Audit Office undertakes an annual audit of our financial statements and each year during the operation of the CJC has provided an unqualified audit report certifying that our financial statements represent a true and fair representation of our financial position in accordance with prescribed accounting standards. The CJC has a current establishment of 248 positions, comprising 80 police officers and 168 civilians. The civilians in the CJC are employed on Public Service terms and conditions.

Pursuant to the provisions of the Financial Management Standard, the commission produces an annual strategic plan and, pursuant to those provisions, consults with the Minister and the Committee in the preparation of that plan, operational plans, an information systems strategic plan and an assets strategic plan. The commission has also approved an internal audit strategic plan for the period 1999 to 2002 which provides a strategy for the CJC's internal audit function during the period of this plan. These audits are undertaken utilising the services of independent consultants who are engaged following a preferred supplier arrangement that was established pursuant to the State Purchasing Policy. The commission's audit committee, which oversights this internal audit function, assists the commission in ensuring that effective financial management and internal control systems are in place. The committee is chaired by one of our commissioners—and Professor Steinberg has assumed that role—and also has an external expert member on the committee.

During the last 18 months, the commission has reviewed its internal committee structure and now has in place the following nine committees: the audit committee, which I have just referred to; a finance committee, which oversights the budget and financial management practices; an information steering committee, which ensures effective use of information infrastructure and resources; a legislation committee, which ensures compliance with relevant legislation and reviews the applicability of legislation governing the commission; a risk management and fraud prevention committee, which ensures risk is minimised and fraud prevented within the commission; an equal employment opportunity committee, which ensures administrative practices throughout the CJC are fair and equitable; a workplace health and safety committee, which monitors and implements strategies to safeguard health and safety throughout the CJC; a commission consultative committee, which provides a forum in which employees are

able to raise concerns, express points of view and make recommendations to senior management; and the executive group, which is a group of senior executives who manage the organisation within the parameters of the delegations afforded by the commission. To ensure these committees maintain a strategic focus, terms of reference in the form of a charter have been developed which define the roles and responsibilities of the respective committees and their members.

During the last 12 months, the commission has undertaken a revision of its code of conduct and subsequently published a revised code. In conjunction with the release of this new code, a series of ethics training seminars were conducted for all staff to ensure that they understand their obligations and responsibilities under the code. These training sessions also ensure that the commission meets its obligations under the Public Sector Ethics Act 1994. They were the main issues I wanted to mention, and I am happy to respond to any questions the Committee may have.

Mr WILSON: I have a question in relation to ministerial approval for the commission's budget. Do you have an opinion as to the commission's independence and whether that is compromised in some way by the requirement that there is ministerial approval for the commission's budget?

Mr Brighton: The only way I can respond to that question is to say that 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. Coupled with that approval, he does give us a fair degree of flexibility in terms of moving money around within certain parameters. If we amend the budget, we seek approval for that. We comply with the Treasury requirements for mid-financial year reviews. 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.

Mr WILSON: Do you think there would be any advantage in the Minister being required to consult with this Committee prior to finalising budget approval?

Mr Brighton: 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 would look upon things more favourably than perhaps the Minister might.

The CHAIRMAN: Thanks very much, Mr Brighton. Mr Butler, before we break for lunch, we wanted to explore with you the issue of resignation of public servants. At the present time, if a public servant is suspected of a criminal wrongdoing, the commission is entitled to continue to investigate and then refer the matter to the Director of Public Prosecutions. In circumstances, however, where the wrongdoing is not of a sufficient standard to constitute a criminal offence but would perhaps warrant prosecution in the misconduct tribunal, upon resignation of a public servant the tribunal loses jurisdiction. There would appear to be competing arguments here. The highest sanction that that organisation can impose is to dismiss someone. If they are no longer in the Public Service, it avoids disciplinary proceedings. On the other hand, persons are entitled to be presumed innocent until they are proven otherwise. Can you give the Committee the benefit of your views on some of the issues in this regard?

Mr Butler: Yes. The CJC has considered this, particularly in the context of our report Safeguarding Students. 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 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.

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-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. It certainly is the case that in New South Wales there is a legislative ability for disciplinary action to be continued where charges have been laid, so there is precedent for this in other States.

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.

The Committee adjourned at 1.18 p.m.

The Committee resumed at 1.56 p.m.

TERRY O'GORMAN, examined:

The CHAIRMAN: I welcome Mr Terry O'Gorman. Would you like to make some opening remarks?

Mr O'Gorman: I am President of the Australian Council for Civil Liberties and Vice-President of the Queensland Council for Civil Liberties. I want to make a number of points that primarily arise from the CJC's submission, which I have read. I have not yet seen the Police Service's submission.

One of the things that I think needs to be considered is the issue of costs that citizens incur in dealing with the CJC. I am concerned that people who are otherwise, for want of a better term, uninvolved are frequently enough pulled into CJC investigative hearings, have to engage legal advice and then are left considerably out of pocket. There was a matter recently where I presented a client to a CJC hearing—not the Shepherdson inquiry—where it would appear that, objectively, my client was not involved in the official misconduct that was under investigation, or at least not centrally involved and, if he was involved, he was involved because he was an employee and directed to do certain things.

I consider that the Act needs to be amended in line with the Queensland Crime Commission Act so that there is a provision for people who are brought before the CJC, whether by way of a notice to furnish information where they have to obtain legal advice or by way of an investigative hearing where they have to obtain legal advice. There should be some discretionary provision similar, say, to the discretionary provisions in relation to costs in indictable matters that exist in States such as New South Wales, Tasmania and others. I think the whole issue of the costs that impact on a citizen where that citizen is not principally the subject or the target of investigation is something which must be considered.

I recall also there was a time some short years ago where I acted for a public servant in a complaint that was sent by her DG to the CJC. On one view there was some scope for seeing the complaint that was sent as either a lack of preparedness by her DG to deal with a minor matter or on another view a referral to the CJC as part of some internecine bureaucratic fight that was going on. The costs that people in the Public Service who are referred to the CJC incur are sometimes quite considerable. I consider that the issue of costs should be looked at, similar to the cost provision in the QCC Act.

One of the major issues which the Criminal Justice Commission addresses in its submission is the failure, almost four years after the Bingham committee, by the Queensland Police Service to mandate the use of hand-held tape recorders from the point of first contact. I recall that the current Police Minister, Mr Barton, said when he was in Opposition that that would be one of the first things he would do. Four years after, it has not occurred. The problem with it not being introduced is that, in my view, we are seeing some very real signs of the re-emergence of the verbal and of police supplying off-tape pressure to suspects.

I am currently involved in a case where a young man took advice from a solicitor, not me, and that solicitor told him not to answer questions. Within something like 45 minutes the police were asking him questions. They claimed that there was an exchange on tape that showed how he had changed from, "I'm not going to answer questions on legal advice", to saying that he wanted to answer questions. That exchange on an individual officer's hand-held tape recorder just failed to record. When she was asked whether she had ever had a previous failure to record on that particular personal piece of tape recording equipment she said no, and she has never had a subsequent one.

I am concerned that this is a serious issue. The CJC has been saying now for almost four years that the Police Service should follow the Bingham committee's recommendation. The Bingham committee was appointed by the previous coalition Government. It made a recommendation which was accepted at the time as sensible, and the excuses I have heard from the Police Service for failure to implement that range from, just before the end of 1999, "We can't do it because we can't find sufficiently large numbers of Y2K compliant tape recorders", through to some even more bizarre explanations. I would certainly urge that that is an extremely important issue that needs addressing.

I will move to a couple of other separate issues arising from the CJC's submission. The fact that Parliament, many years after the issue was first raised, has not completed a code of ethics for members is a matter that I think is not only serious but also shows, at least in the eyes of the community, a certain degree of attitude of parliamentarians being either above the law or considering themselves to be entitled to the height of hypocrisy. The fact that Parliament still has not properly implemented a code of ethics for members is something that is really beyond belief, particularly when there are so many in Parliament, on both sides, who are only too happy to ask for accountability from everyone else, including the CJC.

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 a 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"? You should not do something simply because otherwise the public—that is, the Courier-Mail—might run a couple of editorials about it. I do not know whether the CJC do identify the Courier-Mail with the public and vice versa, but some people do. The fact is that I would 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.

I am conscious of the time. I will make two other points and then answer questions. In relation to the handling of complaints, particularly complaints against police, I have some

considerable reservation about the move that the CJC is currently engaged in, I think through Project Resolve, in handing over the investigation of so-called minor complaints to the police. I note with a degree of wry amusement that the police call this micromanagement. I do not know what they called it when they did it only themselves prior to the Fitzgerald inquiry. I do not think it could be called management.

The reality is that my concern is that the CJC have a necessary role to monitor patterns of minor complaint, both across-the-board in relation to police and in relation to particular police officers, and in relation to particular police squads, because if you use the zero tolerance or broken window analogy that the police have used in relation to law and order, that concept should be applied to the police. If you look at many of the police who appeared before the Fitzgerald inquiry charged with serious criminal conduct, you could see in their earlier files a series of minor transgressions that were never properly addressed, moved up to a more serious level of transgressions and then moved up to corrupt activity.

Brendan Butler or David Brereton may be able to tell you later that I am wrong, but I cannot see anything in their submission that indicates that they have a pattern—even now, before the minor investigation of complaints are handed back to the police—of analysing complaints in relation to individuals and seeing what sort of trend emerges or in relation to particular squads or in relation to particular categories of offences. My concern is: once you hand that investigation of minor offences back to the police, with only what I perceive to be a somewhat superficial supervisory role by the CJC, you are, in fact, handing over to the police and denying yourself the proper opportunity to see trends emerging which, if they were stopped early, would prevent the development of more serious problems.

They are my introductory comments.

The CHAIRMAN: Thanks very much, Mr O'Gorman. Could I just take you to the issue of public servants and resignation? I ask if you would care to comment on this matter. It is my understanding that in New South Wales the office of the Ombudsman has jurisdiction over complaints against teachers both in the public and the private sector to overcome the problem of jurisdictional issues if someone leaves the public sector and goes to the private sector, perhaps under a cloud. Is that the better way of doing it—by extending jurisdiction in relation to professional conduct for schools to the private sector? That way, if someone resigns for reasons that you say they ought not, in the public interest, be pursued, that would not affect that situation.

Mr O'Gorman: Are you talking of the Brendan Butler example of the teacher having the affair with the 16 year old?

The CHAIRMAN: Misconduct by teachers, yes.

Mr O'Gorman: I would have thought that a combination of basic reference checking—and if, after the real as opposed to the imagined revelations of paedophile activity in this State and in New South Wales after Wood, that is not now done as a matter of course by all teaching authorities in the public and private sector, then there is something seriously wrong. But my understanding is that that sort of conduct would probably run the risk of finding its way onto, for want of a better term, the paedophile register that is kept, whether officially or unofficially, in relation to teachers. Does that answer your question?

The CHAIRMAN: Not really. As a principle, we discussed earlier today the issue of these days, increasingly, public functions are contracted out to the private sector—for example, building certification—and there is the capability of the wrong thing being done there in certain circumstances. At the end of the day, it is the responsibility of the State to ensure that people have a certain basic level of education. So in a sense, the public education sector contracts that out as well. What I am putting to you is: do you not have to ask the question about resignation or otherwise if you say then that, really, whether it is public sector or private sector in relation to misconduct, particularly misconduct in relation to students—well, really misconduct in relation to students—that that ought not be a function that the CJC has jurisdiction over regardless of whether it is the public or the private sector?

Mr O'Gorman: Yes. Sorry, I obviously did misunderstand the question. The simple answer is: yes. I would have thought that if a loose definition of a unit of public administration is a place—in this context, a school—that is partially publicly funded, then that would be not only easy to do but, I would have thought, a quite rational thing to do. I have very real concerns having

regard to the significant disparity of resources between the CJC and an individual who is being investigated if an individual has to incur the very considerable cost if they have decided, "Well I don't want to know about this. I give up my career." This particular proposal would pursue that person even if that person has no intention of remaining in teaching. I think it is really a significant worry. It goes back to the issue of what I say about cost. Why should the CJC stand alone from the QCC and use its investigative powers—sometimes one wonders with how much aforethought—and cause people to incur considerable costs? If that occurs with the QCC, you can get some reimbursement of your legal expenses out of the QCC budget. Why can't that happen with the CJC?

The CHAIRMAN: What about in relation to police officers? Can you again comment on the resignation issue? Do you think that the arguments there are still compelling in relation to a situation where a police officer resigns prior to misconduct proceedings being instituted? By having some sort of mandatory reporting function, do you think that would then overcome problems where they might seek employment in another area where public confidence is important still?

Mr O'Gorman: 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?

If you look at the CJC's recently released report on—I forget the technical name of it—police misusing computers and giving information out to various categories of people, the CJC has recommended that the licensing of inquiry agents—I think that includes private inquiry agents—the law on that be the subject of further review. It may be that in that situation a policeman who has resigned for official misconduct reasons who seeks to become a private investigator, maybe his employer might have the right to contact the Police Service as to why he resigned, but I must say, on balance, if a police officer resigns not because he is facing criminal conduct but because he is facing official misconduct charges, I think there needs to be much better evidence put forward than I have seen to cause that to be the subject of mandatory reporting.

The CHAIRMAN: You are talking about general employment; but in relation to employment in another area where that particular level of integrity and trust is important to that, you are still not convinced in that regard?

Mr O'Gorman: Like what? If that policeman sought to join the Queensland Government protective services body, the people who guard the courts and public buildings—well, one would have thought then that basic reference checking—X comes to you; where has he been for the last 20 years? In the Queensland Police Service. Check with the Queensland Police Service as to the conditions under which he left.

The CHAIRMAN: But wouldn't you be the first person then to say, "Well look, this person has not been the subject of an adverse adjudication. He or she is entitled to be employed."?

Mr O'Gorman: Indeed, but what I am saying is that the employer has the right within limits to say to the prospective employee, "Well, you have been in the Police Service for 20 years, why did you leave?" "I left because I simply got tired of driving police cars with flashing lights. I wanted to do something different." That employer has got the right within limits to say to the prospective employee, "We want you to give us your written authority to check with your previous employer to see whether there are other reasons as to why you left."

Mr WILSON: And you think the employer would volunteer those other reasons in the absence of any finding of misconduct with the previous employer?

Mr O'Gorman: I think if the prospective employee signs an authority saying, "I authorise any information in relation to my service as a police officer to be released to my new employer as a condition of whether I am employed", I think that is a highly preferable course of action to the alternative of mandatory reporting.

Mr WILSON: Do you think it would be permissible for the previous employer to convey to the prospective employer some suspicions or information short of certainty, certainly short of

perhaps a prosecution even having been commenced or short of the police having been informed? Do you think it is permissible for the employer to actually convey that information to a new employer about the former employee?

Mr O'Gorman: It is permissible, but I think a practice that would be a worry.

Mr WILSON: Yes. Wouldn't it be a worry because you would think then that the prospective employee would be entitled to be told by the employer that he is approaching, the new employer, as to what has been found out from the previous employer and in fact he might contest the truth of what has been said by the employer within the circle of this permissibility that you are talking about?

Mr O'Gorman: I should have gone that extra step. I assume that as part of this more voluntary—and it is not really fully voluntary, but more voluntary—"You want a job with us; sign a form authorising us to find out from your previous employer any problem matters", part of that must be that the previous employer, in this case the Police Service, would let the protective services people know what concerns they have, but it had to be on the basis that the prospective employee was told about that and given an opportunity to explain it.

Mr HEGARTY: You do not think this opens up the line for antidiscrimination action to be taken by the prospective employee who might not get the position, and setting aside the presumption of innocence, that this person may have voluntarily left the former employment with the Government anyway not for the reasons you outlined as not wanting the hassle of an investigation, that might be the very person who—

Mr O'Gorman: It could, but what I am saying is that this system of asking an applicant for a job for authority to approach the previous employer is at least less draconian than the proposal to pursue a person who has resigned. I still accept that there are problems with it, and indeed the practice that some employers are now having of requiring people who are applying for jobs to in fact indicate whether they have been charged, even if not convicted, is a course of action that is worrying; but if there is to be an alternative, I prefer that alternative to the alternative of mandatory reporting.

Mr WILSON: Mr O'Gorman, wouldn't one of the problems with your suggestion be that it would happen well or poorly and anything in between on a case-by-case basis and instance-by-instance basis, whereas either mandatory reporting—and I am not commenting about the merit of it one way or the other—or extending the jurisdiction at least provides a systematic way of addressing this issue.

Mr O'Gorman: Well, I would question, with respect, whether the mandatory reporting would provide a systematic or a better system. There has to be a system, at least in the example we are talking about, where there is information provided, it is provided at the same time to the applicant as to the employer so that the applicant is in a position to say, "Oh look, that is nonsense for this reason."

Mr WILSON: That might, in fact, happen on an occasion, but its happening occasion by occasion is entirely dependent upon the discretion of the employer in the way in which they respond to the invitation of the prospective new employer.

Mr O'Gorman: Well, perhaps the answer to that is to amend the relevant industrial law to say that where an employer engages in a practice with a particular potential employee of requiring them to give authority to talk to the previous employer, maybe the Act needs to be amended to say what the previous employer passes on has to be passed on as a matter of practice and law to the applicant.

Mr WILSON: If he chooses to pass anything on.

Mr O'Gorman: If it chooses to pass anything on.

Mr WILSON: So my observation is that is the difficulty surely in your proposal in that it would only work so long as the employer exercises the discretion to make the information available to the new employer and if the employer chooses, "No, I won't", then the whole objective is defeated of putting a new employer on notice about the circumstances surrounding their resignation.

Mr O'Gorman: Well, no, I think not. Leave aside the area of child sexual abuse and teachers having an affair with a 16-year old. If a person is applying for a job, the employer says,

"A condition of our considering you, company policy is that you provide a written authority enabling us to obtain any information we want from your previous employer." The previous employer says, "I don't want to provide this information, don't want to spend the time.", or, "Philosophically, I am opposed to providing it." What does it matter? I am not arguing that employers have a right to know the non-criminal background of their employees prior to taking them on. I am simply saying the voluntary completion of an authority by the applicant to enable the previous employer to provide information if the previous employer wants to is better than mandatory reporting. My concern is that the net of mandatory reporting is at risk of going way beyond the area of child abuse and the concern is that if the proposal to pursue public servants—leave alone the example of the inappropriate affair—even when they have resigned is acceded to, is going to yet again widen the net, and for what good benefit?

The CHAIRMAN: Noting your objection to the issue of being able to pursue public servants for misconduct after they have resigned, I note that section 81 of the New South Wales Public Sector Management Act does allow that potentially to occur. Do you say it is possible, or what do you say would be the safeguards that one could institute to make sure that such a power was only used in the most serious of cases? As I said, noting your objection full stop to the issue.

Mr O'Gorman: Well, noting my objection I am certainly reluctant to have that power left to the CJC to exercise without any constraints. I just cannot envisage, if the example of the teacher and the 16-year old is concentrated on, why you would need, under the New South Wales model, to pursue that person anyway if the school in the private sector did their proper reference checking.

The CHAIRMAN: In New South Wales they have jurisdiction over the private sector, so it would not be a problem.

Mr O'Gorman: Do we have any information as to how the New South Wales model is in fact working, because it would seem to me that getting some useful information from New South Wales in that regard may well help.

The CHAIRMAN: So you say that we should have a look at in how many instances it has been used in New South Wales to ascertain the nature of whether it is a useful tool or not.

Mr O'Gorman: Have a look at the instances and have a look at what materials might exist to show that it either is not working, or what effect it has had on people who have been pursued. If we are going to take a model from another State, it seems to me that it is incumbent on those who want to take this model, or put it up to go there, to put before this Committee both the good and bad side of how that works.

The CHAIRMAN: Can I take you to the issue of Project Resolve—you touched on it in your opening remarks—and the issue about devolving to the Police Service greater responsibility for dealing with matters. That was something that Justice Wood in his deliberations, and also Marshall Irwin in a paper presented a little while ago, indicated the desirability of. As a proposition, do you not believe that it is important within reason—we will go through the qualifications in a minute—but for organisations such as the Police Service to accept responsibility for conduct standards a little bit like perhaps if, as a legal practitioner, someone had a complaint against one of your staff members and you just said, "Get out and talk to the Law Society. I'm not interested in resolving it", is it not incumbent upon an organisation to accept some responsibility itself to make sure it promotes a culture and people can be assured that it will take complaints seriously?

Mr O'Gorman: I think the Police Service is different from other organisations. Historically, the Queensland Police Service and other Police Services right around this country have shown a pretty dubious track record in looking after even minor complaints. The problem with minor complaints is—and I have had personal experience of this, even with the CJC—that the CJC recognises that it is very difficult even where it is investigating minor complaints against police to be able to resolve them, because there is simply no evidence either way, to look at the evidence of the complainant or the evidence of the police officer.

My concern about handing over in a large-scale way the minor investigation of complaints to the police is: are the CJC therefore going to be robbed of the opportunity to examine trends? My view is that the importance of examining minor complaints is to be able to get a proper picture of where the problem is developing. My concern is that, if you hand it back to the police, they will go through the motions of investigating a minor complaint—and I have had experience of their

investigating minor complaints under the CJC. They think that, if they give you a 20-page reply, that is a good reply, simply because of the volume of words. It often does not address the fact that the minor complaint is incapable of being resolved because there is no evidence to look at the complainant's position or the police officer's position.

I simply say this: if the Police Service is to be given the increased role of investigating minor matters, correspondingly, the CJC has to take a greater role in ensuring that where a number of complaints are coming in against a particular police officer, the CJC looks at that or where a number of complaints are coming in in relation to officers of a particular squad or officers of a particular branch, say, patrol car officers, the CJC gets all of those finalised complaints and reports and analyses those trends.

As to my final concern, under the model that has been developing over time—and the CJC has been handing minor complaints back to the police before Project Resolve—some police have been put in the position of investigating a complaint against other police, and some police doing the investigating were really part of the problem and just avoided Fitzgerald. We all know how, particularly as a police officer running an investigation, you can produce a 20-page report and still run factually dead.

The CHAIRMAN: But surely the CJC, in contrast to the police submission, which talks about the CJC having an audit role in relation to minor complaints, is the primary repository of the complaint information. Essentially, it has the right at any stage to say, "We have looked at this report, because we look at all of them, and are not happy with it. We are calling it in. Alternatively, you do it again." Alternatively, the complainant is not happy with the result and complains to the CJC. Does that not achieve those important accountability requirements in any case?

Mr O'Gorman: I suspect it does not. Because what you are not being told in the submission—and while I came in a little late this morning, I was here from a bit after 11; I did not hear any evidence given of this—is the extent of actual examination of completed files where the investigation is done by the CJC. Assuming the CJC is understaffed—because I have not heard it say it is overstaffed—you have the position: who is actually given the task of examining these? Is the examination just superficial? And if the examination is superficial, it is not an examination.

The CHAIRMAN: So we should investigate that issue before we embark upon consideration of a recommendation of an extension of Project Resolve?

Mr O'Gorman: Absolutely. I would be happy for the Police Service to take on the investigation of minor complaints, but only if this Committee satisfied itself that the CJC had an actual structure in place that worked and worked 365 days a year to ensure that where they reviewed or audited a police investigation of a complaint it was done properly as opposed to a five-minute scan of a 30-page document.

Mr LESTER: I would like your views on this matter. Should section 118A and section 60 of the Crime Commission Act be amended to provide the Committee with the additional function to monitor and review the level of cooperation between the CJC and the Queensland Crime Commission?

Mr O'Gorman: The simple answer to that is: yes. Could I go further? I heard Mr Carmody this morning. 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.

Mr LESTER: Thank you very much for that. I will see if we can take that up.

Mr O'Gorman: I am sure they would welcome it, Mr Lester. Mr Carmody said that, I think.

Mr WILSON: I do not think the word "welcome" was used.

Mr O'Gorman: I think he said they could live with it. The CJC has lived well with parliamentary supervision and it seems now to thrive on it.

Mr WILSON: We are very nourishing.

Mr O'Gorman: Cross-fertilisation.

The CHAIRMAN: One of the issues raised by the Public Interest Monitor relates to the issue of surveillance devices. He has pointed out that in the Police Powers and Responsibilities Act, in particular section 127(3), when a judge approves the issuing of a class A surveillance device he or she may impose conditions upon that authorisation. Whereas the Criminal Justice Act, in section 82, gives the power of the court to issue a warrant for an appropriate listening device, but it does not indicate that that can be made subject to conditions. Is there some need to have that explicitly stated? Obviously, the Committee is not aware of the terms of particular orders that are made. Is it more precise to have that power listed there so judges can place limitations on the issuing of those warrants?

Mr O'Gorman: There is an undoubted need for that. Perhaps I could spend a minute, while I answer that question, talking about the Public Interest Monitor role. You would remember that it was an initiative of the previous coalition Government. I know from talking to senior people in law enforcement agencies in this State that Mr Perry, who is the first and only incumbent of the office to date, is well respected. He is able to sort out issues. The fact is that part of the justification for bringing in the Public Interest Monitor was the Heery case. There should be a power to impose conditions on a listening device but, more importantly, I submit that the Public Interest Monitor should have the power to, in effect, spot audit during the existence of a listening device to ensure that a particular condition or conditions are, in fact, being complied with.

One of the things I might respectfully urge you to do—and I hope to get back this afternoon for Mr Perry's presentation—is to look at that role of the Public Interest Monitor and see if it can be extended not just to what its current role is, and that is to be in the judge's chambers as a devil's advocate, so to speak, to put an alternative view to the law enforcers; I think there is a strong argument for the Public Interest Monitor's role to go one step further and to be given the extra power and the slightly greater resources to spot audit a listening device while it is in place so that, for instance, it would be a condition of the listening device warrant given by the judge that if there is no more than 5% of criminal intelligence being collected and there is 95% private conversation, the further existence of the warrant should be justified.

My concern is that these warrants may well be issued on the basis of saying that if we can listen to someone, we are going to get very high-grade criminal intelligence. In fact, for all we know—because none of us around this table ever see what happens—you might get very low-grade criminal intelligence. The warrant may run for 60 days and you have 60 days of highly intrusive personal conversation and other activity in the house being picked up. As to the role of the Public Interest Monitor, you may not be able to do it in this review, but I think it is an extremely important role. I would like to see this Committee look at it in due course and to see its role expanded.

The CHAIRMAN: I should note for the record, too, that the Public Interest Monitor in his third report, the most recent one, reports to the Parliament that those agencies, including the Criminal Justice Commission, have established a cooperative and effective relationship with the office of monitor and recognise it is indeed in the public interest that effective investigative techniques be linked with accountability. I should note that for the record. Statutory provisions are important in the public interest as well, of course.

Mr O'Gorman: Before we move off him, I note with some considerable regret the refusal of the Government to take up our submission in the recent witness anonymity legislation that, instead of having a group of police and perhaps a retired judge sitting around deciding what police and citizens can give evidence anonymously, that really is a proper and viable role for the Public Interest Monitor. I am left with the sad conclusion that this Government will not use the Public Interest Monitor because it was a previous Government's initiative.

The CHAIRMAN: Can I ask you about the office of the Parliamentary Criminal Justice Commissioner? You recently delivered a paper in Western Australia about the office. Would you care to indicate some of your thoughts? We have now had the office for approximately three years. Would you give the Committee the benefit of your views of the strengths and weaknesses of the office?

Mr O'Gorman: I went over to WA and gave evidence to an equivalent of this Committee. Obviously, my evidence was not particularly useful, because the committee recommended an office of parliamentary commissioner and the Premier, Mr Court, said it was not needed. My view is that that office 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.

The CHAIRMAN: One difference between the police Integrity Commissioner and the Parliamentary Criminal Justice Commissioner is that our Parliamentary Commissioner, with the exception of the Connolly/Ryan records which are a different issue, has no own motion power. Therefore, references to the Parliamentary Commissioner in Queensland come through the Committee by bipartisan majority, whereas the complaints in relation to the police Integrity Commission in New South Wales are made direct to the inspector. Have you any thoughts on the relative advantages or disadvantages of either procedure?

Mr O'Gorman: I really cannot see the justification for the Parliamentary Commissioner having to get effectively the green light from this Committee before the incumbent of that position can carry out an investigation. 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.

The CHAIRMAN: One of the advantages that this Committee has in primarily taking responsibility for assessing complaints is that it provides a very useful window for it to understand the operations of the CJC, regardless of whether the complaints are ones that are at the end of the day found to be justified or not, and thankfully the vast majority of them are not. Would you then see that if the Parliamentary Commissioner essentially took over the complaints role, this Committee would ensure that it then still had the ability to question with respect to matters or to make sure that it was up to speed about that important window into the CJC that dealing with the complaints gives?

Mr O'Gorman: Possibly by requiring the inspector to the Parliamentary Commissioner to provide you with details of all complaints. I have the impression—and this has not come from Julie Dick herself—that the Committee having to be a conduit through which all complaints go is perhaps contributing to delay and is perhaps simply not necessary. I could see if I were to sit in your position, Mr Lucas—and clearly I never will—I would want to know what complaints are being made against the CJC. But I cannot see any reason why complaints cannot directly go to the commissioner with a directive, whether in law or otherwise, that the commissioner effectively copies all complaints to the Committee.

The CHAIRMAN: One issue—and I alluded to it earlier—that is very topical relates to private entities exercising public functions. The classic example is prisoners, where an amendment to the Corrective Services legislation will shortly give the CJC jurisdiction over private prisons, and also increasingly in areas of public functions that are contracted out. There are various degrees that one can go from an organisation that has perhaps a statutory function even though it is not a Government organisation all the way down to the local bowls club that gets a Gaming Machine Community Benefit Fund grant, therefore, it receives public funding. How do you draw a line and what is the appropriate line to draw to ensure that the competing interests,

first of all, of integrity, administration of public moneys and public confidence and, secondly, the resources implications for the CJC—we do not want it investigating a fight over who is on the committee in the bowls club? How do you ensure that there is some public confidence in those public functions that are privately undertaken? That is a difficult question. What do you see as the issues?

Mr O'Gorman: It is a difficult question. In the FOI area there really is not much serious debate. Private entities that carry out Government functions should be subject to FOI. If that is an accepted principle, then arguing on principle, the same should apply: private entities that carry out previous Government functions should be amenable to the jurisdiction of the CJC. It really is a question of where do you draw the line. I must say it is not a matter that I have given much thought to, but I think that the increasing contracting out of previous core Government responsibilities to the private sector is a serious issue that has to be addressed.

It took some time for that equivalent argument in FOI to gain currency and centre stage. It probably needs some more debate, perhaps a specific call for submissions for an examination in the middle of or late next year. There are some philosophical issues: to what extent should the writ of the CJC run? I think thought needs to be given to that. To what extent should private sector organisations have to incur the extra cost of responding to CJC inquiries? I think there are resource as well as philosophical implications, but I think the issue has to be addressed.

Mr HEGARTY: Going back to the earlier one on misconduct, where a person chooses to retire or resign to save the hassle of an investigation or subsequent determination of a tribunal, do you think that, as in the case of simple offences such as a traffic offence where a person chooses not to appear and by implication is acknowledging guilt, that will be a fair system in view of the fact that something will be recorded as a mark for future employment prospects to be measured against?

Mr O'Gorman: If the question is: should former public servants still be able to be pursued and put before the misconduct tribunal but have a choice to simply not turn up, my answer is: I would be very, very concerned about—is that the question?

Mr HEGARTY: Correct.

Mr O'Gorman: I would be very, very concerned about that model because, with respect, I do not think there is much of an analogy with the person who does not turn up for the traffic ticket. You do not get the media reporting, "X did not turn up for his traffic ticket", or as a result of not turning up for a traffic ticket matter in court you do not suffer career-wise later. I would be very concerned about any proposal that would allow the CJC investigation through to misconduct tribunal proceedings in respect of a former public servant where it could be done in his absence.

I must say I am just concerned about this function creep/spread of the CJC's role. Go back 10 years ago and look at what its role was supposed to be. I think the natural tendency of any organisation is to want to continually gain more power. I think the question we have to ask, particularly in relation to pursuing public servants once they have resigned, is where do you draw the line? My position is you draw the line at: you do not pursue it.

The CHAIRMAN: Thanks very much, Mr O'Gorman. We will excuse you now, although you are most welcome to stay. Mr Tony Glynn from the Bar Association is unfortunately not able to be here. We might take the opportunity to have Mr Butler respond to any issues he wishes that were raised by Mr O'Gorman. It might be apposite to do that now.

Mr Butler: I was not able to be present for all of what Mr O'Gorman had to say. I would obviously be happy to answer any queries arising out of it for the Committee. 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. I think

probably the way it is operating at the moment addresses some of those comments that were made by Mr O'Gorman.

On the issue of the CJC's dealing with investigations which were referred to the Police Service, I think some of the concerns Mr O'Gorman had and some of the aspects that he was suggesting really align with the position of the CJC. At the moment, the majority of matters referred to the Police Service are reviewed by the CJC. It is not a five-minute review; it is a comprehensive review of the investigation material and the report from the investigators. Quite frequently the CJC does refer matters back to the QPS, indicating inadequacies that it has detected in the investigation or requiring further investigation or interviews to be carried out or requiring the CJC to look again at the matter. So there is a comprehensive process of review going on.

As probably would have been apparent from what I said earlier, I am not at all in favour of the devolution of responsibility for dealing with complaints to the police—and I use "dealing" broadly to include either investigation or a managerial response to the complaint. I am not at all in favour of that without that ability for the CJC overview to allow the CJC to impose itself at whatever point in the process as necessary to either take over and do the investigation or to monitor it in the sense that it would be requiring progressive reports and perhaps some involvement in the interviews so that it can have some effect on the direction of the investigation.

The CHAIRMAN: And Project Resolve allows you to do that?

Mr Butler: Yes. Under Project Resolve we retain those sorts of abilities. What we are doing under Project Resolve, though, is trying to move away from reviewing all of the matters to having a more flexible response and making judgments on that. We would be looking at what the appropriate response is out of that package that I have spoken about for the particular matter and making those judgments as we go.

The CHAIRMAN: Say you get a periodic report from the Police Service and someone looks at each of the items and then says, "On the basis of that information, we do want more information. We do want something else", and they then make a decision on that. If they believe there is insufficient information, they can ask for more. Does that take place?

Mr Butler: That can take place. In fact, sometimes the Police Service seems to favour it. Notwithstanding its submission, when there are seen to be compelling reasons it comes to us and wants us involved. That often happens with major incidents such as deaths in custody and so on where the Police Service is sensitive to the situation and favours the CJC having an involvement in it. It is not the case that we do much monitoring. What you are talking about is what we would presently define as monitoring. Primarily, where it is referred back to the QPS, we review it, that is, we wait until the investigation is finished and we receive an investigation report before any disciplinary or further action is taken. We then look at the material and the report and make a judgment on that and take it back to the Police Service at that point if necessary. Alternatively, if it is a matter under Resolve where we determine that we do not require to review it, there will be a process of auditing those matters. Consistent with what goes on in New South Wales, in future we would anticipate that that auditing would be quite focused and along the lines Mr O'Gorman was talking about, that is, we would be looking for patterns.

The CHAIRMAN: People and places.

Mr Butler: Yes. It might be that a particular area seems to have an abnormal history in terms of complaints, the percentage of resolution and so on. We might decide to audit that particular area. It would also be the case that, under our proposal—and this is contrary to the police proposal as I understand it—the CJC would assess the

matters up front. We would be able to check that against our understanding of individuals' complaints histories or specific patterns that we are aware of that raise concerns about a risk factor in a particular area and make our choices as to whether we are going to investigate a matter ourselves, having regard to those sorts of considerations.

Mr WILSON: If the objective is to, by whatever means, put yourself in a position of detecting a pattern of behaviour revealed by the type of complaints made against the police and the way in which they are investigated, would it not be the case that the best way to detect a pattern, if there is one, is to individually review each investigation, as has happened in the past? You might step away from individual review to monitor and then the next level might be audit

where there is a random selection but perhaps not so random that there might be indicators that bring new focus. As you move away from individual review, are you less able to detect, fully at least, any patterns that might be there. That was the concern Mr O'Gorman raised.

Mr Butler: There is a certain logic about what you say, of course. In practice, it is not quite that simple. It depends how you use your resources. One of the factors in this is that it is necessary to have managers manage and to place that responsibility on them. We are weighing how we are going to deal with matters against that consideration. The other issue is that, if all your resources are focused on comprehensively reviewing each matter on a case-by-case basis, you do not really have resources left to be scanning the broader issues, because the person who looks at this case and spends some days working on it may not have looked at the other ones that actually form the pattern. So you need someone else to be checking the overall picture. There is a danger that, if you deal with everything on a case-by-case basis on a highly investigative, adversarial type model where you are worried about the fact finding and whether or not you are going to prove guilt against somebody as opposed to asking questions as to whether there is a systemic problem and how we can deal with that, you might lose the wood for the trees. So there are competing factors.

A lot of it depends on the type of matter and the level you are looking at. You need to go to practical examples to understand it. The issue of inappropriate behaviour towards people in strip searching is an example. In relation to the potential in terms of investigating the allegations complainants made, getting a positive investigative result that would result in a prosecution against somebody is very low indeed because police officers have the power to strip search people in watch-houses. There are a whole range of reasons why they might properly utilise those powers. It is very often a word-against-word situation as to whether or not there was appropriate reason at the time or not.

If you expend all your resources trying to investigate every one of those matters but the likelihood is that you end up with 99% of them unsubstantiated, then you have not really done anything about the problem of people complaining about being strip searched in watch-houses. What we tried to do was look at that pattern and say, "Maybe we need to operate in a more general preventive way here." We asked whether there were issues that might assist police officers who have to do this job which might result in a situation that is more acceptable to the people who find themselves in watch-houses so that complaints will not keep arising.

Through a process of open submissions, surveying police, investigating what was going on in watch-houses and providing good recommendations, we now have a situation where there seems to have been a reduction in complaints of this sort of behaviour. The problem has been brought to everyone's attention. There is an understanding of the tensions involved. The Police Service has committed itself to implementing our recommendations in full. The potential is that we have minimised those sorts of complaints for the future. However, you need to allocate resources to do all of that. You cannot do that if you are using those resources to look at the facts in each individual case on a one-by-one basis. So it is that balance.

The CHAIRMAN: Thanks very much, Mr Butler. The only other issue that arose from Mr O'Gorman's contribution on which we wanted a response from you related to public servants, but other witnesses will address that. It is probably more appropriate that you address all of their comments at the appropriate time.

The Committee adjourned at 3.08 p.m.

The Committee resumed at 3.17 p.m.

GARY LONG, examined:

The CHAIRMAN: I invite you to address the Committee.

Mr Long: Thankyou. I presently hold the position as the senior member of the misconduct tribunals. I had the opportunity yesterday to send down some observations that I have recorded in writing in response to your letter. I will start in reference to that by observing that, in the capacity in which I appear here, I think it is undesirable that I enter into making observations in relation to individual cases or particular lines of argument, rather than identifying issues of policy that may impact upon the operations of misconduct tribunals in terms of the issues that you set out in your letter, and that is what I have attempted to do through this document that I have prepared.

I draw attention to the fact that, in relation to the issues specifically relating to the resignation or retirement of public servants, it is important to bear in mind the two levels at which the misconduct tribunal operates and the different considerations that apply, particularly in practical terms in the way in which those matters come before the tribunal and the powers that can be exercised.

I emphasise that it is important in my view in considering these issues that what is borne in mind is the purpose which is identified for which disciplinary proceedings are taken and for which sanctions are imposed in our tribunals, having regard to the protection of public interest or the protective nature of the tribunal, rather than being a tribunal that exists to exercise a punitive function.

Having done that, I made observations that if changes were to be considered that should be done from the point of view of identifying therefore the particular public or departmental interest that was being sought to be protected by proceeding against people who otherwise were desirous of retiring or resigning and to bear that in mind in relation to both what changes should be made and how those changes would be implemented in the legislative structure.

I then attempted to identify what I thought would be aspects of the legislation that might require attention, having observed that there may well be a category or type of case that can be identified where the competing public interests on balance favours proceeding, and proceeding in a way that allows some independent adjudication of the issues.

That is really a thumbnail sketch of what I set out there in writing. I have also then gone on to raise two other issues, having been given the opportunity to raise them before this Committee, that have arisen in relation to the operation of misconduct tribunals. The first one is one that I would urge is an issue that is deserving of some consideration, because it is something in practice which has proved to be a difficulty in some cases in dealing appropriately with them.

Although there is provision for a power to make non-publication orders, by the way the legislation is constructed it can only be done if the tribunal is closed. There are of course ways in which the tribunal's proceedings can be regulated such that it is closed for part of the hearing, or perhaps other orders are made in some instances, but it can lead to tension particularly, as I have said in the document, where one has a deserving complainant and where the public interest does not necessarily extend to having widespread publicity of embarrassing or sensitive evidence that is given. At the moment, the only way of protecting those interests is to actually close the tribunal. That can lead to tension then with the primary rule that the tribunal should operate in a public way so that the operations of it are in the public gaze.

That is a limitation that is there at the moment that I would suggest is worthy of some consideration as to whether there is a good reason, which does not occur to me, for having it or whether the legislation might be amended to simply allow for a wider power, in appropriate cases, to make binding non-publication orders without having to close the tribunal to public gaze for its proceedings.

The other issue is one that had simply been raised with me in an administrative sense by departmental officers in relation to the question of community service. I have set out there what are the competing considerations as I see them. At the moment the tribunal does not have an express power to make a community service order as part of a sanction. Whilst there is an ostensibly wide power to impose conditions on suspending a sentence, the difficulty is the practical consideration of how, if it is not specifically provided for, community service would be enforced and supervised within the relevant departments.

The important consideration there will be at the end of the day that, although in practical terms in the appeal jurisdiction all matters have come to us from the Police Service, there is power to deal with officers in appropriate cases from other units of public administration. Whilst the police discipline regulations do envisage police officers doing community service—I cannot comment on that; I do not know how that is effected in practice because it is not something we see, because it is done at a lower level, at the disciplinary level—it will not be necessarily the case that other departments have that capacity or have procedures in place to be able to do that. That would of course need to be there for such a power to be an effective one in practice for the tribunals, if it was seen as being a desirable option. Those are the observations that I think I can usefully make in reference to the document I have prepared.

The CHAIRMAN: One issue we have been discussing in some detail is the issue of public servants who are facing misconduct tribunal proceedings resigning. Then, of course, your tribunal loses jurisdiction. In New South Wales there is a provision in section 81 of their Public Sector Management Act that allows the disciplinary officer in the relevant department to proceed with disciplinary proceedings. What do you say are the benefits or negatives of such an approach? Is it more likely that you would probably never see them because resignations happen before they come to the tribunal? Can you assist the Committee there?

Mr Long: I am aware of two matters that came before the tribunal where resignations ensued and the matters did not proceed before the tribunal, at the election of the Criminal Justice Commission. As I have observed in the paper, I am not aware of any testing of that proposition, as to whether the tribunal loses jurisdiction as such. What I have attempted to do in this paper is point out that I think the real limitations are more practical. That is, the tribunal's powers as they presently exist could not in any sensible way be applied to such a person so that any effective sanction could be imposed, save I suppose for a finding that the charge has been proved. But that does not seem at the moment to have any practical effect, as far as I understand it, in the procedures.

The CHAIRMAN: What about in the situation where, for example, a teacher in the Government system has had a misconduct investigation of them, say, for a relationship with a child over the age of consent but nevertheless inappropriate? Do you see any utility in jurisdiction still being able to be exercised there? Are there other ways in which one might deal with those problems without having a general approach? Do you have a view on that?

Mr Long: I have expressed the view here—I express it again—that an obvious difficulty in this area is that you may have people who have arguably demonstrated a complete unsuitability to hold a position in a unit of public administration. The argument that there should be some way of marking that has merit, obviously. That means that there needs to be a procedure put in place that allows for a determination of those type of allegations, notwithstanding the fact that there has been a resignation or a retirement tendered.

Because there are the competing public interests—on the one hand the expense of doing this as against the utility, the public interest, of seeing some determination in these cases—it seems to me that you are arguably going to be talking about the more serious type of allegation that will probably amount to allegations of official misconduct, which generally are regarded as being the more serious type of allegations.

That will necessarily mean that those sorts of allegations will come to the Misconduct Tribunal, which has exclusive jurisdiction in relation to them. If that is the sort of approach which is being contemplated, then the sorts of changes to the Act which I have dealt with in here will be necessary in order to allow for some determination of the matter and some sanction at the end of the day, even if it only be a declaration as to the fact that a person would otherwise have been dismissed or reduced in rank or salary level or whatever it might be.

There is, of course, the possibility to retain a power to fine or impose a monetary penalty, which is an option that is there already. I just simply emphasise again the need to approach this on the basis of protecting a public or departmental interest in marking the fact that such a person has shown that sort of unsuitability or committed some misconduct which needs to be recorded on their record because of the seriousness of it.

Mr WILSON: If it were possible for the proceedings to continue after the resignation, at least to the point only of a determination of the issues, then would you see that that would be of some value—and, in this case, assuming that there was an adverse finding—from the point of

view of protecting the public sector if that employee, five years later, for argument's sake, applied for new employment?

Mr Long: That, I think, would depend upon the particular framework in the particular unit of administration and how that framework allowed for that sort of finding to then be recorded and acted upon, for instance, in the example postulated in the material—the concept that the Teacher Registration Board could have and act upon such a finding within the framework of its duties and responsibilities.

Mr WILSON: It was argued by a previous person giving evidence today that the former employer could be approached by the next succeeding employer by way of asking for a reference, making the general reference checks, and that would be a suitable means of the next employer—and let us say it is another Government department down the track—becoming aware of the circumstances of the resignation, short of a determination or finding having been reached. Do you have any comment about the suitability of that process?

Mr Long: A difficulty with that, I would perceive, is going to be that the concepts that are being considered here necessarily raise questions of the more serious types of allegations, and in my view 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. If they are those that are at the more serious end and those that could amount to official misconduct, such that a charge of official misconduct is appropriate, then the exclusive jurisdiction is with the misconduct tribunal. That is why that would have to be looked at in terms of the extension of the jurisdiction of the tribunal. I hope that answers your question.

I have assumed for the purpose of what I have said here, as I say at the bottom of page 4 of this document, that it is not intended to provide that retirements or resignations not, in fact, take effect subject to findings, and I have dealt with my suggestions on the basis of that assumption. I have also observed in the paper that, in considering the public interest in this area, it can easily be observed that, in many cases of misconduct within units of public administration, it may be easily argued that a simple resignation or retirement is an adequate way of dealing with that at that stage, when things are at the lower end of the scale, perhaps.

Mr LESTER: Do you have any specific changes you would like to make to the Misconduct Tribunals Act?

Mr Long: One that I am urging on the tribunal is in relation to section 24 under the heading of "Non-publication orders", but that is getting away from the other issue I was asked about. In terms of changes, I would suggest if the sort of process which has been discussed with me here this afternoon is going to be implemented, I have made those observations at page 4 and over on to page 5 as to what sections I think should be looked at and the way in which amendments should be looked at.

The CHAIRMAN: What about section 8 of the Act? It is the one that provides that a tribunal member, in aggregate, must not serve for more than six years in total. There is a fairly limited pool of people who are able/willing/qualified to serve in the position as a tribunal member. On the other hand, there are good arguments for avoiding people being there for lengthy periods. Could I put this proposition to you: rather than perhaps an absolute term limit, it may be more appropriate to have a limit on continuous appointment, and therefore someone sits out for a few years and they potentially may be able to be reappointed so we do not go into a situation where, in six years' time or nine years' time, we do not have sufficient people of the appropriate talent to appoint. Would you care to comment on that at all?

Mr Long: There is definitely, in my view, advantage in having some continuity and not losing the advantage of a good deal of experience, which is gained through actually sitting on the tribunal and dealing with matters over a period. The period which is set of six years—which is two terms only continuous, for six years in total—is obviously very restrictive. I would agree with the suggestion that you make. I would simply qualify that by saying that my own particular view is that it would be more desirable not to have a limit specified as a number of years. No-one could argue against a process that required periodic reappointment where the factor that you speak of, of allowing for the infusion of new appointees, can be catered for, but not necessarily losing the benefit of continuity and the experience of people who have been doing the work.

The CHAIRMAN: It should also be remembered that the Act requires that any appointment be subject to a bipartisan majority of this Committee as well, which is a further safeguard.

Mr Long: Yes, that is right. It is quite a rigorous process.

The CHAIRMAN: We have no further questions. Thanks very much for attending. You are now excused.

MARK LAUCHS, examined:

The CHAIRMAN: The next person to appear before us is Mr Mark Lauchs from the Office of Public Service Merit and Equity. If you could identify yourself and what you do and address the Committee.

Mr Lauchs: Mark Lauchs. I am the Acting Team Leader for the Ethics and Integrity Area in the Office of Public Service Merit and Equity.

The CHAIRMAN: Would you like to address the Committee?

Mr Lauchs: I think we have actually provided in advance a copy of our responses to the questions that were outlined in the invitation to attend. The most basic point we have made there is one that, whilst we work with the CJC and with other agencies in relation to whistleblowing, we do not supervise their detailed actions. We have the responsibility over the Whistleblowers Protection Act, but most of our responsibilities are in relation to policy and education rather than the application and detail within agencies. So we do not feel very qualified to give a commentary on how well the CJC applies that Act.

The CHAIRMAN: Who has responsibility for individual agencies and their whistleblower policy?

Mr Lauchs: The individual agencies themselves.

The CHAIRMAN: Does your organisation exercise any oversight or guidance in that regard?

Mr Lauchs: Yes. We are doing a review at the moment of the reporting of whistleblowing within annual reports. We are doing a single document covering the last six years. As part of that project, we are looking at the ways we can ensure that agencies—and when we say "agencies", we are including departments, the universities, the local government authorities and statutory authorities, so about 500 reporting agencies that have to report on their disclosures under the Whistleblowers Protection Act. So we are currently conducting that review for six years with a view to making sure that we can do an annual report on how agencies have reported, and they are actually required to assist us in doing that each year. At the moment we are discovering that most agencies have not reported; they have not met their requirements under the Act.

Mr LESTER: There may be reasons why they are all different, or some are, but would there be an advantage in trying to - and I know you are doing these reports—get the reporting similar? One of the things I come across as a member of Parliament—and I am sure others do—is that somebody does report in the interests of us all, and then they find that there are various ways they are subject to victimisation with people getting around the requirements. There are ways and means you can make it difficult for somebody who does report in the public interest. Do you have any thoughts on that?

Mr Lauchs: Once again, as I said, we have not done a review of how the individual agencies have conducted their application of whistleblowers, so it would be hard to give a commentary on how well they are operating. I am not saying that is not part of our responsibility; it is just something that has not occurred as yet, and it is something that we have on the list of things that we are doing.

One thing we are concentrating on is alternatives to whistleblowing itself. Our main responsibility and the main responsibility of my branch is in relation to the Public Sector Ethics Act and in training in relation to ethics. Other parts of the agency deal with leadership and with executive management, and what we are trying to implement is preventive measures.

One of the things we have been talking to agencies about is alternative methods such as the Main Roads Department's confidential hotline. A similar hotline runs in the Premier's Department. I believe there is going to be one in Education. These things require a great deal of trust, obviously, within the agency, but what they can do is allow for intervention at a much earlier stage than whistleblowing, and in that sense we think it is very important. But at the same time we also think the Whistleblowers Protection Act is absolutely essential as setting the minimum catchment of standards that have to be met—not everything could be prevented.

Mr WILSON: Not necessarily related to whistleblowers but more generally, does your branch or somewhere within the Office of the Public Sector work with the CJC in the introduction into agencies of proactive and systemic initiatives to address the risks of official misconduct?

Mr Lauchs: Yes. There are two methods we are using. One is the Queensland Public Sector Ethics Network, which we have set up. It previously had existed for a few years as more of a conference forum for people to talk about ethics, but we have set it up as an interdepartmental committee—it also has academics attending—where we discuss issues in relation to public sector ethics. In fact, whistleblowing is our next topic that we will be dealing with in February. So that is where we actually set standards for departments. At the last meeting we had we workshopped the issue of public sector ethics education and what each of the agencies thought were the minimum standards. We benchmarked code of conduct training for agencies. We can do the same thing for whistleblowing insofar as we would get feedback from each of the agencies in advance of the meeting of what they are conducting within their agencies in relation to whistleblowing and then workshop those issues to obtain, once again, a benchmark for agencies on how they should be applying the Act.

We have a restriction in that the legislation, particularly the Public Sector Ethics Act, is established on the basis that we will provide guidance but we will not set rules for people. So that is the way we have to operate and that is the basis of the Queensland Public Sector Ethics Network—that it is a place where the guidance can be obtained for benchmarking but we cannot go out and make agencies comply other than with those things that are strictly stated within the Act.

The other mechanism that is now available is the Corruption Prevention Network, which has been established in cooperation with a number of agencies' internal audit areas and the CJC. It is much more focused on the practitioners of corruption and prevention rather than on our role of education and guideline setting. So they are looking more at sharing knowledge and techniques.

We are also working with the CJC. We have held two meetings so far and we are going to hold regular meetings, mainly with the research area, about how we can examine what is going on and share our research capabilities to prevent duplication and get the maximum bang for the public dollar out of what we are working on.

Mr WILSON: Just following up on that, is there any central agency from which is driven the agenda over all of the departments and agencies of introducing these education initiatives or reviewing the way in which official misconduct matters are handled, or is it left to each agency and department independently to go as fast or as slow or as imaginatively or as dully as they each choose to do?

Mr Lauchs: It is a bit of both, actually. We have a leadership role but we do not have a supervisory role in the sense that we can set an agenda and raise benchmarking standards but we could not go to the agencies and ensure that they meet those standards.

Mr WILSON: So you might lead but they do not necessarily follow.

Mr Lauchs: That is correct.

The CHAIRMAN: Is that desirable? Is it not in the interest that your office be able to, perhaps liaising with the CJC and taking into account their considerable expertise, promulgate some standards that might be appropriate for whistleblowing across the public sector?

Mr Lauchs: I would not like to give an opinion on whether or not it is desirable because that is actually something we would need to check. The policy situation has been put in place through legislation. It may be that standards can be set under our Public Sector Ethics Act in relation to the powers of the Integrity Commissioner and the Premier can ask the Integrity Commissioner to set standards. That is a very general provision, though, and would not necessarily guarantee that anything could be enforced from that. It could actually be just another benchmarking standard. In order to determine whether or not it would be better—that your suggestion be put in place rather than the current situation—that would have to be examined in some detail.

The CHAIRMAN: You have indicated that you have been discussing these ideas about standards. Is there an ongoing working party? I am conscious of the fact that people might want to try to reinvent the wheel and we have different standards but it seems to me—and this is only my view as a layman—that often with whistleblowers one of the real critical factors is that support has not been offered from an early stage. If you have a comprehensive and well-supported

system, then you may overcome some of the problems that whistleblowers have expressed in the past.

Mr Lauchs: I think there is certainly room to see how we could set up a better system than we have now. We are looking at whistleblowers in general. As I indicated in the letter, we have a project right at the moment where someone is just looking through the entire whistleblowers procedures and talking to stakeholders about how they feel. As I say, that has been set up independent of this process, which we were not aware of at the time. We are trying to look at that very problem from our point of view as the lead agency and what can be done to improve the whistleblowing regime. But we will be tied in the sense of, excluding legislative change, by that benchmarking.

The CHAIRMAN: Have you examined overseas models of dealing with whistleblowers?

Mr Lauchs: That is part of the current project; that is right.

Mr WILSON: When is the current project intended to finish?

Mr Lauchs: It would be February.

Mr WILSON: How long has it been going for?

Mr Lauchs: It started this month. So it will be three months—and when we are talking February I mean that during February there will be a final report. That is the current plan.

Mr WILSON: The benchmarking that you speak about coming out of the meetings that you have with agencies and departments collectively, does that generate a document that is a public document?

Mr Lauchs: Yes.

Mr WILSON: What document is that?

Mr Lauchs: We actually do notes from the Queensland Public Sector Ethics Network. They are publicly available but the mechanism we are going to be using is our web site, which has not been set up. With the reorganisation of the Office of Public Service Merit and Equity, one of the things that has fallen behind and has not been re-established is the web site, but everything we do will be available through there. In fact, they are publicly available on request now. It is just obviously that we do not have a mechanism to advertise that.

Mr WILSON: Thank you.

The CHAIRMAN: Thank you very much, Mr Lauchs.

Mr Lauchs: Thank you.

The CHAIRMAN: Our next person before the Committee is Ms Noelene Straker from the Youth Advocacy Centre.

NOELENE JOY STRAKER, examined:

The CHAIRMAN: I welcome you to the Committee. If you can identify who you are and what you do and then you are welcome to address us on issues that are important.

Ms Straker: Thank you. My name is Noelene Joy Straker. Just get that right for the record. I am a solicitor. I work for the Youth Advocacy Centre and I am involved in casework at the centre.

A little bit about the centre first, perhaps. The Youth Advocacy Centre is a community legal welfare agency for young people between the ages of 10 and 16—generally young people living in Brisbane. The centre provides a range of services such as legal advice, education, representation in the Childrens Courts and the higher courts, if necessary. The staff provide counselling, family mediation, support with accommodation, income and referral and the staff are also involved in research policy and law reform.

The centre has been in operation since 1981; so we are coming up to almost 20 years. We receive our funding from Legal Aid Queensland, from the Federal Attorney-General and from Families Youth and Community Care Queensland. We also get one-off funding grants for research and development from various relevant bodies that are kind enough to respond to our requests for such grants.

The young people we deal with—I particularly deal with a lot of young people who are caught up in the juvenile justice system and I act as duty lawyer once a week down at the Brisbane Childrens Court and I do work in other courts as well. We hear a lot of complaints from young people about their handling at the hands of the police. I would like to make the point that, in dealing with complaints against police that are made by young people, it is important to recognise the inequities that these people face when dealing with the police. Studies have proven them to be more vulnerable in their dealings with the police as a result of their immaturity, their paucity of verbal skills, their inexperience in dealing with questioning, their limited confidence with the police, their socialisation to agree with figures of authority and their vulnerability to pressure.

Obviously, where there is complaint it is because of a problem that has occurred in the young person's dealings with the police and which the young person had been powerless to address at the time. This often leaves young people with a mind-set that a complaint made to another member of the police force would be a waste of time. As they see it, people in the same organisation would tend to stick together. So they have already been badly handled at the hands of the police and to actually get them to go back to the police to complain about that, they would feel as if that would be quite useless.

They also expressed their feelings that there would be some payback by the police by way of being stopped by the police for questioning, stopped to give their particulars, having to undergo searches at the hands of the police or just in the general exercise of the police move-on powers. It is generally this fear that prevents young people from making complaints. We hear about the complaints but they are unwilling to take the complaints any further and we feel if they had to make these complaints directly to the police there would be even fewer complaints than there are at the moment.

At common law it has long been acknowledged that, in admitting the evidence of young people to court, there are certain safeguards that have to be taken into account, and it was from this that the role of an independent person grew. This has been acknowledged through the police procedures or the operations manual and it was also given statutory acknowledgment in the Juvenile Justice Act. Section 4, which sets out the principles of juvenile justice, acknowledges young people and their vulnerability in dealing with people in authority. Both the Juvenile Justice Act and the Police Powers and Responsibilities Act acknowledge this vulnerability in legislating for independent persons to be present during interviews that relate to indictable offences.

The original Police Powers Act called this person an interview friend and the most recent version of the police powers Act from this year calls this person a support person. This is moving away from the fact that we just need someone independent there to make sure everything is done, someone who is actually going to be there in a support role for the young person and this third-party protection or intervention or support, if it is necessary, would be lost in the complaints procedure, we submit, if the complaints were not made to independent third parties.

An existing problem with the CJC complaints that are then referred on to the police for investigation is that the young people feel very intimidated and quite afraid when a policeman then turns up on their doorstep to investigate this complaint that they have made not to a police body but to what they thought was an independent body, the CJC. It often takes a lot of talking to the young people to calm them down, to get them to accept that these people are quite divorced from the people against whom they are making the complaints. This is not a complaint about the way the police handle these affairs; it is just a statement of the perception of the young people.

In regard to police investigations, we actually get in touch with the police. We write letters of complaint to them for matters that are not serious enough to be sent to the CJC, and I can perhaps explain our problems with these letters just using anecdotal evidence. A magistrate found that a young person had been unlawfully arrested. We informed the officer-in-charge of the particular JAB where the police officer came from. We requested that we be notified as to what training would be put in place for the particular police officers involved and in the section generally to ensure that there was not a repeat of this situation. We sent this letter in June this year and we are still waiting for a reply. We have not heard a thing.

In October 1998 correspondence was sent directly to the Commissioner of Police outlining a situation in north Queensland where local police were imposing an unofficial form of community service without the protection of any court processes or anything like that. We received a phone call from someone in Brisbane advising that the local superintendent from north Queensland would be investigating the matter further and liaising with us, and from October 1998 we have heard nothing from them to this day.

Another complaint was made about the cautioning process. The elements of the complaint for which the young person had been cautioned had not been made out, and the independent person who was present to support the young person was the person's mother but also the complainant in this situation. The reply we had from the police said that the operations manual had been complied with and no further action would be taken. We had requested that the caution be dismissed. This illustrates a situation where the police are unable to look beyond their own practices and sometimes can be blind to the problems that exist with their own procedures.

It is really important, too, that complaints involving young people are resolved in a speedy fashion. The principles of the Juvenile Justice Act state that a decision affecting a child should, if practicable, be implemented within a time frame appropriate to the child's sense of time. Young people who have contact with the police are often very much at risk and are transient, and this makes it difficult to contact them, particularly with the lapse of time. Also, time delay causes young people to lose interest and despair that anything is actually going to happen.

It also means that there is no closure to the event. A recent CJC complaint, which was referred to the police for investigation, involved a 12 year old client of ours. The matter took 18 months to be finalised. By the time it was finalised the 12 year old had turned 14. She was living in a different area, she had got on with her life and she had put the matter completely behind her. She was angry when she was contacted with the result, not so much because of the result itself, which she found predictable, but because of the fact that it reminded her of a distressing period in her life which, in the way of young people, she had just put completely behind her.

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.

Just last week a meeting was arranged with Tom Barton, the Minister for Police, and six young people who had been directed by the move-on powers. Our director had been talking to Mr Barton about the wide use and abuse of these move-on powers. Mr Barton was unaware of these problems because there had been no CJC complaints made about them. He agreed to meet with six young people, who were very anxious to talk about their concerns about what had happened to them with someone in authority. At the last moment, two of these young people got

cold feet; they could not turn up on that morning. Between leaving where they were leaving and getting to the place, they had to turn away. They were too intimidated to discuss this matter with someone in authority.

Because of the vulnerability of young people, because we find police do not often investigate complaints, because young people are unable to cope with the delays and because the systems are not child friendly we referred in our submission to the provision for advocacy services for young people when they make these complaints. It is widely acknowledged that when young people deal with persons in authority, be it the Minister, doctors, nurses, schoolteachers and other people trying to help, they are still fearful of these people. In making a complaint, we think there needs to be a person these young people can identify as a support person, someone they can feel comfortable with and trust and who can advise them along the way. When the police investigate sexual abuse cases, a support person is provided, because of the special circumstances and the nature of the offences and because of the person's vulnerability and also their inclination to ignore the matter in an attempt to make it go away.

In talking about advocacy, we believe that thought should be given to a model for such a person. But whoever it is should be independent of both the police and the CJC. If a person could be identified as belonging to either of those organisations it would affect the young person's perceptions of their independence. Perhaps a position could be funded in an expanded role at the Children's Commission or at Legal Aid Queensland in the Youth Advocacy section or at a youth agency or a community legal centre. That is something that I think could be open for discussion. I would like to thank you for giving me the opportunity to address you today.

Ms STRUTHERS: Just in pursuing the issue of some sort of model to improve the likelihood of young people, firstly, making complaints and then feeling that their complaints are being dealt with appropriately, do you think it really needs another commissioner-type position or additional resources to the CJC or the Children's Commission or could it be established with better developed protocols at existing youth agencies? There is an extensive network of youth agencies around Queensland. Is there anything in the existing system that can be improved without looking at some other formal commission or role?

Ms Straker: I do not think there is funding for anyone to deal with these problems. To my knowledge, we are the only organisation in Queensland that does this. You cannot get Legal Aid for it.

Ms STRUTHERS: I mean more in the sense of a young person who is homeless and living in a shelter. Could it be that the CJC establishes protocols such that in its initial contact with a young person it identifies that person's acknowledged support person and then, with the permission of the young person, link with that person or establish some way of working with the young person and an advocate if they are not at home with parents? It just seems to me that we can risk having a whole lot of established agencies in Queensland for specific purposes of various forms of accountability for different target groups, for want of a better way of describing it, yet if the existing agencies can work better and have good protocols with other agencies, that seems to me to be something worth exploring.

Ms Straker: Yes. In dealing with the young person you first mentioned—the young person who was not living at home but in shelters and so on—these young people are highly transient. They have this life because they do not have a support person as such. For that young person it would be, I suppose, very difficult for them to have to nominate someone who was going to deal with their complaint.

Mr WILSON: Do you see that, if there was an official position of youth advocate, for example, that person would be able to act as the support person for the type of young person that you are just speaking about and take their matter up with all of the other relevant agencies? Is that what you are arguing?

Ms Straker: Yes, just someone that the young person can identify, be it a new position that is created or be it within local agencies that the young person can go to throughout Queensland—someone who is able to champion their cause, a young person with whom the young person will feel safe to talk about their particular problems and will not feel as if there is any type of backlash because of the complaints they are making. A lot of it is in the perception of the young person. But perhaps there could be someone who could speak on their behalf—some type of advocate.

Mr WILSON: If there was such a position, given the highly regionalised nature of Queensland, would it not be difficult for that person and whatever small staff they have to have the personal contact that might be necessary or at least desirable with the young person and to be their advocate? How does creating one position actually solve the problem of connecting young people in need with the relevant existing agencies, such as the CJC, which itself is in a position to investigate that type of complaint against police, for example?

Ms Straker: As I said when I first spoke about this, we do not have the answer to it. I think there needs to be a lot of discussion about it. Perhaps parties could get together and talk about it, when they come up with a role that is workable, given the size of the State and the remote areas. We were just throwing various ideas on the table. We do not profess to have the answers.

Mr WILSON: Earlier in your contribution, you were raising examples of, to say the least, tardy, if any, response from at least the Police Service in a couple of instances that you gave. Were those experiences or situations themselves taken by someone to your organisation or whoever to the CJC itself for it to follow up?

Ms Straker: No. These have been situations where the Youth Advocacy Centre has itself written the complaints.

Mr WILSON: To the police?

Ms Straker: Yes. And we have not followed them up. It has just been very tardy. We have two solicitors who work with us. We see 1,000 clients throughout the year. Whilst in a wonderful world with best practices you would follow up all of these things, you normally tend to make the complaints and that is it.

Mr WILSON: I was not reflecting on your organisation.

Ms Straker: But to take that further, once again, is another resource issue. In relation to taking matters to the CJC, we find this is normally when young people have issues at the hands of the police that we think are serious enough to merit a CJC investigation.

Mr WILSON: Maybe this is an area where the CJC would be interested, as Ms Struthers was saying earlier, in working closely with your organisation and similar other organisations to develop protocols that open up the communication between the CJC and an important, needy and vulnerable section of the community. Perhaps you could work in collaboration with the CJC in that direction.

Ms Straker: Yes, anything that will improve the situation is certainly worthy of consideration.

The CHAIRMAN: We will obviously need some information from the CJC. But we will be interested to note to what extent both it and the Ethical Standards Command of the Police Service receive complaints from young people to examine how feasible it is to employ a young person as a liaison officer. It really depends upon the number of complaints that one receives as to the efficacy of doing that. That is something that we will obviously have to talk to the CJC about. You mentioned that one of the problems—and you do this in the context of talking about whether further power should be devolved to the police—is that young people would perceive the CJC as being a big institution that is just part of the Government, too. Perhaps they could have a youth contact with whom young people might be able to identify a bit more. I am not sure that this is something that is easily explained to people. It is not part of Government, but it is a big operation with big people. Do you have any ideas as to how that perception can be minimised?

Ms Straker: Apart from a special advocate, it is very difficult, because a lot of young people see the CJC as virtually a limb of the police force. Perhaps that is a matter of education. But if perhaps within the organisation there is someone who will deal just with young people and who can advocate on their behalf, maybe they can once again help educate them and allay their fears. But we feel as if a lot of complaints are never made because young people, for various reasons, do not want to go through the process. I think the example of the move-on powers and the lack of complaints about that to the CJC and the Minister's perception that everything was working very well is a good point in fact.

Mr WILSON: When we are talking about young people, are we talking statistically or more generally? Up to what age?

Ms Straker: We deal with young people as defined under the Juvenile Justice Act, which virtually covers people between the ages of 10 and 16. In Queensland once they turn 17 they are then covered by the criminal justice system. Our organisation considers them as adults then, but we deal with people up to the age of 16.

The CHAIRMAN: Thanks very much, Ms Straker. We appreciate you coming. Our next witnesses before the Committee are Mr Jim Wauchope, the acting Executive Director of the Department of Aboriginal and Torres Strait Islander Policy and Development, and Mr Kevin Smith, the Chief Executive Officer of the Aboriginal and Torres Strait Islander Corporation for Legal Services. We will just very briefly adjourn—do not go away—and we will invite them in.

The Committee adjourned at 4.16 p.m.

The Committee resumed at 4.18 p.m.

KEVIN SMITH, examined:

JIM WAUCHOPE, examined:

The CHAIRMAN: We will resume the meeting. I would like to welcome in alphabetical order Kevin Smith, Chief Executive Officer of the Aboriginal and Torres Strait Islander Corporation for Legal Services, and Mr Jim Wauchope, acting Executive Director of the Department of Aboriginal and Torres Strait Islander Policy and Development. Mr Smith, would you like to lead off? Perhaps you could speak to your submission, then we will ask Mr Wauchope, and then we might generally ask some questions of both of you.

Mr Smith: I will refer to us as the QEA. The title is the Aboriginal and Torres Strait Islander Corporation (QEA) for Legal Services.

The CHAIRMAN: I never knew what QEA stood for.

Mr Smith: QEA stands for Queensland east area. It is an anachronistic term from days gone by. We made a written submission on 13 October. This has obviously been tabled. I just want to expand on a few things in that. I think the first issue in relation to the jurisdiction of the CJC is a bit of a concern for indigenous people because I think there are definitional problems with it. If you actually look at what misconduct constitutes, it is very difficult for people to get a definitive answer. In the Criminal Justice Act there is talk about official misconduct and then there is also talk about misconduct. You then have to go to another piece of legislation, as I understand it, the Police Service Administration Act, which talks about it in the definition section. There is also another definition for disciplinary matters in the police administration's regulations. In regulation 9 of those regulations, they talk about misconduct being included in there as well. To me it is very confusing as a lawyer. When it comes to members of the general public, I think the definition of what the CJC looks after is also a matter of confusion.

What compounds the problem is also the Police Powers and Responsibilities Act. Section 5 of that Act then talks about the Parliament's intention about what police officers should take into account when exercising powers. It refers to four different levels in section 5. It talks about an example of disciplinary proceedings taking place if a police officer fails to enter a matter in the police register. That is considered to be a disciplinary matter. Then it gives a misconduct example, and that is about maliciously strip searching a person in public. Then it goes on to official misconduct and then there is an example of criminal activity.

I needed to actually go through those four definitions or the confusion caused by "misconduct" because earlier this year my legal service, the QEA, had cause to contact Minister Barton and the Commissioner for Police in relation to things that were of concern to us as a legal service. It was about a matter that involved the Murri school, the indigenous school at Acacia Ridge that police had raided. There were also some other problems that were occurring in the community. It came to such a head that we basically said, "Look, really it's time to meet with the Minister in relation to this." We spoke about not only things that were of grave concern to the indigenous community in terms of the relationship between the police and our community, but also things that were of what could be considered a mundane or technical nature, and that was non-compliance with the Police Powers and Responsibilities Act. We gave some examples of what actually happens in our legal service all the time.

If I may, I would like to tender a landscape document that sets out particular allegations that are made—breaches of the Police Powers and Responsibilities Act. It is actually a document to explain the prevalence of some of these breaches. If I may, I would like to tender it. This is a document that highlights those matters. You could probably see from that that there are matters that could probably fall within the definition of misconduct for the CJC, but a lot of them fall within simple disciplinary matters under the Police Powers and Responsibilities Act which the CJC does not really have jurisdiction over. It got to the extent where we were thinking something has to be done about this, because we were starting to think that maybe the police senior management did not have control over the lower ranking officers. We basically tabled that document to the senior executive and we also tabled a document called an action plan. I would also like to submit that. I suppose I should have done that while you were getting some photocopies.

Basically, the Queensland Police Service were fairly supportive of our initial action plan, which was to actually set up an indigenous review committee that would look at preventive

measures. It would look at training, reviewing all the literature involved with the police documentation, and we would give input as an indigenous body to make sure that the content of the document was culturally appropriate and so forth. We considered this as a very positive move with the QPS.

The third action in that document makes reference to the setting up of an independent disciplinary tribunal. The reason why we thought it necessary to do that is that the CJC obviously does not have the mandate to look after minor matters and we were of the view that, if you actually took a zero tolerance approach to misconduct whether it be of a very, very minor nature such as a disciplinary matter, then you would actually be stamping out misconduct at a higher level. Whenever there was a complaint involving an indigenous person, we wanted an indigenous person to sit on that tribunal. In that document we make reference to possibly a member of the Police Service also sitting on that.

We had something very different in mind. We basically wanted to take more control. We wanted the QPS to be proactive and actually consider having an indigenous person, having members of the indigenous community involved in disciplinary matters. I think Commissioner O'Sullivan, the then commissioner, was understanding of our dilemma but, regrettably, he raised the fact that there would obviously be jurisdictional issues with the CJC. Secondly, he also raised concerns about the Police Union. In that respect he was talking about industrial relations issues, whether an independent body could then pretty much take over the role of the QPS when concerning performance issues and minor misconduct matters.

All in all, our submission was that, if you looked after the little matters such as minor transgressions, you could actually play a far more preventive role in misconduct matters at a larger level. To overcome the cultural problems that the police and indigenous community have experienced over the years, we basically said that if you had that indigenous person sitting on that tribunal, you might be able to overcome some of those problems. Just to round that off, we were basically saying definitional issues—even the most minute misconduct matter should be dealt with by an independent body. I will address whether that should be the CJC or whomever in a minute.

In respect of the CJC handling complaints, I think that we, as an indigenous legal service, and many of the clients whom we represent have major problems with the CJC in its current form. Our clients see the CJC as pretty much an adjunct to the Queensland Police Service, and that is a perception problem. That is actually manifested by virtue of the definitional confusion. If we are talking about matters that may simply be in the disciplinary area, we obviously refer a client over to the CJC, the CJC will then probably make a characterisation of whether this is within misconduct, official misconduct or simply a disciplinary matter and if it is, it refers that matter back on to the Queensland Police Service.

I think 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. The practical problems—and I have highlighted that in my written submission—are that obviously there are evidential issues. Whenever we have a complaint against a police officer, invariably the complaint may be attached to a substantive offence. If that offence has been dealt with by the magistrate and there has been no adverse finding of credit against the police officer but the charges have been dismissed on technical grounds, we actually make a complaint and invariably the response back from the CJC is that there is insufficient evidence to take the matter any further. There are practical problems there.

If indeed our client has been convicted of an offence but there are circumstances after the actual arrest which warrant the investigation by the CJC, we also find there are problems because I think the CJC takes an approach that, "Look, there is a conviction. There are obviously credibility problems and so forth." Again, from a practical perspective, indigenous people and our clients in particular get a bit disaffected with the whole process. It is from that perception problem and also at a practical level that my clients do not get a lot of joy from the CJC.

Since our submission in March of this year to the Queensland Police Service and Minister Barton about the matters I was talking about before, we have made a concerted effort to religiously refer any matter that smells of misconduct to the CJC. We would refer a matter a week or a matter a fortnight to the CJC. Unfortunately, of those 50-odd matters, I know of only three

that have been taken up and accepted as legitimate complaints. Of those three, two are glaring examples. One related to a young fellow who was captured on video. That was proof of some type of alleged assault. The second incident related to an acquittal by a District Court jury, which raised allegations about the propriety of the actual charges being laid in the first place. They are two of three or four matters that we have had any success on. When I say "success", I mean that the CJC has actively investigated the matters and they are undergoing some type of investigation.

Since Project Resolve was commenced in June of this year, some of the matters that we are putting up to the CJC have not received the attention that they deserve. For instance, one matter related to the complaint of a police officer handcuffing one of our clients and repeatedly punching him while he was being transported to a police station and then punching him again whilst handcuffed at the watch-house. Upon that complaint being made to the CJC, we received an almost pro forma letter saying that the CJC has characterised this as a matter that can be dealt with by Project Resolve and therefore someone from the QPS will be contacting us in relation to that.

That begs the question: if there are allegations of serious assaults taking place whilst a person is handcuffed, how serious must a matter be before it will be pursued by the CJC? This raises a very serious question, because in that particular response from the CJC there was not even a perfunctory statement as to the criterion which the CJC applied to say that this was a less serious matter. It really is a cause of concern for my organisation when matters of assault—and I would submit that they raise allegations of misconduct, if not official misconduct—have already been referred to the Queensland Police Service.

I do not think we are a lone voice in the wilderness when I say that our legal service is disaffected by the progress of complaints investigated by the CJC. The submission of 13 October was tendered at a recent meeting of all Queensland Aboriginal and Torres Strait Islander legal services. I have received some feedback from legal services which are supportive of the level of disaffection with the progress of complaints. I would like to, if I may, submit letters from the Wakka Wakka Legal Aboriginal Corporation. They are a corporation in Murgon. They agree with the submissions in our letter of 13 October.

There is also a letter from Pat Tresize, who is the chief executive officer of the Mount Isa Aboriginal Legal Service. It is essentially just a note attaching a submission to an inquiry in 1997 which claimed that in Mount Isa complaints that are made are not taken up as assiduously as one would hope by the CJC. The argument is resource issues and so forth. There is a comment there by Pat Tresize saying that things have gone downhill since then. There is also a comment from the Mackay and District Aboriginal Legal Service, which basically agrees, and also the Queensland Aboriginal and Torres Strait Islander Legal Service secretariat, which is the State representative body for all services.

There are other legal services throughout the State who have indicated that they share the views of the QEA. I spoke to one of the legal officers from the Ipswich Aboriginal Legal Service this morning who indicated that he makes referrals to the CJC at least once a fortnight. Upon being asked what the outcomes have been, the response was that there have been no successful outcomes from that area. There is a concern generally throughout the State whether the CJC is adequately addressing the needs of indigenous complainants, particularly in relation to police misconduct.

Thirdly and finally on whether the police should have greater responsibility, you will see from our submission of 13 October that the answer is quite clearly: no. We believe that the CJC annual report for the year 2000 bears out sufficient evidence to suggest that the QPS has not advanced to a stage where it can look after misconduct matters. I refer you to page 18 of that report relating to police use of force. Under the heading "Assessing Progress", it states—

> "The number of assault/excessive force complaints per thousand officers has remained fairly stable in recent years.
>
> Our ethics surveys indicate that many police remain reluctant to report the use of excessive force by fellow officers or to testify against them—a finding consistent with our experience in investigating use of force complaints."

I would submit that if complaints have remained at a stable level over previous years, there has not been a major impact in reducing misconduct or behaviour that is capable of being classified as misconduct. That closing statement about police attitudes towards investigating or making complaints against their fellow officers is also a posit when considering whether the police should take greater responsibility for these types of matters. I would suggest that that statement alone is quite sufficient for police officers not to look after any type of misconduct matter.

Advancing on that further, it is quite clear that, if you have the Queensland Police Service prosecuting a person in a summary matter, all the witnesses in that matter would obviously be police officers. If after that successful prosecution, or even unsuccessful prosecution, of a defendant the defendant subsequently raises allegations of misconduct, then I cannot see how that person would have any confidence in going to the Police Service after being cross-examined by police officers where police officers are called in to give evidence against them and then actually asking the police to be impartial and accountable in the way it conducted the investigation arising out of events where that person may have been acquitted or convicted. It is quite clear that they need to be treated quite differently. I say quite clearly that the police should not have any responsibility for those types of matters.

If the CJC had more resources and had a prosecuting function—and this is the deficiency in it; in the current structure of the CJC—and, therefore, more teeth, and it is commonly referred to by my clients as a toothless tiger, and if it looked after all misconduct matters, that might instil a bit of confidence in myself and also in other legal services. In conclusion, the argument that the CJC wants to take a more preventive role in the future and the QPS needs to take a more remedial role is contradictory and the rationale is a bit skew-whiff. I would have thought that, if the QPS had more of a preventive function, because it can have more control in preventive measures by way of training and so forth, that is a far better way of going about it. What you would then have is an independent body looking after remedial matters and disciplinary matters.

Looking at Project Resolve, that is the wrong way of going about it. In relation to the briefing paper that this Committee sent out putting the arguments for and against, I quite clearly think that it should be the other way around. The CJC needs to have a disciplinary remedial role and preventive measures need to go back to the QPS. We are advocating a complete independent body to investigate and prosecute disciplinary matters involving indigenous people. That would obviously present a resource issue, but I think public accountability is the price you pay for that type of remedy.

The CHAIRMAN: Prior to asking questions, I ask Mr Wauchope if he would like to make a short presentation and then we will proceed with questions.

Mr Wauchope: Thank you, Mr Chairman. In the interests of time, I will be extremely brief. You have received our departmental submission, which was basically our endeavour to convey to the Committee the representations that have been made by the community over a number of years to our agency and its predecessors. There are really only two points I want to make. After lengthy experience in this area dating back many years, perception is very important. In the Aboriginal and Torres Strait Islander community, it does not necessarily matter that you can prove something did or did not happen; the perception and the way in which people view things is very important. That then leads to the issue of the independence of the investigating arrangements.

My only other comment is that, in the 25 years or more that I have been involved, the relationship between the police and the community, even though there are still a number of problems, has certainly improved dramatically. There is no other way to describe it. If you look back at how things were dealt with 25 years ago to how they are dealt with today, we have moved light years ahead. That does not mean you stop. You still keep searching for improvements, but I do think that we need to acknowledge that significant improvement has been made.

The CHAIRMAN: Mr Smith, I want to explore with you the issue as to the extent the police accept responsibility for investigating certain matters complained against them. I put this proposition to you: one of the problems with any organisation is that if it is not expected to have some responsibility for the conduct of its own, that is a bit of a cop-out in a sense. If you or I go to Woolworths and are not happy with the service and we complain, they say, "Look, don't talk to me. Go and talk to Consumer Affairs." Do you not accept that the Police Service has some role in ensuring that its members know that matters of misconduct and certain other matters will be

addressed seriously by the Police Service itself, in addition to any other body that might consider it?

Mr Smith: Indeed. I accept that totally. I actually would be arguing that it is far more important for the QPS to play a preventive role there—by actually training people up and making people aware that certain conduct will not be tolerated—but to actually remove the disciplinary proceeding away from it.

For the Queensland Police Service to operate successfully and efficiently it needs to be built on a virtue, if you like, of teamwork and so forth—it deals with dangerous issues every day—but I think that virtue can be turned into a negative, as highlighted in the CJC report itself, whereby police officers will not give evidence against each other. There will be, in effect, a turning of the blind eye. No amount of modern management practice or rhetoric is going to change that type of reality on the ground. This was actually discussed and explored extensively in the Fitzgerald report as well as at the royal commission into Aboriginal deaths in custody.

I think it is important that the senior executive of the Queensland Police Service take control in implementing preventive measures, but I think public accountability measures should be considered paramount. History has proven that the Queensland Police Service, because of its very nature—it is paramilitary in nature—should have an independent body that explores those types of remedial and disciplinary matters.

The CHAIRMAN: What do you say to the proposition that the CJC would still maintain its role and its ability to call in complaints; however, it might refer certain complaints in the first instance to the Police Service? Can you not see that as still sitting with its overall ability to supervise those complaints? If a client is not happy with their outcome, they can then complain.

Mr Smith: I see it as a whittling away. In relation to Project Resolve I gave examples of matters which I would submit raise serious misconduct issues, about allegations of assault. Those matters have already, it seems, been put in the less serious basket and referred to the QPS. So I think even this Project Resolve initiative is a retrograde step. I think the pendulum has not swung far enough to accountability. I think it actually needs to take back all those simple, mundane things I was referring to before—simple breaches of the Police Powers and Responsibilities Act by not giving people warnings and so forth. At the end of the day, when a police officer does not comply with those things a citizen has been adversely affected. Someone's freedom has been taken away by police exercising powers. My submission would be that it has not gone far enough.

The CHAIRMAN: You mentioned with respect to matters that fall short of things that would be dealt with in the misconduct tribunal that there ought be a tribunal at a lower level that deals with those things. One of the things that troubles me with that suggestion, though, is that once you set up a tribunal it is required to proceed in accordance with rules that generally apply to tribunals. Bearing in mind that if someone is accused before a tribunal they are entitled to certain safeguards, it might be that you might not get a desired outcome. In some instances the fact is that matters simply will never be able to be established to an evidentiary satisfaction, but they might be matters that are able to be resolved on the basis that, "We do not need to resolve the issue of who is in the right here but what we can resolve is that in future this could be done this way." Often a lot of low-level issues—I am not talking about high-level issues—are ones of communication or lack of understanding, whether it be on either side or both.

Mr Smith: That is a valid point. In the matters I am talking about, invariably they will be dealing with issues of considerable gravity—arrest, harassment.

The CHAIRMAN: You are talking about a higher level than that, then?

Mr Smith: That is right. Also assaults. You might note from the 2000 report itself that a good number of the allegations against police relate to assault matters. So we are talking about very serious matters. What you are talking about there is a lower level of complaint. I believe that if you actually exercised zero tolerance on lower-level matters, that would actually have a considerable deterrent factor. Sure, you may not ever get over the evidentiary problems—that may always be a problem—but I think an independent body that will sit there presiding over all matters will be a sufficient deterrent factor, especially if you dovetail that in with major preventive measures by the QPS itself. It is doing good work on the preventive side—recruiting people with tertiary qualifications, increasing the age requirements and so on. You are getting more

experienced people in the Police Service. That to me is a good initiative, but at the end of the day you will always need to have an independent deterrent body.

Ms STRUTHERS: Thank you both for your contributions this afternoon. I would say that all members of this Committee would share the view that the public in Queensland ought to have confidence in the CJC. Certainly the CJC commissioners and members themselves appear to have gone to great lengths over the past couple of years to actually promote what they do and encourage people to make use of the service.

Mr Smith, what you have indicated this afternoon is that there are significant problems or perceptions within the indigenous community about the role of the CJC and the outcomes achieved by the CJC. I do not make any judgment about the merit or otherwise of those. I personally share the view that it is particularly important that people with fewer resources and people who are least powerful actually get better access if possible, or at least are given support and advocacy to make sure they use bodies like the CJC.

Having said that, in looking at, firstly, strategies to assess the extent of the claims you are making and any possible problems there, I think there needs to be a strategy to firstly make some review and assessment of that Statewide and then out of that some processes for remedy. The idea of an independent tribunal with an indigenous representative seems to be a remedy without there having been a full and proper assessment of what the problems are.

I just wonder whether you would support a process which included the CJC working cooperatively with your agencies, the police and maybe independent academics? I am not sure, but it would be a collaborative effort to firstly assess the extent of the problem and then, through that, come up with some remedies and then have some implementation of that. I just put that to you. Do you see any value in a process of that kind? I am not suggesting something that is going to go on forever and be yet another task force or investigation but something that might get to the crux of these issues and claims you have made and then come up with some pretty workable remedies.

Mr Wauchope: There is a distinction between the views of the department and the legal service as a completely independent organisation. We do not, as our submission points out, take such a negative view of the role of the CJC. But I think the suggestion you have made has merit—actually testing how people view the process, so you get a firm picture of just how people see things and what could be improved.

Once again speaking from my experience, even if you had a new and completely independent body—we do not suggest that in our submission—you still have a problem if the outcomes are not what people expect. You may end up in exactly the same position as you are in terms of what Kevin is saying in relation to the CJC. I guess what I am trying to say is that just the creation of a new body, without picking up your suggestion of actually looking at how you can improve things with the existing arrangements, may not necessarily work in the way that you would want it to work.

Mr Smith: For a study of that type to be meaningful to anyone, I think the CJC would need to increase its presence outside of south-east Queensland. The attitude of my colleagues in other legal services throughout the State is that unless it is very serious the CJC does not really have a presence and, in fact, matters are simply referred back to the police. If I can speak on behalf of those colleagues by what is in the letters, it is clear that there is considerable lack of confidence in the CJC at the moment. I think there would need to be an injection of funds into the CJC to actually have a presence. Then you could meaningfully scope the efficiency and effectiveness of the CJC throughout the State.

Ms STRUTHERS: We had this issue earlier in relation to young people. Ideally we would like to be at a point where the advocacy agencies themselves help dispel the urban myths and help improve perceptions, but if the agencies themselves are seeing improper or untimely practices and so on, it makes it very difficult to deal with that public perception.

I suppose what I am after is your thoughts on a cooperative or collaborative sort of process that can assess the extent of the problem and come up with some remedies with a view to the advocacy agencies themselves seeing improvement and therefore helping to dispel myths, because myths linger far longer than the practice.

As Mr Wauchope has identified, in the last couple of decades we have seen probably significant improvement in race relations generally and then specifically in how agencies like the CJC may deal with indigenous people, but until the advocacy agencies themselves are seeing day-to-day improvement those myths will continue because they will not be challenged. I think there is a risk in responding simply to the perceptions that people have without investigating those and getting firm facts and evidence. I am not challenging your presentation; you have cited case examples and other things. I am really looking for your views on what processes might be implemented in the short term to try and remedy this issue.

Mr Smith: First of all, like any legal practice we act on instructions. Myths are not created by us; we are just faithfully taking up the instructions and advocating on those instructions. That needs to be borne in mind. I do not think you are suggesting this, but advocacy agents obviously are doing that. They are advocating on behalf of instructions that are provided to them.

There has to be greater collaboration. At our meeting in March with the senior executive of the QPS there was an outcome. There was the actual creation of the Indigenous Review Committee. We meet quarterly to discuss a whole range of issues. So that is a positive. Our legal service, as well as other legal services, is most definitely embracing the practice of collaboration, partnerships and so forth. I think we would most definitely be exploring and collaborating with whoever to actually make sure that not only the myths are dealt with but also the issues are dealt with.

The CHAIRMAN: One final question—and I am not sure to what extent you are able to answer this, so if you cannot, that is fine—the CJC, in relation to general issues of concern to Aboriginal and Torres Strait Islander people, have indicated to us that they have put a significant effort into those issues in recent times. Just in passing, I note—though she is not there in that capacity—that one of the commissioners, Sally Goold, of course, is an indigenous Australian. So at the very highest level, the commission has people; you do not get more expert than that. Is there a feeling that, in broad policy issues, there is consultation with indigenous organisations and representatives? For example, in Project Resolve, has there been input in relation to that project?

Mr Smith: I sit on the CJC Indigenous Consultative Committee, and we actually sat yesterday. I do not really want to go into the specifics, because we do have confidentiality in that meeting, but the existence of that committee itself speaks clearly that the CJC wants to get the views of indigenous people and construct policy around those views. Obviously, it also has two indigenous employees, a male and female, and one Torres Strait Islander within the CJC who travel extensively throughout this State to get community/local views, and they obviously percolate up through that office to policy makers within the CJC. So I think lots of good things have happened in relation to the CJC consulting with indigenous people.

Unfortunately, I may have missed the meeting where Project Resolve was discussed. If it was discussed prior to its implementation, I think I probably would have been very vocal about it. I hasten to add that I think that every other indigenous person sitting on the consultative committee may have expressed a similar view.

I think that the CJC is doing a good job with the resources it has, and I think it really is that. I think that, reading between the lines, it is quite clear that Project Resolve is about really trying to allocate resources, and if the minor matters can be taken back to the QPS, then that is what the object is. But my view is quite clearly that I think public accountability must always take paramountcy to issues that we are talking about, and resources come somewhere down the bottom.

The CHAIRMAN: Thanks very much for coming along today. Our next attendee is the Public Interest Monitor, Mr Richard Perry. We will have a very brief adjournment while we are waiting.

The Committee adjourned at 5.03 p.m.

The Committee resumed at 5.15 p.m.

RICHARD PERRY, examined:

The CHAIRMAN: I welcome Mr Richard Perry, the Public Interest Monitor. Mr Perry, would you like to identify yourself and speak to your submission?

Mr Perry: Certainly. Richard Perry is my name. I hold the position of Public Interest Monitor, which is one that applies to all of the relevant agencies, not just the Criminal Justice Commission, of course. That appointment is made pursuant to specific provisions in each Act and first arose some three-odd years ago. Pursuant to my obligations, I report each year to Parliament in respect of the Criminal Justice Commission and the other agencies.

You sent me a letter, I think of 5 December, highlighting certain aspects that you wished me to address when I came down today, so I will briefly do that, if I may.

Firstly, there was the question of accountability of the Public Interest Monitor. I have said in previous reports of mine that I think the monitor should be accountable. By that, I mean no more than this: there should be a forum in which the monitor may explain and elaborate on his reasons for taking a particular position representing the public interest concerning any application that the Criminal Justice Commission might make. When I say "explain and elaborate", I do not mean "justify", because it should not be the case that the monitor is held to have to justify a position taken. It is incumbent upon the monitor to represent the public interest, but I think "explain" is probably a fair way of putting it.

If someone is bound to represent the public interest, as I am, it seems to me to be inconsistent with that that that person or the office holder should not be in a position to elaborate, particularly to a Committee such as this which, in its own terms, because you are politicians, also represents the public interest—although in a different perspective. I think that where a warrant application is made by the Criminal Justice Commission and that Commission is required in any sense to explain to either the commissioner or to this Committee why it took certain steps, why it took a view that it did, I cannot see that it is inconsistent with the role of the monitor for the monitor to be in a similar position, albeit, of course, it does not have a commissioner who can investigate the position. It seems to me that the public interest itself also requires the opportunity for fairly full and frank discussion between the monitor and in particular, as I said previously, a committee such as this so that you can get a better handle on what the public interest in any one case is. It is a difficult enough task as it is for one person to attempt to represent that in all circumstances and I think it is of assistance to the monitor, to this Committee and to the Parliament if there should be opportunities provided consistent with the secrecy provisions, of course, for the monitor to explain and elaborate as to why he or she took a particular position.

The next question which I think you asked me about was a comment I have made in previous reports about the necessity or wisdom of having consistency of approach in the legislative schemes that touch upon the CJC as well as the other agencies. As it stands, there is not that consistency of approach principally because at the time that the initial Police Powers and Responsibilities Act came in there was not a consistent series of amendments to the Criminal Justice Act at that time to reflect the provisions of the Police Powers and Responsibilities Act. I must say, at the time that I was initially appointed to this position I had rather understood that that was proposed to be the case—that is, there would be mirroring amendments to the Criminal Justice Act. There were some, of course—that is, creating the position of monitor—but certainly not across-the-board.

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.

It seems to me, for example, that where, under the Police Powers and Responsibilities Act, there is power for a judge to impose conditions which the judge sees to be in the public

interest, that sort of stipulation should also apply to the Criminal Justice Commission. It would be unusual, I think, in the extreme for there to be any real basis in principle for an assertion that the issuer should not be able to impose similar conditions which the issuer sees to be in the public interest.

In terms of how that consistency of scheme should operate, can I place these observations on the record. In my view, there can be a consistent approach with the Criminal Justice Act if it is done this way: the applicant for a warrant should always be the chairman, as he is now, effectively. The warrant should be directed to the chairman. The reason for that is that the chairman of the Criminal Justice Commission of course has particular powers with respect to the officers of the commission. If the warrant is directed to the chairman, the issuer and the public can have confidence that it is the chairman of the commission who will ensure that the conditions on the warrant are properly executed and that the terms of the warrant are complied with.

In terms of the warrant itself, it should be for a period the same as the other agencies. There may be an argument, in fact, for the 30 day period which applies to the other agencies to be lengthened in particular circumstances, because one thing that my experience has taught me is that there are numerous rollover applications under the Police Powers Act. That is at times a somewhat expensive and unnecessary task because all you are doing is ticking the same box again. But be that as it may, the 30-day period remains the law for the Police Powers and Responsibilities Act and it seems to me that it should be the same period for the Criminal Justice Commission. Again, I can see no reason in principle why the agency should be treated differently in that regard.

The CHAIRMAN: Do we know what the Commonwealth has?

Mr Perry: Different periods for different things. The National Crime Authority utilises the Customs Act fairly regularly. Their warrant periods are significantly longer—I think 90 days or thereabouts. As I have said, there are arguments and fairly compelling ones for longer periods for the warrants. There are arguments also for the rollover applications so that the court retains some degree of control over the warrants, but be that as it may I think consistency is an important thing here.

It is in terms, though, of the nature of the warrant which is granted which is the important point. Under the Police Powers and Responsibilities Act, as I have said earlier, the issuer may impose whatever conditions the issuer sees fit in the public interest. That is not the case under the Criminal Justice Act. That is, there is no similar section under the Criminal Justice Act.

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 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.

Having said that, let me make it clear that I am talking here about consistency of legislative approach. I want to make it fundamentally clear that, certainly since Mr Butler's accession to the position of chairman, the Criminal Justice Commission and I have managed to cooperate effectively and efficiently to discharge my responsibilities and to assist and monitor the Criminal Justice Commission to some extent, but the monitor's role in terms of the commission would be materially assisted, and indeed would provide for some proper degree of monitoring which does not exist at the moment, if the Criminal Justice Act mirrored in that sense the provisions with respect to monitoring which exist under the Police Powers Act. 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.

It would be, I think, a useful purpose for there to be, for the purposes of this Committee, an attempt at a draft of that sort of consistency of conditions. It is something which I would be willing to undertake if the Committee thought it appropriate but not something I would put forward of my own motion, because ultimately the decision as to the legislative content of course is a matter for the Government rather than for someone in my position. But I think there is some merit in seeing the extent to which that sort of consistency can be achieved in a practical sense rather than arguing at this level of whether it is a good idea at all.

You asked me also to consider questions of consistency in terms of powers. 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 videos 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 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.

The covert search warrant power is one, sir, that you asked me to address in particular, so I will do that now. The most frequent use of the covert search powers under the Police Powers and Responsibilities Act is by the National Crime Authority. They use it in a particularly effective and efficient way because they have wider and broader video, audio and telephone intercept powers, of course, than any of the State agencies do. The way they utilise covert search warrants is as part of their basket approach; that is, they will find information from these other sources and utilise specific covert searches targeted towards particular aspects of the investigation, and from my perspective that seems to me to be a fairly efficient and effective way of doing it and the CJC should have access to precisely the same powers.

Their powers in respect of covert warrants are, I think, awkward and clumsy as they stand and it seems to me that, as the powers under the Police Powers and Responsibilities Act have been shown not only to work but to work efficiently and effectively, and as they also provide for the imposition of conditions which allow monitoring of it, the same sort of scheme should be put in place.

Can I pause to add here also that you would be aware, of course, that the Police Powers and Responsibilities Act, particularly the new Act, gives the police in certain circumstances, generally associated with proceeds of crime investigations, powers in respect of financial records. That is, if someone has benefited directly or indirectly from a crime, then access can be had to their financial records. It seems to me from my experience both in private practice and since I have become Public Interest Monitor that it is fundamentally important for an organisation such as the Criminal Justice Commission to have fairly extensive powers with respect to financial tracking. Not surprisingly, it is that sort of investigative approach which is often most fruitful.

But having said that, you will appreciate that I have always expressed the view that this has to be a parallel track approach. As increased powers are given to any agency, including this one, there should also be increased accountability and monitoring. They cannot go other than in tandem. You can see immediately that wide-ranging financial tracking powers are, if utilised

inappropriately, the sorts of things that can cause significant invasion of rights of privacy. Those powers should only be used, to my mind, by order of the court and in circumstances where the monitor is able to make submissions as to whether an order should be made in the first place, as it does under the covert surveillance powers, and also subject to monitoring, as the covert surveillance powers are at the moment.

You also asked me to look at questions of how the monitor's powers might be treated. As it stands, the monitor has few express statutory powers. The reality has been that, because of the relationship which has developed over the three years this office has been in place, between myself and the commission and between myself and the other agencies most of the monitoring functions which I would wish to undertake are undertaken cooperatively. That, of course, can change. It can change now between myself and those agencies, although I must say history would rather indicate that that is unlikely, or it can change between my successor and any successor holding the position of chairman. It has not always been the case, unfortunately, that that relationship has existed. But certainly for the last two or three years I think it has. As I think Mr Butler and I have discussed in the past in other contexts, the fact that a system works well at the moment by reason of the personalities involved is no reason not to change it to ensure that it will work well in the future when such a degree of cooperation may, unfortunately, not be present.

As it stands at the moment, there really is no way for the monitor to insist upon any entitlement to really monitor the warrants which are granted by the Criminal Justice Commission. Certainly, you get a compliance affidavit, but that is simply an assertion by the commission itself, of course, that certain things have or have not happened. There is no basis upon which that can be checked or audited.

In one previous report I made reference to the powers under the Telecommunications (Interception) Act. Under section 86 of that Act—and I have asked for a copy to be brought down, unfortunately, only for me, by the look of it—the Ombudsman has fairly extensive powers to require the provision of information and access to premises. It seems to me that there is much force in the legislative scheme put in place in that Act to be applied in this State, not of course entirely, because the Ombudsman has less of a monitoring role and more of an auditing role than the Public Interest Monitor does and should have. But it seems to me that if you are going to provide for a monitor's position and if that position is going to be something more than a mere figurehead or a sop to public concern about agencies such as this, that is, if the Committee actually holds the view that the monitoring role is of assistance, is advantageous and really ought to have some role and something to do, I think the Committee has got to look very carefully at providing the monitor with the degree of powers to be able to undertake intrusive monitoring with respect to the agencies.

I touched earlier upon the question of accountability. I accept that the same principles should be applicable to the monitor as I have said should be applicable to the agencies, that is, if you give people powers to do things, you should also have a forum within which the use of those powers should be explained. Equally, just as the same argument can be addressed to the agencies that powers without accountability can lead in certain circumstances to inappropriate or capricious exercise of those powers, the same criticism can be made of the monitor. The monitor is simply an individual who may be possessed of significant powers, and should be. But that person should also be required to explain those powers, because only then can a committee such as this have confidence that the scheme it set up works properly. If this Committee cannot have confidence, neither can the Parliament. If the Parliament cannot have that confidence, neither can the public. The Public Interest Monitor is just that; it is meant to represent the public interest. So it seems to me that in a circular approach in the sense that each power ought to be twined with responsibility to justify and explain, then I think both the agencies and the monitor can follow a similar approach. Given the hour, I will not say any more. If there are any questions from the Committee, I would always welcome them.

The CHAIRMAN: Today Mr O'Gorman indicated to the Committee—and you probably touched on this in your last contribution—that the Public Interest Monitor should have the power to in effect spot audit during the existence of a listening device to ensure that a particular condition or conditions are in fact being complied with. Do you see that as feasible?

Mr Perry: Yes, it is certainly feasible and not terribly difficult. All it would require is the ability to be able to undertake that in the face of resistance from the particular agency.

The CHAIRMAN: Are you saying it does not require a legislative change?

Mr Perry: Yes, it does. But it is feasible and simple to do by providing those powers. Certainly, all the Act says at the moment, for example, is that you monitor compliance with conditions. The question is: how? The Act is silent on that. I can see, legitimately from the aspect of any agency, resistance to the notion of someone undertaking the sort of task that Mr O'Gorman refers to. I think it is fair to say that this Committee has been apprised of a similar sort of approach in terms of the powers of the Parliamentary Criminal Justice Commissioner. One can see from different perspectives why those positions are taken. One of the advantages I think I have had from being the monitor is that I have an appreciation of the different perspectives that different agencies take and why they take them, but the reality is that, if you are going to provide for a monitor to do what the Act currently says, you have to give him or her the means to do it. At the moment, they do not.

The CHAIRMAN: At the beginning of your contribution, you indicated quite appropriately that it would not be appropriate for you to report—indeed, you do not have an ability to report—to the Committee about individual matters. Clearly, the vast majority of them are highly sensitive. And we do not have a need to know that. But to what extent do you think there ought to be an ability for you to report to the Committee on longitudinal matters and trend matters, for example, that a particular agency, or in our case the CJC, tends to make use of or not make use of or if there are certain things that you believe ought in a general sense be drawn to the attention of the Committee?

Mr Perry: I think that would be a very good idea. As you are aware, the current position is that I can report to the Committee where I have concerns about compliance with conditions. Indeed, as you are aware also, that aspect has arisen once relatively recently. I think it was successfully concluded in the manner in which it was approached. I think that indicates how the monitor can play a role which is of assistance not just to the Committee or to the commission but to the public at large by resolving concerns that can arise. I think it is important, though, for the monitor to be able to play, if you want the monitor to monitor, a wider role than that and to raise matters with the Committee not just of non-compliance but matters that are of more general interest—I think you described them as longitudinal matters—to the operation of the powers as a whole.

I think the annual report is probably not the most appropriate opportunity for that to happen. This Committee can hear matters confidentially or otherwise and will have a greater familiarity, for example, with respect to particular matters that I might want to address you to. For example, if I talk about a recent matter involving something, you would probably have an understanding of what it is we are talking about without having to spell it out. It is easier to do that in the context of this Committee than it would be in a broader forum. So I think that would be a good idea. But it is all predicated on what you want the monitor to do. If you want the monitor to monitor and thereby to provide the public with an assurance that an agency is possessed of fairly sweeping powers—and quite appropriately possessed of those powers—you do not conduct the sorts of investigations the CJC does and you do not combat the sorts of problems that the CJC has to without having those powers. As I have attempted to say since I got this job, you have to do it on a twin track method, that is, you do not just give the powers, you give the powers with accountability and responsibility as well.

The CHAIRMAN: There being no further questions, I thank you very much for attending and declare today's proceedings closed. We will resume tomorrow morning.

The Committee adjourned at 5.38 p.m.