



CRIMINAL JUSTICE COMMITTEE

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Hon. V. P. LESTER, MP
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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

**Friday, 15 December 2000
Brisbane**

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The Committee commenced at 9 a.m.

TIM PRENZLER, examined:

The CHAIRMAN: We will commence proceedings. Before us we have Dr Tim Prenzler. Dr Prenzler, would you like to identify yourself for the record and speak to your submission?

Dr Prenzler: Tim Prenzler from the School of Criminology at Griffith University. I did not realise I would have to speak to my submission. It is all here on paper.

The CHAIRMAN: It probably would be helpful for the record if you gave a brief highlight of the issues.

Dr Prenzler: I think there are probably two key points I have tried to make. The first one is that the structure of the CJC unnecessarily exposes it to undue influence by members of the Police Service largely in the form of police working at the CJC. We still have a system of police investigating police, albeit under the supervision of civilians. My research, particularly overseas and looking at the New South Wales royal commission recommendations, would suggest that the trend is to go further away from that model. I have recommended quite a large role for police in complaints resolution but not in the actual investigation or adjudication of complaints or of any other intelligence about misconduct.

The other key recommendation I make is that it is probably time to reconsider the very broad role of the CJC in criminal justice policy. I think that, again, the trend in administrative theory and understanding of corruption prevention is that the policy role should be separated from law enforcement roles or corruption prevention roles. I think we really need some other body to do that kind of research and coordination function that the CJC has and that the CJC should be simply a one-stop integrity commission or anti-corruption commission with no other functions.

The CHAIRMAN: Anything else?

Dr Prenzler: That is it.

Ms STRUTHERS: I will just pick up on that second point first. It seems as though one of the advantages of having the dual roles is that the investigation and work that is done on that side of the CJC actually informs the prevention activities and a lot of those activities need to be based in sound research. I just wonder whether you have a view about whether there is some benefit there at all, whether you think the two need to be completely separated, which seems to be your position.

Dr Prenzler: I do not think you can have complete separation because policy developments have implications for integrity. Changes to police powers, for example, which I think is really in the province of crime prevention, and policy relating to police operations and police functions will have integrity issues, but I think at that point there can be liaison between the two responsible bodies. I really think that corruption prevention is a specialist task.

Ms STRUTHERS: One more point about that: do you see that the CJC works in well with other bodies doing research in the criminal justice area like other academic institutions and others involved in the area?

Dr Prenzler: I think they work extremely well with other research bodies.

Ms STRUTHERS: So it is not an issue about the working relationship or who has resources or who has not?

Dr Prenzler: No.

Ms STRUTHERS: It is really your concern about that integrity/anti-corruption role being quite distinct from others?

Dr Prenzler: I am not aware of any other body like the CJC anywhere in the world that has those dual functions. If you look at the ICAC, if you look at the Police Integrity Commission, any of these bodies are exclusively about corruption prevention; they are not involved in the broader area of criminal justice policy. I am not aware of any body overseas that has the two functions.

The CHAIRMAN: What body exists in other jurisdictions that deals with criminal justice policy?

Dr Prenzler: In Britain there is the Home Office Research and Policy unit. In the United States there is the National Institute of Justice. At the Federal level in Australia there is the

Australian Institute of Criminology. In New South Wales there is the Bureau of Crime Statistics and Research.

The CHAIRMAN: It seems to me one of the advantages of having a strong research section attached to the Criminal Justice Commission is that—some of the problems with research is that it does not tend to be very practically orientated or have the benefit of experience. It always struck me as a lawyer that you have people doing research papers on the law and on issues like criminal injuries compensation, but they have never acted for a victim. One of the things about having practical experience with anti-corruption and also working with police services is that it might give you an opportunity to work out a little bit in more detail what is effective.

Dr Prenzler: I am not against the CJC having a research function. My argument is that it should be confined to corruption related matters or issues of ethics and behaviour, not broader policy considerations such as how police can prevent crime, prisoner numbers and those sorts of things. They belong to another body. I am not saying that that area should be done away with at all.

Mr WILSON: Can you say what key defect or flaw could be found in that broader policy formulation function arising from it cohabiting in the one organisation with the anti-corruption function?

Dr Prenzler: I think it can be a distraction from the anti-corruption function. Structurally, I think it creates a potential for the anti-corruption body to take an appeasement approach to the agencies that it is supposed to be enforcing anti-corruption laws against. It is necessary to develop close working relationships with those organisations. It is basically police, courts, corrections, juvenile justice and family services.

Mr WILSON: If there are no other bodies elsewhere in the world that have these dual functions, do you say that the combination of these two functions in the CJC has resulted in an appeasement approach to the anti-corruption side of the CJC?

Dr Prenzler: I do not have any hard evidence that that has happened, but I think there is the potential for that to occur.

Mr WILSON: What is the logic of that? As you said, how would—

Dr Prenzler: It is the same logic as the fact you should not have the Mines Department enforcing workplace health and safety and environmental protection legislation at the same time as it is supposed to be facilitating mining and maximising the benefits of the mining industry, because there is an inevitable conflict there. You cannot get tough on the mining industry and things like pollution at the same time as you are supporting the industry.

Mr WILSON: Would not the difference be there—and perhaps it is not an appropriate analogy—that on the CJC policy side, they have no executive responsibility or duty in the administration of policy or the administration of Government functions, unlike the example you have just given where there is an executive responsibility in the Department of Mines for the administration of their policy position as well as a regulatory function? Therefore one could argue that there is an infection that takes place between those two roles, but not so with the CJC.

Dr Prenzler: That is a good argument. In fact, if you look at the legislation, the CJC does have that power to direct Corrective Services or to direct elements of the criminal justice system to take certain action. It just has not bridged that gap. We have seen a whole series of reports on drugs, prostitution and all those sorts of things that have really gone nowhere because of the lack of an executive function.

Mr HEGARTY: Is that not the benefit of the argument, the fact that the particular department such as corrections would fall into the category you have just outlined, whereas the CJC being an outside body would come in the opposite direction without being in the same camp?

Dr Prenzler: The fact is that it has never done that that I am aware of.

Mr HEGARTY: It is early days. It has only just taken on the role.

Dr Prenzler: I mean historically for any department in the 10-year life of the CJC.

Mr HEGARTY: Even from an economy of scale point of view, given that the structure of the CJC is such that they have the various divisions and whilst there is an overriding cooperative and directional role from the chairman and the commission, do you not find having the functions

within house and being able to have that facility to draw upon an asset rather than having to go to an outside agency and then having to ask for that information or intelligence that they would hold?

Dr Prenzler: Sorry, I do not understand the question.

Mr HEGARTY: You were suggesting, if I understood your argument, separating the research and other aspects of the CJC from its pure function of anti-corruption.

Dr Prenzler: No, I am not suggesting that. I think the CJC should have a large research function but purely in the area of ethics and integrity and anti-corruption.

Mr HEGARTY: So define it to those areas only?

Dr Prenzler: Yes. There should be a separate body which attempts to coordinate general policy in the criminal justice system in Queensland.

Ms STRUTHERS: Could I go back to the other issue of police investigating police? In your submission you make a number of claims about the apparent pathological inability of police to objectively investigate other police, you favour a civilian control model in terms of misconduct and discipline procedures and things. From your research and knowledge of other research in Australia and overseas, is there any benefit in models, though, that actually integrate the functions? For instance, I am thinking about if civilians investigate police through a body like the CJC. Is there evidence to suggest that there then becomes very much an us and them culture, there is no cultural change, police put up the barriers, an external agency may have difficulty and more of an adversarial relationship develops? If you have a model that actually integrates and works with police—and works with the QPS in this case in the way it is set up in Queensland—do you think there is any benefit in that actually breaking down police culture and having benefits? What you seem to be saying is that the civilian control model is really the best model, taking it right away from police.

Dr Prenzler: I think that the civilian control model still would entail quite a bit of cooperation. There would have to be communication between the Internal Affairs Department in the Police Service and the outside body in terms of developing internal anti-corruption strategies and cultural change strategies. There would be a lot of communication in terms of the area of informal complaints resolution or management based resolution. It could never be a complete separation. I think when it comes to actual investigations where it is necessary to gather evidence and to make decisions about guilt and innocence and penalties, then I think it should be an independent function. I think the problem with all of these models is whichever way you go you lose something from the previous model. So there is never going to be a perfect arrangement. It is about finding the one that probably instils the most trust in terms of being structurally resistant to undue influence or appeasement.

Mr WILSON: On that issue of police secondment to the CJC and then the principal investigators of the police, are there particular instances or case studies that you believe support the contingent that by that mode of operation the outcome of an investigation has been less than what might have otherwise been achieved?

Dr Prenzler: I think there are three sources of evidence. There have been two evaluative audits that the CJC has done—one on investigations by police of disciplinary matters and another one on decision making about penalties. Then there has been the survey of complainants. In the main, complainants were not happy about the way police investigated their cases.

Mr WILSON: Police as in the QPS at first instance, as distinct from the police working with the CJC?

Dr Prenzler: I think it is the police working with the CJC, if I understand that survey correctly. There have been similar surveys conducted overseas, in Canada and Britain, which show the same thing.

Mr HEGARTY: In your submission you make the point that investigations can be obtained through the generic skills of the investigator, that it does not necessarily have to be a police officer. Is that what you concluded?

Dr Prenzler: That's right.

Mr HEGARTY: I would suggest that most investigators have some form of police training somewhere along the line. I would be surprised if there was anyone who just came out of school

or university and set themselves up as an investigator. Therefore, would there not be some association, if nothing better, to say that when they are joining another body, even if not seconded from the organisation they are investigating, there is some sort of brotherhood or association?

Dr Prenzler: A law enforcement mentality or shared interest?

Mr HEGARTY: A fraternity, I suppose, through association.

Dr Prenzler: That is very difficult to resist. The Police Integrity Commission in New South Wales I think is a better model. It disallows any former or current New South Wales police officers working in it. That leaves open the door for police from other backgrounds. It means that there can be input from other police officers.

The other response I would like to make is that I think there is this rapidly growing field of civilian investigators in insurance—private investigators. From the research I have done I do not think the majority of private investigators in Australia at the moment come from police backgrounds—not the majority; a lot do. There is enormous growth in training academies for civilian investigators. It is a large area. The CJC could do its own training.

Mr HEGARTY: It is very expensive, though. Usually you draw on someone else's experience in any commercial activity, to bring the skills to the job.

Dr Prenzler: I guess so.

Ms STRUTHERS: Is there any evidence to suggest that when you get a pool of people like that—we are probably talking 80 to 100 investigators; I am not sure, but sizeable numbers—there are problems with loyalty to the organisation, confidentiality and all those sorts of values that are critical to this sort of work? Is there a lot of mobility and movement out of the job? It seems to me that possibly one of the benefits of having seconded QPS officers is that they are part of the tradition and discipline. They are career police officers, generally. They are not likely to move in and out of the insurance industry and other areas where there is of itself potential for corruption, wheeling and dealing in those sorts of industries. I just wonder whether you are aware of any model that uses that to a large extent and whether there is high mobility and other problems with that.

Dr Prenzler: I simply cannot answer that, I am sorry. I do not know.

Mr WILSON: Do you have a view about the question of the extent to which the QPS should resume primary responsibility for the investigation of complaints against its officers?

Dr Prenzler: I am totally opposed to it.

Mr WILSON: So are you happy with the model that operates now whereby a certain amount of the disciplinary-type matters, whilst they might come through the CJC, end up back with the police for them to follow up, with the CJC reviewing those files? Are you happy with that situation or do you think even that is too close?

Dr Prenzler: I think that is too close.

The CHAIRMAN: Have you had a chance to look at Project Resolve?

Dr Prenzler: I am afraid I do not know a lot about it.

The CHAIRMAN: I will not put you on the spot about something you have not examined. We might ask you if you would have a look at that at some stage, and you might favour the Committee with your views in relation to that.

Dr Prenzler: I could say that that also seems to be a worldwide trend, but particularly in terms of resolution and satisfaction of complainants rather than actual investigations. So I am inclined towards favouring it in principle, although I would have to see the detail.

The CHAIRMAN: As you are probably aware, Justice Wood and Marshall Irwin in a paper delivered a while ago both expressed a view that if one expects to have a mature Police Service then it must have some degree of responsibility for the conduct of its officers. The analogy I give is that it is a bit like going to Woolworths with a complaint and the store manager saying, "Don't talk to me. Go and talk to Fair Trading." That is not acceptable. We should expect of our Police Service a level of responsibility and maturity to be able to resolve a certain level of complaints itself. The CJC submits that it is important for it to have the oversight at all levels so that it knows

what is going on. Of course, it will deal with serious matters and matters about which people are not happy with the resolution by the police. Do you still have a problem with that philosophy?

Dr Prenzler: I think in my model prime management responsibility for corruption prevention would still reside with the Police Service, and the CJC would in fact serve as a body testing management effectiveness in terms of discovery of corruption and that sort of thing. So it would still be down to the Police Service to use all its human resource management strategies and recruitment and training in reducing corruption hazards—all that sort of thing, as well as the large area of resolution of complaints.

The CHAIRMAN: As I said before, we might get some information about Project Resolve to you and ask you to comment on your views on that when you have had an opportunity to digest it.

Mr HEGARTY: Are you familiar with the role and powers of the Parliamentary Commissioner?

Dr Prenzler: Just from the Courier-Mail. I do think a parliamentary oversight body such as the PCJC does need an investigative arm, or at least one person who can act for it in collecting information and conducting investigations. So in principle I am in favour of that.

Mr HEGARTY: That was the point I was going to ask you to comment on—whether you thought it was an adequate role the current commissioner plays.

Dr Prenzler: I think it is extremely unfortunate that it started off so badly. I know the ICAC oversight body is pushing for a similar addition to its powers. You have to have somebody who can go out there and do the leg work for you in investigations, to have some powers.

The CHAIRMAN: Thank you very much, Dr Prenzler.

Dr Prenzler: I will give you some more information on the topic of the CJC. It was just recently published.

ROBERT ATKINSON, examined:

JOHN McDONNELL, examined:

The CHAIRMAN: I welcome Commissioner Atkinson and Assistant Commissioner McDonnell and their colleagues. I ask you to speak to the Queensland Police Service's submission.

Comr Atkinson: Thank you for the opportunity of being here today. This is of course my first appearance as the commissioner before you as a Committee, so I would be grateful for the opportunity to initially, if I could, just get an understanding of how it is you wish us to proceed.

The CHAIRMAN: We have received your submission and the Committee members have read that. We will ask you to take five or 10 minutes to speak to any particular points that you see are worth while highlighting in the submission. Then the Committee will ask some questions on issues arising therefrom.

Comr Atkinson: Thank you for that opportunity. There are three matters that I did particularly want to comment on. I say at the outset that, as you identified quite correctly, we did provide a submission. Subsequently we received correspondence dated 5 December covering a number of issues. We hope to be able to respond to some of those today. The issues raised in that correspondence of 5 December are quite significant and substantial. In our view they cover six broad areas, some of which were not canvassed in our original submission at all.

What we were hoping to do with your indulgence was to provide a further written submission to you within a reasonable time frame that would cover those matters in the correspondence of 5 December, together with any other matters that you wish to raise today with us or at any future hearing where you wish us to attend before you. Where appropriate in that further written submission we thought that we may respond to matters that impact on us that have been raised by other persons who have appeared before you.

The CHAIRMAN: Certainly.

Comr Atkinson: Could I just get an indication as to whether or not you would be comfortable with that course of action?

The CHAIRMAN: That is not a problem.

Comr Atkinson: Thank you for that. I now turn to the three matters I want to comment on as invited by the Committee. The first of those is the aspect of jurisdiction for police misconduct. I have some material prepared. Again, with your indulgence, I will read from that material. The Queensland Police Service does not tolerate corruption or misconduct and full disciplinary processes are levelled against any transgressors in that regard. Pursuant to section 4.8 of the Police Service Administration Act 1990, the commissioner is responsible for the efficient administration and management of the service and the discipline of its members. Whilst the CJC maintains the primary responsibility for dealing with misconduct by members of the service, the commissioner cannot have overall responsibility as required by the Police Service Administration Act.

I understand that the PCJC has considered this point on a number of occasions and has recommended that the QPS be progressively given greater responsibility in this area. The reference I am given in that regard is PCJC report 45 of 1998 page 45. We believe that the CJC could reduce its investigative costs if it were to randomly audit or overview QPS investigations and employ investigators only where serious matters are raised that require the CJC's powers and independence. At present, there are some 73 police seconded to the CJC to undertake or assist in investigations. The fact that they are seconded does not make them necessarily more capable of investigating misconduct except where they are using powers pursuant to the Criminal Justice Act, which is generally, as we understand it, reserved for more serious matters.

It is my understanding that in Queensland the Police Service is different from other Government departments because it is the only department that cannot manage complaints of misconduct against its own employees. I acknowledge that the Police Service is in a very different and unique position from the other 17 Government departments. Other safeguards in place since the establishment of the CJC include legislative change in the areas of freedom of information, judicial review, whistleblowers protection, anti-discrimination and police powers and responsibilities, as well as increased funding successive Governments have provided to the Police Service to be more professional and more accountable, and financial accountability is increasing

through the implementation of output-based budgeting, particularly in the area of performance indicators.

Our Police Service research indicates that complaints against police per officer have fallen by over 40% between 1995 and 1999 and that in the period from 1992 to 1999 only 3.5% of allegations resulted in disciplinary charges being preferred. Further, only 1.1% of all allegations resulted in a disciplinary sanction other than a caution or reprimand in the time frame of 1992 to 1999. In conjunction with the CJC through Project Resolve, the service is trialling a system which will enable misconduct of a less serious nature to be dealt with managerially where appropriate. Complaints are dealt with expeditiously and therefore address the problems of time taken to satisfy complaints and the cost of legalistic investigations.

In our view, the CJC should continue to be a safeguard for persons who are dissatisfied with the manner in which police deal with their complaints. The service is of the view that the CJC could conduct random audits of the misconduct matters which the service dealt with rather than over-viewing each and every case in detail. The service accepts, however, that if a complaint is made concerning the manner in which the service was investigating misconduct, then the CJC should have the right to review that matter. We believe this could be cost effective given the opportunity costs of the CJC taking complaints against the QPS carrying out initial investigations and referring back the majority of the matters to the service. There are time delays and double handling. This is costly and we believe it could be better resolved by the manner we are suggesting.

The number of internal complaints by rate per officer is increasing with respect to misconduct. The ratio of complaints generated externally is decreasing. In other words, it would appear that complaints from the public against the police are decreasing and there is an increased preparedness of police officers to report inappropriate behaviour internally. We see that as a very healthy sign on both counts. Of the misconduct complaints reported directly to the service, there has been a significant decrease of 39% in more covert methods such as by letter or phone relative to overt methods, that is, in person, since 1995 indicating a greater confidence on behalf of complainants and the process of the disciplinary system. Survey results indicate that 80% of people believe police are professional and fair, 74% thought most police were honest and 82% had confidence in the police. This is from the Australian Bureau of Statistics Population Survey Monitor results for 1999 in relation to community perception of police services.

In summary, the service believes it is appropriate that it be given responsibility for misconduct as a natural progression, and that is consistent with the PCJC's own recommendations. The substance to support that is that we believe the relationship between the Ethical Standards Command and the service in broader a sense, but particularly the Ethical Standards Command and the Criminal Justice Commission, has resulted in a very productive and professional partnership. Project Resolve should provide increased managerial options and skills to respond to performance and conduct matters, the authority and accountability for supervisors and managers to rectify by performance and minor conduct issues and a focus on client service to complement performance and professional conduct standards within the service.

Issues relating to integrity, accountability and professionalism have been included in all aspects of strategic and risk management planning, intelligence-driven investigation and managerial intervention through profiling and case management, particularly regarding individual officers or types of areas where work is now undertaken by the service, as has the ongoing provision of resourcing into ethical practice initiatives, including ethics awareness education and internal witness support; the evidence of research and intervention into factors impacting on unethical behaviour and conduct, particularly with regard to improved communication and conflict resolution skills; strategic alliances with academic, Government, external policing jurisdictions and other agencies to identify ongoing good practice and corruption prevention, complaint minimisation and performance management; other related human management issues, which are now quite extensive in the service, in particular vetting and careful recruitment processes—and this could include joint research activity with the CJC on complaint-prone recruits; integration of ethics into all training of the service; and continued assistance in the development of tenure policy, particularly regarding maximum tenure and high-risk areas. Training in the areas of ethical awareness, audit, financial management, risk management, discipline and managerial resolution also form part of our current strategies.

We have a competent research capability now. Research areas of the QPS have been tasked to provide high-quality and rigorous evaluation of major initiatives within the service and to ensure that the area of corruption prevention is in step with best practice and latest developments. The day-to-day operations of the Ethical Standards Command involve overseeing and conducting internal investigations and providing a key strategy for us. The establishment of the Ethical Standards Command has been quite significant. There are safeguard and accountability measures in provisions of the Misconduct Tribunals Act 1997 in terms of the CJC's ability to appeal decisions, placing greater responsibility on individual managers, which is critical, and members for prevention, detection and resolution of misconduct with audit by the CJC. We see that as a mechanism that would make officers respond rather than see the problems as they perhaps do now to some extent as being for the CJC and not for themselves.

I want to be quite clear on this point: in our view the CJC would always have the right to access any misconduct matter. When we talk about random audit, we think that would be adequate. But in our view the CJC would and should always have the right to access any misconduct complaint that the service was dealing with at any time. In terms of potential time frames, we would be looking at possibly a period of approximately 12 months with a view to implementation of such change for the service to take responsibility for misconduct. Inevitably, these things sometimes do move slowly, so it could be longer than 12 months, but we thought 12 months was a starting point. It will probably tend towards a longer period rather than a shorter period. I am conscious of the time. Did you want me to break after each of the three matters we wanted to raise?

The CHAIRMAN: No, we will ask you to speak in relation to the lot of it and then we will ask questions at the end.

Comr Atkinson: The second matter relates to the situation of police officers and public servants who elect to resign and whether or not there is a continuation of the investigation into their activity. However, by resigning, the reality and the perception is that, effectively, they are perhaps seen to escape appropriate justice. My comments essentially are focused towards the Police Service. I really did not want to get into the area of public servants across-the-board in all the other departments generally. My view of this may be different from others, but I would like to express it to you. In real terms, the penalties imposed for both official misconduct and misconduct are often far less severe than dismissal or demotion. Examples illustrate the types of behaviours that constitute official misconduct and the types of penalties. One such example is that an officer was found guilty of official misconduct for failing to breath test a suspected drink-driver on the basis that the suspect was the brother of a fellow police officer.

The officer received a significant fine—\$1,250—but remained a police officer as the Misconduct Tribunal did not see fit to dismiss the officer. That is a matter of official misconduct. Another matter of official misconduct: an officer was charged with assaulting a prisoner who was in the custody of the police, found guilty and fined \$2,500, but again remained a police officer because the Misconduct Tribunal did not see fit or appropriate to dismiss the officer.

The service has actually taken a very strong stand on misconduct matters and, in many cases, has dismissed people, only to have those officers, through appeal processes, be returned to the service. Many instances of misconduct, as I say, have resulted in dismissal, but these sanctions have been reduced on appeal, and that includes appeals to the Supreme Court. One such matter occurred, I believe, on Tuesday, in the matter of Callum Ross and a determination by the Court of Appeal, where an officer had been dismissed by the service, taken the appeal to the Misconduct Tribunal and been reinstated. The service then took the matter to a single court judge of the Supreme Court. The Misconduct Tribunal decision was overturned and the dismissal of the officer was confirmed. That matter again went on appeal, as I say, to the Court of Appeal, and they have determined that the Misconduct Tribunal was correct, and we now will have the officer back in the service.

In our written submission, we will advance comment in relation to that matter in terms of the circumstances of that particular matter. Whilst, obviously, we accept the decision of the Court of Appeal, that does not necessarily mean that, as Commissioner, I have to be in agreeance with it, that it is the correct decision. We believe the circumstances of that matter are very serious, and we would like to include those in the written submission we supply to you in due course.

The CHAIRMAN: What we are interested is in systems. So in so far as you have systemic suggestions, that is what we are interested in.

Comr Atkinson: Yes, thank you.

The inappropriate behaviour, it should be noted, we believe can be dealt with through a range of mechanisms. There is the criminal law, the civil law and administrative processes.

The number of members subject to a misconduct complaint—which includes those who may or may not have been charged with disciplinary offences prior to resignation or retirement—who resign or retire is decreasing, with an average over the last five years of about 28 per year. This represents an average of 3.1% of misconduct complaints having a nexus to resignation or retirement over the last five years. Approximately 1.65% of officers facing disciplinary charges resign. In these cases, approximately 80% are under investigation for misconduct. This equates to approximately three officers charged with misconduct resigning every two years. It should be noted that where officers resign or retire, none of the allegations are ever tested, that a proportion of officers who resign or retire already have significant behavioural problems, and that the behaviour is generally such that dismissal may not have been warranted. Also, there is often no correlation between resignation and the facts surrounding a complaint.

The current time-consuming process used to investigate complaints—which Project Resolve, of course, aims to improve—also means that many investigations have been under way for a considerable period before the officer decides to resign or retire. The time taken to investigate and the costs associated with preferring charges is generally far greater than any reduction in benefits accumulated to the individual. As well, any findings of guilt may not necessarily preclude the officer from future employment in the public sector, and this may be particularly so given the principles of rehabilitation.

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

Ensuring integrity of the system, of course, is paramount. The presumption of innocence and principles of natural justice still need to be observed. The service experience indicates that the actual number of instances where officers resign before facing disciplinary charges which would have resulted in dismissal or demotion are, indeed, rare. Of all complaints made, only 1.1% result in a formal disciplinary sanction other than a caution or reprimand. Dismissal or demotion occurs significantly less often. It could be argued that the likelihood of officers who have resigned being charged and found guilty might be much higher. Even if it were the case, the cost of the investigation and the costs associated with the officer remaining in the employ of the service will generally be substantial. Also, charges after dismissal might well be a deterrent to many officers who would otherwise have resigned, leaving the service with an officer they ideally might wish to have separate but one they cannot dismiss.

In all cases of resignation or retirement of police, the Deputy Commissioner considers integrity issues and often seeks the advice of the CJC before acceptance of a resignation. The advice of the Assistant Commissioner, Ethical Standards Command is sought as part of a vetting process in respect of all applications to resign or retire.

Another issue that adds to the complexity of this matter is that complaints could be received after an officer has actually resigned or retired. The service has long relied on the willingness of officers to resign or retire as a means of maintaining a professional organisation where those who do not reflect core values of ethical practice are encouraged to leave. Of course, the Police Service Administration Act does not have a legislative Commissioner's confidence provision which allows the Commissioner to ask any officers that the Commissioner

has lost confidence in to show cause as to why they should not be dismissed and then, if appropriate, dismiss the officer, as does Commissioner Ryan in New South Wales.

We believe there is an administrative solution to the concerns about re-employment. The service has an integrity committee chaired by the Assistant Commissioner, Ethical Standards Command, and any applications for employment and re-employment as a police officer are considered by the committee, which has, of course, access to records of previous employment, and the CJC can assist in that regard as well. The committee takes a cautious approach to matters of integrity. Persons aggrieved by decisions of this nature have, of course, recourse to normal administrative processes, primarily judicial review. It is a model that other agencies and departments could consider in terms of the issue of the concern of re-employment of people with integrity issues hanging over their head. Again, the CJC could be fully involved in such a process.

A clearance from the former employee's CEO or director-general could be requested before re-employment within the Public Service. The clearance could indicate that the employee was under investigation prior to resignation. There will exist no record of a person's misconduct as a warning to future employers. However, there would be a record that the person was under investigation. This is in itself a warning, although one that should be acted on with obvious due care, because the person may not have had the opportunity to defend the allegations, but which can be overcome if natural justice positions were to be applied.

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

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

If I could just perhaps try to summarise briefly. May I just refer to the issue of criminal law and police investigation? There are many, many matters where police have strong suspicion and there is some evidence in terms of the person's suspected guilt but there is not enough evidence to prefer a charge, and we all have to live with that. Particularly the police have to live with that, and that is frustrating when it is a very serious matter. It is perhaps not a dissimilar thing, to some extent, with this situation with misconduct. The most serious penalty that we can apply in the service is dismissal to an unprofessional officer who has engaged in substantiated behaviour that warrants dismissal. The track record would seem that many of those matters, however, are reversed on appeal, so we end up with the officer back.

It is our view, and my view particularly, that the service needs to be very conscious of maintaining its professional standards and its integrity. The service is currently increasing in number. If the current Government maintains its commitment to increase police numbers, we will have 9,100 sworn officers by 30 June in the year 2005. That will be 18 years after the Fitzgerald inquiry started in 1987. For most of those police officers, "Fitzgerald" will simply be an Irish name. They will not have the memory of it that people like myself and Mr McDonnell have and had, and the determination never to revisit that situation.

There does seem to be, on the face of it, in western police agencies, examples of cycles, where police agencies go through periods of corruption, reform and then there is slippage back to corruption. I am extremely conscious of the need to avoid slippage during my term of administration as the Police Commissioner. It would seem to me that if we have someone who is unprofessional, we are better off rid of them, rather than going through a convoluted process

that, at the end of the day, although well intentioned, might result in our retaining them. That is my submission in that regard.

The final matter, if I could perhaps be very brief, is in relation to research. I will not refer to the papers for this; I will just try to summarise this very briefly. It is in relation to issues of research in relation to the criminal justice system and in relation to recommendations that are made from time to time by the CJC in relation to the Police Service. What I would ask is this: I believe that the service needs to be a part of this. Firstly, in terms of research, I think there is opportunity for a broader perspective in terms of the research. There are a number of research bodies and agencies—the CJC, the Police Service, the Crime Commission—and I think it would be helpful if that research was better coordinated and focused towards the criminal justice system so that the benefits of the research are perhaps better structured and focused. I think there is opportunity to do that.

Secondly, in relation to recommendations, I believe it would be very helpful if, in terms of recommendations, there was a consideration, where they are made, of the resource implications that are associated with them. I refer, for example, to the recommendation that microcassette hand-held tape-recorders be issued at a personal level to every member of the service. That has enormous resource implications for the service in terms of the supply of appropriate-quality equipment. The throwaway line has been made on one occasion that you can go down to Tandy or somewhere and buy these things relatively inexpensively. To buy a quality product, a useful product that would sustain the demands of policing, would probably be in the order of \$300 or \$400 each. That would then open it up entirely to issues of record keeping. The logistical and resource implications of that recommendation are significant.

My point is that those matters need to be considered and canvassed when recommendations are made to us. I believe that there is an obligation on anyone reasonably making a recommendation about what the service should or should not do to do that, but I also believe that it is inherent within the Criminal Justice Act at sections 23(c) and (h) that there is in fact an obligation on the CJC to consider the resource implications of such matters. So in regards to research and recommendations, that essentially was my submission to you in that regard.

The CHAIRMAN: Thank you very much. Assistant Commissioner McDonnell, did you wish to say anything?

Asst Comr McDonnell: No. I support what the commissioner says.

The CHAIRMAN: Thank you. Commissioner, you spoke, in terms of the resignation of police officers, that sometimes the costs involved in pursuing someone, particularly for a misconduct matter as compared to an official misconduct, would be significant compared to perhaps what the ultimate penalty would be. We have heard some evidence from the Queensland Council for Civil Liberties who are quite opposed to allowing proceedings to be preferred notwithstanding resignation. On the other hand, the New South Wales Public Sector Act allows that to happen in certain circumstances. One of the things that the Committee is particularly interested in in this area is in relation to the protective jurisdiction in a sense that there seems to be little point, if someone is resigning from the Police Service, in pursuing action against them if it does not matter, even if an adverse finding was made against them in the future. What sort of employment or what sort of examples are there that it is actually in the public interest to have an adjudication on them? For example, if someone applies to the Police Service from interstate, there have been concerns about the conduct in the past, is that enough for the police here to act on or are there other things that you need to have? If someone resigns from the Queensland Public Service and then seeks employment in the Police Service, could you fill us in on whether this ability to prosecute an official misconduct proceeding would help in those instances or not or whether it is not needed there?

Comr Atkinson: Yes, because we are talking to some extent, too, of the possibility of other jurisdictions. We are very cautious in terms of the employment of police officers from other jurisdictions. We do actively campaign in that regard and we recruit officers both nationally and internationally, but I am just not sure—and I may need some clarification—that I fully understand the thrust of the question. I hope this is able to respond to it appropriately.

From our perspective, the issue of recruitment is not one that—we feel that our current standards and processes are adequate to identify people who are inappropriate in terms of recruitment. There is also their six-month training phase. An officer's appointment as an officer is

not confirmed until 12 months after they are sworn in as police officers. So there is actually an 18-month period from the time they start with us where we are able to take action far more, I suppose, effectively and quickly than we would after their appointment is confirmed, after they have been with us for 18 months.

We have a large number of people applying for the service so we are in the comfortable position of being able to be very selective. Far more apply than we are able to take on board. At the risk of being repetitive, could I simply perhaps restate that from my point of view and from the service's perspective—perhaps I did not make this point clearly before—one of my concerns is that if we say to people, "Even if you resign, we are still going to pursue you or may pursue you.", then that would, to my mind, be a significant barrier to their resigning or leaving because there is simply no advantage for them; they might as well stay in and see what happens.

The CHAIRMAN: And take their chances.

Comr Atkinson: Why not, yes.

The CHAIRMAN: The point that I was making is that the ultimate sanction that the misconduct tribunal can prefer is dismissal. Essentially, it cannot go any higher than that. Given that is the case and someone resigns anyway, then the only reason that you would want to pursue them is to have a negative adjudication against them. Can you give us some instances where it would be important to have a negative adjudication against someone in the public interest? Say, for example, because they maybe resigned from the Queensland Police Service under a cloud—no more jurisdiction—but they go and apply for a job at the casino control division or something like that. Is it the case that you have those contacts in place in any case? It has come to light particularly in relation to schools. This is not your area obviously, but perhaps someone in the Government school system has resigned short of misconduct proceedings and then taken a job in the private school system. Is that a problem? Can you give us any examples in the Police Service that would militate in favour of saying, "Look, we ought to be able to proceed to protect the public in these areas"?

Comr Atkinson: I cannot at the moment. What I would like to do is give Mr McDonnell the opportunity to respond.

Asst Comr McDonnell: If I could just speak to that. In the instances of applications by ex-members of the New South Wales or Victorian Police Services, every application to join the Police Service is very deep and assesses things such as, "Have you ever been investigated for a matter?", and it is up to you then to tell the truth because if we find you have lied when we check on you, that is enough. The integrity is not there.

As far as an ex-police officer is concerned, for a start, we write to the commissioner in New South Wales or Victoria. They send up their record to us and they will tell us through our system whether they have left under investigation. We can ask them what it was and if it is serious enough we would not have them. Or if it was just a public servant who tried to join the police then the questioning on our application would be, "Have you ever been sacked from a job or resigned? Why did you resign?" Those things come out and it goes to the integrity of the person to prove that they are telling the truth. If we find in our investigations of an applicant that they were misleading the Queensland Police Service, then we declare that is an integrity issue and therefore you are not in the police. Even down to traffic matters. We say, "How many tickets have you got?" If they say "None" and we find that you have got 10, and the most recent was a few years ago, that would be enough for me to say, "Your integrity is in question because you lied."

The CHAIRMAN: But that is a matter of record, your traffic history. So in relation to the public sector, say, in Queensland, someone is a public servant, they apply for a job at the Queensland Police Service, what checks do you make at the moment that would identify a potential problem that might have occurred with misconduct in the past? The reason I am asking you this is that if you are saying that you are making the checks and the current system turns them up anyway, then we do not need to, on that argument, look at maintaining jurisdiction when people have resigned.

Asst Comr McDonnell: That is really an administration solution to it, isn't it?

The CHAIRMAN: That is right. So we want to hear whatever the solutions are.

Comr Atkinson: In terms of examples, I am unable to think of any at the moment but what I would like to do—if it is okay—is just to take that on notice and give it some further

consideration. That is in relation to both misconduct and even official misconduct. Could I just add, too, that if behaviour is so serious that it does warrant pursuance, then it is very likely that it will enter into the area of criminal behaviour and there could well be criminal charges, be it an assault or whatever it might be. So I would have thought that if the behaviour is so serious that it would need to be pursued, then more than likely there is evidence of criminal charges.

Asst Comr McDonnell: We have done that in the past. In fact, there was a certain officer just recently who was going to resign over stealing, allegedly, six stubbies. They said, "Can he resign?" We said, "Yes, but we are still going to charge him." So now he has stayed and the union will now pay for his legal fees, which is going to be a cost to the union, and if we lose that then he is back—if he stays with us.

Mr HEGARTY: Obviously, the situation is good between the other Police Services in the other States where you cross-pollinate—officers move to and fro from time to time and their records go with them—but when you are recruiting from other agencies, maybe the United Kingdom or New Zealand, does that still exist? More importantly, when they come from a non-Police Service background—they are a new recruit and may have been employed in the public sector in some capacity—does the cooperation extend to those former employers there, bearing in mind that there may be situations where it may reflect on the former Government agency that there might be litigation following if an adverse finding that has not been proven is disclosed?

Comr Atkinson: It is obviously a very important, if not critical, issue for us. There is good cooperation generally from other police agencies, as you quite rightly point out. Because of the number of people we were recruiting from Victoria, the Victoria Police actually expressed some reluctance to be cooperative with us, and I can understand that. If you are recruiting, for example, fingerprint experts and it takes five years to acquire the qualification of a fingerprint expert and they decide to come and live in Queensland for a better lifestyle, then that is a significant impact on their level of ability to provide that service. So what has happened down there, as I understand it, is the officers have to make an FOI application to get their records and they have to provide them to us through that source. So we are able to sort of get around that particular problem.

I can only say that we are very conscious of the need to be very cautious about who we recruit and we would make every endeavour to obtain whatever records are available. But you are quite right in terms of, regrettably, there is the circumstance where people—at times in their desire perhaps to be rid of someone—will not necessarily identify always the true circumstances of their departure. I guess that is understandable in terms of human behaviour. So we can only take on board every caution we can. Can I just invite Mr McDonnell to respond to that if he wished to?

Asst Comr McDonnell: I agree with the commissioner. It is really a case of anything that is at all a bit iffy, for a better word, comes to the committee, the recruit section—and the commissioner has had this set up under him, and I respond directly to the commissioner. So that committee that I chair has got the director of the recruiting section, HR and the chief superintendent of the Ethical Standards Command—and myself as the chair of that committee. So anything that is a bit iffy we ask more questions, as you can imagine, to make sure we are not going to get someone that we do not rightly deserve in the Police Service.

Mr HEGARTY: Could I follow up with a supplementary question just to finalise that point? Given that we have flagged the possibility that we need to see people if they voluntarily retire or resign, given your experience to date with the measures you have in place for recruiting for your particular service, do you see that there is any real need to go that extra step, at least in the public sector, to have the matter finalised if you are drawing from that particular area for recruitment?

Comr Atkinson: Not from the Police Service's perspective. I understand fully the public perception at times about this but we think it would actually be counterproductive from the Police Service's perspective in terms of pursuing people.

Mr HEGARTY: That is pursuing ex-police officers, but in recruiting from the public sector, do you think we should be imposing the measures to have the matters pursued in the public sector so that when you draw from that sector you would be sure that you were not taking someone else's problems?

Comr Atkinson: We think that there could be an administrative solution in that regard so that people—and in terms of the application for employment—that there be some capacity there for people to have to identify in terms of where they came from, the previous employment and a capacity, obviously, to make checks with those departments of the circumstances of their departure.

Mr WILSON: Can I just follow up on that? What actually happens now if someone applies to join the Queensland Police Service and their most recent employment from which they have resigned is as a teacher, for example, or it could be from any other of the Government departments? What actually happens now when they apply in following up what their employment background is with that agency? Is it different from what you have so well detailed happens between police agencies in different States?

Asst Comr McDonnell: We really do referee checks on every person who is an applicant and that is very well much checked out.

Mr WILSON: Does that pick up a former public servant who resigned under investigation?

Asst Comr McDonnell: Sorry, I did not—

Mr WILSON: Does such a reference check pick up a former public servant who resigned under investigation?

Asst Comr McDonnell: It would not necessarily. If the person was not aware, that is very true.

Mr WILSON: Even if they were aware, though?

Asst Comr McDonnell: There is no obligation on another department to report that.

The CHAIRMAN: That is something we have found.

Mr QUINN: Do Police Services in other States have a similar process to what you are supporting; in other words, once an officer retires or resigns they no longer pursue misconduct other than matters of a criminal nature?

Comr Atkinson: I will have to take that on notice. I do not know.

Mr QUINN: The point I am getting at is this: if everyone has a similar position, is it possible for officers to move around Australia from service to service and resign just prior to investigations concluding so that there is no official record of that possible investigation being made available to you?

Comr Atkinson: It should not be. Given the circumstances in New South Wales in recent years, we are particularly conscious of the fact that officers who might be wanting to join our department from New South Wales would need to be the subject of particular scrutiny in that context, and it should not be. Again, I will respond to that specific issue in our written submission. I would not think that would be possible. I think that the policing fraternity in Australasia—not just Australia but Australia and New Zealand—is so tight and small that the referee checks and departmental checks should be able to pick that up. That does not mean, of course, that it may not happen.

In terms of lateral movement between police services, this is probably more significant for us in Queensland than any other jurisdiction, because we are the agency that is recruiting actively from other jurisdictions so we are particularly conscious of it. There is a greater capacity because of that and for some other reasons—or one other reason particularly—for officers to move to Queensland. Departments in other State jurisdictions have been less inclined to recruit laterally as we have and are less inclined to open the candidature for senior positions. Can I give you an example of that? In Queensland, every position of superintendent and above is advertised nationally. Police officers from every other jurisdiction in Australia can apply for our superintendent's positions. But other jurisdictions do not do the same thing. So our people cannot apply for their superintendent's positions, but they can apply for ours. We think that is a healthy thing in terms of our openness and our pursuit of the best type of person for the job. I am pleased to say that in most cases, if not nearly all, our positions are actually filled internally. Can I just add one thing to that? We have come a long way since Fitzgerald. Recently, one of our inspectors who was on promotion to superintendent was poached by KPMG. This person has tertiary qualifications and, I think, legal qualifications. The prospect that 10 years ago a Queensland police officer would be poached by KPMG would not have been able to be

entertained. I think that is an indication of just how far we have come in the last 10 years in terms of our professionalism.

Mr WILSON: Earlier you suggested there was merit in continuing an investigation of a police officer who had resigned but not taking it to the point of determination, that is, continuing it beyond the date of that officer's resignation. It was thought that something might be learnt from such an investigation. Does that happen now and, if so, should it happen more often? Can you give me an example of how that works?

Comr Atkinson: It does happen now. An example could be the abuse of property in the care of the police either as an exhibit or as lost property. An officer might be under investigation over missing property. The officer might elect to resign or retire—we think that is a good thing—and the officer might leave us. But there would be a necessity to continue to examine the circumstances of that missing property. It could be that our procedures are inadequate. It could be that supervision was inadequate. And only through the investigation will that be determined. But, of course, our point is that if the officer has gone there is no value in further pursuing the officer. But systems, procedures and supervision could be issues that need to be pursued.

Ms STRUTHERS: I wish to pursue the issue of police investigating police. As you are probably aware, we have had submissions across the full continuum. We have heard from people at the Queensland Police Union, who would like all complaints to go to you as Commissioner and be directed to the CJC for internal investigation. We have heard from people at the other end of the continuum who have suggested that police have some kind of pathological problem in investigating other police. It is important that as a Committee we canvass all views, hear the reasons for and determine the merit of those arguments. You have mentioned in your submissions this morning that there are some cost benefits in police taking up more responsibility for internal investigations. In its submission, the QPU said that one of the problems with the CJC having such a strong role is that—I think they mentioned public perception rather than saying it is their view—the police are being hampered in their day-to-day duties by overzealous enforcement of the discipline system. They are just a sample of some of the arguments for and against the QPS having a stronger role in investigations. Firstly, can you convince us why the QPS should have a stronger role? Secondly, what do you see as some of the problems of police investigating police?

Comr Atkinson: I think it is evolutionary. Obviously, the current system is the same system that we had post Fitzgerald when the report was released in July 1989. Both the police department and Queensland have moved on quite significantly in the 11 years since that happened. I believe—and I think there are some supportive views in this regard as well—if you are going to have a quality Police Service it has to be a professional and ethical Police Service that is able to deal with its own difficulties and problems. I believe where you have responsibility for that outside the organisation there will never be a full acceptance of ownership of the issues. I believe we are now positioned to accept that responsibility in terms of misconduct and that we should be entrusted with the responsibility for it. Having said that, though, it is very clearly our submission that, in our view, the CJC will always retain an audit capability which would be at its determination in terms of the percentage of matters it would want to audit. It is our view that the CJC would always have the right to call for any investigative file in terms of misconduct that we had and review it at any time. So we are not advocating a total lack of involvement of an oversight body or the role of the CJC, it is just that we think in the first instance we should have the responsibility for dealing with matters of misconduct rather than going to the CJC and then being allocated back to us. Probably nearly all of the complaints are sent back to us now, anyway, from a practical perspective.

I appreciate that this is just one view, but Mr Justice Wood, who led the inquiry into corruption in the police in New South Wales, has commented—

"To pass the problem—i.e. of misconduct—entirely to an external body is only to guarantee disaster. If we absent responsibility, then vigilance and pride in the job will collapse."

That is Mr Wood's comment in that regard. I think you also invited me to comment in terms of the effectiveness of police investigating police. I would certainly agree that pre-Fitzgerald that was not done in a satisfactory way. What I am heartened by is the fact that internally the evidence of police reporting inappropriate behaviour is increasing. Police are now more prepared to do that.

Externally, the proportion of complaints by members of the public against police is decreasing. I think those two levels of activity are very healthy. The proof of this will be demonstrated in the results, that is, if the organisation is transparent, which it would be under what we are proposing, with an audit by the CJC of any matter that it wishes to look at, if the public is satisfied, if particularly the complainants are satisfied and if organisationally our results are sound and our public credibility is high. There is a clear nexus between the two; everything we do is dependent on public support. Essentially, we police in three broad areas. We police reactively—the traditional response to complaints and queries from the public—we police in a preventive mode and we endeavour to police in terms of a problem solving perspective. But whatever it is, we rely on community confidence. We will not have that community confidence if the community does not have faith in us. No-one will ring the police and say, "I want to report a drug dealer", if they suspect the police are involved in drug dealing. So there is a clear nexus between this and our effectiveness as an organisation. The answer perhaps is that there has to be an element of trust, and only time will determine that. I hope I have answered your question satisfactorily.

Ms STRUTHERS: That is fine. I wanted to elaborate further not on individual complaints but on issues of systemic reform. Do you see that there can be any improvements to a model to enable some sort of monitoring of Police Service reform? For instance, I am thinking of the example you raised of the hand-held police recorder. I accept your point that there needs to be an understanding of the costs involved in that. But do you see it as a role for be it the Government of the day, a body like the CJC or whoever to monitor broader based systemic reform so that, if the Police Service is not responding and dealing with reforms that are suggested through research or through a body like the CJC, there is some way of monitoring this and being a catalyst for those things to occur? I understand that at the moment the CJC does not really have any power to ensure implementation of any recommendations. I imagine it is up to the Minister or the Government of the day. Do you see that there is any system or model that can be improved upon for the public to have confidence that, if reforms are recommended, they are actually happening?

Comr Atkinson: I think what we have now is very healthy. My understanding is that, although it has never been exercised, the Chair of the CJC does have the power under the Act to give a direction to the Police Commissioner. I think it is healthy that there has not been a need for that to happen. It would concern me that, if a body was set up to do that, it could be counterproductive in that responsibility for reform could be assigned to that body and everyone else would abrogate their responsibilities. What we have now is extraordinarily good in terms of the Queensland community in the sense that we have vigilance from bodies like yours, we have media interest and we have a strong public interest in the whole criminal justice system. As I travel around Queensland I have never seen so much interest in the community in terms of how policing resources are applied, what we do, how we do it, what sorts of penalties the courts impose and how effective things like Neighbourhood Watch are. There is an extraordinary level of community interest in all of this. And there are bodies such as the CJC, the Queensland Crime Commission and national bodies now located in Queensland, such as the Australian Federal Police and the National Crime Authority. There is a wealth of research now conducted by tertiary providers—three in Brisbane alone—in the criminal justice area. The synergy effect of all of that is very helpful and healthy. I think the current situation is quite sound in that regard.

Ms STRUTHERS: Finally, do you support the view that the QPU has put forward that the public perception is that police are hampered in their duties by an overzealous disciplinary system?

Comr Atkinson: No, I do not. I think that, understandably, there will be a concern in terms of balance at times. But I think that it is absolutely critical for the reasons I alluded to before in terms of the overall effectiveness of the Police Service that we have an effective internal and external overview discipline process. Without community confidence in us as an organisation we will ultimately be ineffective. Particularly in some individual cases, it might be seen that the discipline process results in police officers losing their motivation and enthusiasm. But in terms of the broader balance, I think that, whilst there is room for improvement in the current system, particularly in the time that things take, we are evolving, emerging and developing constantly and I think that we are on the right track.

Mr HEGARTY: This may have been covered. Currently, in relation to officers who have been disciplined for misconduct, what measures do you have in place to monitor their future

career—I presume there is an annual reporting process by superiors—without stigmatising them or preventing their putting a matter behind them? If greater responsibility is devolved to you from the CJC, what do you see as needing to be changed in the present system? Can you make any comments as to how to best serve the interests of the public, the service and the officers involved?

Comr Atkinson: I have just some brief responses and then I will invite Mr McDonnell, who is perhaps better qualified than I, to respond to that in terms of the detail. It would seem as though on balance we are actually harder on our own people than the appellate courts. So the sanctions we impose tend to be—particularly in terms of dismissals, as I mentioned earlier, where people appeal and are allowed to rejoin. We have a profiling system where not only officers who have matters substantiated against them are profiled but all complaints made against them are profiled in a proactive stance, because it could well be that an officer receives three or four complaints in a short time for incivility to the members of the public but none of those are able to be substantiated. The simple fact that members of the public individually are making complaints sets off warning bells, and we have a capacity to identify them and hopefully come up with some proactive educational strategies to try to address that issue. I think that accepting of ownership for the issues is indicated through the intent of Project Resolve. Having people in management and supervisory positions required to accept that ownership will be a very healthy thing as well. I just invite Mr McDonnell to further add to that.

Asst Comr McDonnell: What we have in place now is the formal assessment of each officer by his superior. We also have profiling which is done out of the Ethical Standards Command which is the development program. The development program includes counselling, coaching, motivation, referral to welfare officers or psychologists, their lifestyle or their chaplaincy. Career development includes assessment and monitoring, valuing a higher performer, performance enhancement, increase supervision where appropriate, transfer to other duties—this is non-disciplinary—restriction of duties, guidance and training skills, POST, firearms, special projects, research disturbance education, computer based training. Professional services include research, counselling, conciliation, apology on behalf of the department or referral to external professional training and development courses. We have a number of things in place to pick an officer up from where he is going.

The CHAIRMAN: One of the things about accepting increased responsibility for dealing with your own discipline is that when you do that you have to accept that you have a much greater role in terms of ensuring that the public understand that. To what extent do you ensure that, if someone has a complaint—and it might just be incivility, but it is an important issue to them or it might be a fairly minor manner. If they do not turn up at the local police station, they feel as if, "It's not my problem; it is ESC's problem." The people clearly understand they can go and have a talk. I can think of an instance when I was aware of an incident where a person had a complaint and once they actually got to ESC, the matter was resolved to their satisfaction. But the heartache and the concern was caused about getting there in the first place. What steps do you take to ensure that the members of the public have confidence that they know that there is a body in the Police Service that will deal with these matters and also that they are told that they can again talk to the CJC?

Asst Comr McDonnell: In the Police Service we have a bulletin board. Yesterday an article came out as we had a problem with firearm use. Under the commissioner's direction, I put out a news item to every police officer to say, "This is what our complaints are. You are using this too much and not thinking of retreating and not doing this and this and this." Every complaint that comes in of a morning must come to our command. We see what the complaints are and I then report to the deputy and then to the commissioner.

The CHAIRMAN: I am not talking about your internal structure; I am talking about if I walk into the local police station and I am cranky about something and I have a concern, how do I know as a member of the public I will not just be met by the person at the counter saying, "Sorry. Okay, I will talk to someone about it. Thanks very much"? If you want to have responsibility for dealing with these things, how do I know that the members of the public will have some confidence that you will refer it to the Ethical Standards Command?

Asst Comr McDonnell: If it is a disciplinary matter, again the police are obliged under the Police Service Administration Act to report it under section 72. If they do not do it, then they are charged.

Mr QUINN: I think what the chairman is trying to get at is that at the moment the public have a perception that, if they have a problem with the police, they lodge a complaint with the CJC. What are you proposing to put in place that can give a similar sort of confidence? If you want to take over this process yourself, how do you intend to make that confidently available to the public so that they know that, if they have a problem, that is where they go?

Asst Comr McDonnell: Our media officer would be the way to do it—and marketing it. That is how the CJC do it, and do it very well.

Comr Atkinson: Can I just comment on that? I think it is a very valid point. Ultimately it will be critical to our credibility. From my point of view, I think that we do it through myself and other senior officers throughout the State, articulating to the public that we are sincere and genuine about this and that, if people have a complaint to make, they should make it and it will be properly and appropriately dealt with and they will get a response. Then we will monitor the people who actually make complaints to determine their level of satisfaction with the process. We reinforce internally the importance of acting on complaints. If at the end of the day we actually get this and we get it wrong and it goes back to the CJC, we will never get it back again. So it is in our interests to get this right. Also I think there is the significant public awareness. If a member of the public makes a complaint and is satisfied that there was a professional, appropriate, timely and effective response to it, then I imagine that that member of the public would share that view with other members of the public.

The CHAIRMAN: Most likely the vast majority of complaints are ones of communication. If someone feels they have someone they can talk to who will treat their concerns seriously, it may be it might not escalate to cause trouble for the complainant and for the police officer. That is what we are interested in. It has been our experience that a lot of these issues are just communication problems. So it is important that at the cutting edge of communications, which is often the local police station, you have systems in place to ensure that people know that they will say, "Thanks very much for your bringing the problem to our attention. This is what we do. Here is a leaflet about it if you are interested in knowing what we do." Those sorts of things are very important.

Asst Comr McDonnell: I think that this Operation Resolve we are trialling on the Gold Coast and Toowoomba does exactly what you are saying. Sometimes results turn around in 48 hours which normally would take weeks and weeks to do.

Mr WILSON: To follow up on that, what do you have in mind would change at the local police station such that a member of the public could feel just as confident walking into that police station to lodge a complaint publicly about someone in that police station as they presently would feel in lodging the complaint with the CJC? The key issue it seems to me is that, if you cannot address the issue of public perception, then you will never be in a position to reach a conclusion about whether Operation Resolve is adopted more widely or was successful or not because you will not be getting the complaints coming to you at all.

Comr Atkinson: That is a very valid point. My understanding is that in another jurisdiction in Australia it would seem to be the case that, whilst the broad public have a fairly high regard for that police jurisdiction, where they have surveyed their clients—the people who actually use their services—there is a significant drop-off in terms of perception. It is a critical point. I think that, as Mr McDonnell said, Project Resolve will go a long way. If I can just add to the chairman's comments, people do want things addressed and they are communication issues in the main. But I think that they also want things done in a timely way as well. They do not want an investigation to go on for a year and then get a letter saying, "Well, we have looked into this and it was not substantiated." Quite often I think they would be happy with an apology or even just that the officer has been spoken to about it and that something had actually been done.

I think that Project Resolve is on the right track in that regard. We are trying to deal with these things. My understanding of it would be that people will always have the right to take a complaint to the CJC if they are not happy. If they are uncomfortable with the proposition of reporting it to the police they could always take it to the CJC. It is entirely in our interests to see that the complaints that they do make are dealt with. I take your point. No-one knows for sure the

extent of dissatisfaction, and arguably that applies across many issues. Not every criminal offence is reported, for example. We do not know in some cases the full extent of some areas of activity. It is important. The only way we will get closer in terms of bridging the gap is if our response is a highly professional one and one that the community gains satisfaction in.

Mr HEGARTY: I just wondered if any consideration has been given to the extra strain that will be placed on manpower if you achieve this responsibility for disciplinary measures yourselves. I presume that in lots of cases someone from Ethical Standards Command will handle this, at least initially, to direct it to the officer in charge of the division or district.

Comr Atkinson: Again I will ask Mr McDonnell to comment, but I do not think it would be a huge issue. We are doing nearly all of them now. Most matters of misconduct are referred back to us from the CJC. That is my understanding. So we are doing most of them now. As Project Resolve unfolds and develops and rolls out across the State, it will actually result in—and should—in less application of resources and, we would hope, more effective results. We should not be going back to Government and saying, "We need 100 more police because we have this added responsibility." We should in fact be able to say that we can manage it within our own resources.

Mr HEGARTY: Would there be any reduction in manning of the CJC's strength of officers seconded?

Comr Atkinson: Hypothetically that would be a possibility, yes, but in terms of transferring, it would be just a movement of people from one jurisdiction possibly back to the service, because that would be something that would have to be further examined in the future.

Asst Comr McDonnell: I think you will find that in relation to most of the complaints that the Police Service do now the commissioner has not got the authority to carry that out.

The CHAIRMAN: Thanks very much, Commissioner Atkinson, Assistant Commissioner McDonnell and your colleagues for attending today.

Comr Atkinson: Thank you for the opportunity. Once we get the transcript of today's proceedings, we will take note of the detail of your observations and questions of us and include in our written response those considerations.

The CHAIRMAN: Thanks very much. We will take a very short break and then we will start with Mr Bainbridge from the Queensland Police Union.

The Committee adjourned at 10.41 a.m.

The Committee resumed at 10.49 a.m.

MERV BAINBRIDGE, examined:

The CHAIRMAN: I welcome Mr Bainbridge. Thank you for coming today. Would you like to make some opening remarks about the police union's submission? Then we might ask some questions.

Mr Bainbridge: Thank you very much for having me here today. Our union submitted a proposal on 12 October. Basically, we believe there is a definite need for an overseeing body to maintain high standards of contact and propriety in the Queensland Police Service. We welcome steps taken by anybody to prevent and reduce instances of corruption throughout the QPS or the Public Service. However, we believe that now is the time for changes with respect to the police discipline system.

We believe that sufficient time has elapsed since the Fitzgerald commission of inquiry and we believe that the Police Service has proved itself capable of undertaking investigations into matters of discipline. Certainly, we believe that the CJC should handle matters of a criminal nature and serious corruption matters, but in the day-to-day matters of discipline we believe that the Queensland Police Service is quite capable and we believe it has the necessary expertise and the public confidence to carry out these duties. Our submission you have, and that is our point of view with respect to the matter.

Mr WILSON: If we move to a situation where complaints are made directly to the police, regarding at least disciplinary matters, and the police directly investigate them and the CJC's involvement is a periodic and/or random audit of those investigations, does audit really mean selective review? Whereas now the CJC handles every matter—it goes over to the police but then back to the CJC—if you moved to a situation where only some of those matters would actually be reviewed by the CJC, how would it conduct that audit? How would it identify which matters to look at and which matters not to look at?

Secondly, if its overall objective is to identify systemic problems rather than deficiencies case by case, would that not be more difficult to achieve with the fewer investigations it is actually reviewing? It would be more difficult to actually detect a pattern of behaviour by police themselves or a pattern of behaviour in the way in which the investigations are being undertaken.

Mr Bainbridge: The CJC's own data states that complaints made to police represent 73.1% and that only 3.8% of people complain directly to the CJC. I would suggest that there is a public perception out there that if you do complain to the police something is done. The system of auditing would be a spot check of the Police Service's handling of the matters. Bear in mind, as I originally said, that the CJC would still deal with matters of a serious criminal nature or corruption.

Surely the Police Service has the ability to handle what I would call minor infringements with respect to issues such as drinking on duty and so on. The CJC becomes bogged down. That is probably one of our complaints. Since the change in stewardship of the CJC we have noticed what we consider to be the CJC being a lot more fair in its dealings with us. But there is still this inordinate delay in investigating police officers. I think it is a matter that cannot be taken lightly. I can give you anecdotal evidence of people who have been under investigation for 12 months or two years. In that two years their promotional prospects are put on hold because they are under a cloud and transfers are not considered. Whilst we do not wish for a rush to judgment, what we do wish is for a speedy investigation. Unfortunately, with the system the CJC operates under that is not the case. There are not speedy investigations.

Mr WILSON: If the majority of those disciplinary matters, whether they are reported directly to the CJC or the police at first instance, are investigated by the police ultimately—it is simply that they are doing it in a sense as agent for the CJC—what is actually gained by the CJC being reduced to a periodic monitoring role? What is gained from the police end of it? You are already presently investigating those disciplinary matters.

Mr Bainbridge: What happens at the moment is that a form 307 comes in and it is assessed as to the level of importance that the investigation will take. If it is of a reasonably minor nature, back it goes to the Police Service for it to investigate. After it is investigated there it goes back to the CJC. It may be a number of months down at the CJC. There are those transfer and promotion matters I mentioned.

Another matter that comes into it is morale with respect to the people who are under investigation. There are members of what I call the criminal class who know that if you lay a complaint with the CJC over an officer's actions—let us hypothetically suggest that that officer has done everything by the book and acted with complete propriety—you will jerk him around for a while and when the matter comes to court his legal team will raise the matter that currently that member is under investigation by the CJC, and of course he is. It is a system that is used against police. With respect to the decent, hardworking officer that this complaint is made against, morale wise it is very destabilising.

Mr WILSON: If the CJC were not involved in the way it presently is but complaints could still be made directly to the police—

Mr Bainbridge: Police should be able to sort their own complaints out. We have people who are so-called managers. If they are managers, they should manage the place. A lot of our commissioned officers find it so easy to put in this form 307—tick and flick and send it off to the CJC—instead of undertaking to sort the matter out, perhaps through mediation. In most cases you will find that all the member of the public who has laid the complaint wants is someone to listen to them. I will give a quick anecdotal story.

When Mr Greg Early went to the Gold Coast as the assistant commissioner he told his commissioned officers down there that with any complaint that came in that a 307 was put on he would require an attached report saying why the matter could not be sorted out with respect to mediation. The complaints dropped by 75% for the simple reason that his managers, who were well paid, had to sort the matter out. A number of the matters, just by way of simple example, were of a member of the public saying that a police officer was very rude to them. They sat that police officer and that member of the public down and they sorted it out. It was not sent to the CJC for the CJC to adjudicate that it was a minor matter and then sent back to the Police Service. That whole matter was sorted out within a couple of hours.

The CHAIRMAN: But that is happening under the current system, is it not?

Mr Bainbridge: It is happening, but unfortunately a lot of our commissioned officers find it still very easy to tick and flick.

The CHAIRMAN: If it ought to happen under the current system and it is not happening in certain cases, then rather than us necessarily looking at a change in the system it is important that what we are saying to the CJC—we do not have a direct role in relation to the police—is, "Are you ensuring that the Police Service lets its managers know that they have a responsibility for attempting to resolve matters?"

Mr Bainbridge: In-house handling, yes, sure.

The CHAIRMAN: I want to explore an issue with you. I take your point that managers have some responsibility to manage things themselves. For them to say, "Go down the road and talk to someone else" is not an adequate response. What you have suggested is some sort of audit role for the CJC. Isn't it important to have public confidence in your complaints process so that, even if it is accepted that there is a level of internal resolution of matters by the Police Service, the CJC has the data that tells them about everything? That gives them the opportunity to say, "Here is the list of complaints we have received. We've had a quick flick through them. We want this one raised as a query. We want to know more." Isn't that better than coming back two months later and doing a random audit? In that case, the CJC might then say, "This has all been finalised. We want to reopen it." In its dealing with complaints against CJC officers, the Committee has found that it is quite useful to be advised at an early stage, even if it is just to say, "We're noting what you're doing. We'll note what happens at the end." Alternatively, you have the right to say, "No, we want this thing to be dealt with in a different way."

Mr Bainbridge: I take your point, but there is a problem with all matters—I call them minor misconduct matters—going back to the CJC for overview, that is, every issue going back. As you say, the argument is for the CJC to have a handle on their statistics and so on. Surely there must be some other way to gather statistics.

The CHAIRMAN: I think that system achieves what you want it to achieve in the interests of the Police Service and achieves what the CJC wants to achieve. If they know—and I am not suggesting that they micromanage complaints of, say, people incivility or minor things like that—what has happened and they have elected not to treat it differently later on, that then gives

the individual officer the ability to say, "Look, these matters are subject to the CJC overseeing them. It hasn't sought to do that. Not only has the matter satisfied the standard of the Police Service, but clearly it satisfied the standard of the CJC in the absence of other information." I think that is an important protection. If there is a complaint against the CJC to us and we say that it is not upheld, they are also able to say, "It went to an independent body."

Mr Bainbridge: If we take that a step further in the nine separate kingdoms we have, surely an assistant commissioner in charge of one of those regions should keep track of complaints coming in within his area and he should be able to identify after a period of time if he has a person who has a problem, a personality deficiency and so on. He should be able to identify these matters. He should not need the CJC to say to him, "In your particular region, X number of complaints have come in for incivility, X number of complaints have come in for this matter or that matter." Again, I get back to the point that these people are paid quite a lot of money to manage. In some cases, I feel that they shirk their responsibilities by passing on a lot of their work to the CJC.

The CHAIRMAN: On the other hand, the CJC might want to say to him or her, "In your region, we found that, for some reason, matters aren't able to be resolved by this mechanism or another mechanism. Is there some reason? Looking at how you've purported to resolve matters, we don't think that's appropriate in a global sense." I do not see that as being opposed to the important issues that you raise.

Mr Bainbridge: Even though it is not my concern, I would see it making a lot of work for the CJC. However, the time limit being extended on our member under investigation is the problem I have with the current system.

The CHAIRMAN: If you have any further submissions you want to make in relation to any of these issues, particularly timeliness and those sorts of things and how you think that might be improved, we would invite the police union to submit that to us. That is an important issue.

Ms STRUTHERS: This morning Commissioner Atkinson spoke of what he said was a pattern in western police services that there is corruption, a period of reform and then likely slippage. In terms of the situation in Queensland, we have had significant reform for the past decade. I am not suggesting that we are going to get into any slippage, but that to me relies on an effective system of anti-corruption and accountability. I wanted to move away from individual complaint mechanisms and talk to you about the overall systemic issues. The Fitzgerald report identified significant corruption within the Police Service, the detective culture that Commissioner Fitzgerald spoke of and the inappropriate relations between politicians and police. There were a lot of things in that report which have seen significant improvement. I want to canvass your views as to what role the CJC has in preventing this slippage from occurring. You have identified that you would prefer a much stronger role for the Police Service in investigating police but, on those broader issues, how can we prevent a pattern of slippage that occurs in other jurisdictions?

Mr Bainbridge: Corruption will never be something that will be totally eradicated 100%, whether it be the Police Service, the armed services, the Public Service—no matter who it may be. The Police Service as I know it today and when I joined 35 years ago are chalk and cheese. What I see now is a Police Service that is accountable in lots of ways—so accountable that in some cases police officers find it very hard to do their jobs because of the accountability and the checks and balances. I have no problem with that, but what I do have a problem with is the complaints system—and that is part of the checks and balances plans and the accountability—where people make vexatious complaints against officers. Recently I spoke and wrote about the fact that they turn these young officers, as I term it, gun shy. It is quite simple really. The system works like this: two police officers are working Logan Road at Holland Park at 2 a.m. in the morning and see two youths walking along carrying what we would call an athlete's bag—a rather large bag. So they pull them up, ask them what they have in the bag, search through the bag and there is nothing untoward there and away they go. One of the youth's father makes a complaint. There is no complaint of the police being rude, assaulting them and so on. He just thought it was not right that police officers should pull his son up.

The story I tell is accountability gone mad. So what happens is that these two young officers are investigated. We come back again to the system, because it is probably six or 12 months before the investigation is finished. They receive no transfers or promotions in that time. They are disciplined under what we call a reg 11, which is correction by way of guidance. It is the

lowest form of discipline, but it is still discipline. They are disciplined because they never had what you would call probable cause to speak to these two young fellows. They were not seen acting suspiciously.

In my day, two people walking down the road at 2 a.m. in the morning carrying a large bag with them certainly would be pulled up and spoken to. Yet what happened is that the complaint went to the CJC for six to 12 months. What happens then? In the future when these two officers are walking down Logan Road and see someone carrying a portable TV set, do they look straight ahead, pretend they do not see them and keep walking? They will not get into trouble if they take that option. The accountability we have now is, in some cases, accountability gone mad. I have never known a Queensland Police Service that has been more accountable than it is now. As we have found out recently, corruption covers all facets of society, whether it be police, politicians or whoever. It can be kept down to a certain point. I disagree with Commissioner Atkinson. With the checks and balances we have now, I cannot honestly see corruption as we knew it coming back.

Ms STRUTHERS: So do you see that there is a continuing role for the CJC in corruption prevention?

Mr Bainbridge: The union has never objected to the CJC per se. Whether it is known as the CJC or whatever, we have never objected to there being a body that investigates issues of corruption. What we do have a problem with is the inordinate delays that our people have to clear their name. That is the only problem we have ever had with the CJC.

The CHAIRMAN: That instance you referred to in relation to those police officers in relation to the inspection of the bag, was that a CJC investigation or an Ethical Standards Command?

Mr Bainbridge: No, it went down to the Police Service. If I could take it a step further: what happens then is the matter is viewed by the CJC and a commissioned officer handles the matter. I would suggest that you or I would congratulate the officers on their good work with respect to checking these youths out and explain to the youth's father who made the complaint that it is just normal police practice. However, what happened is that these two officers were disciplined under reg 11 by a commissioned officer. What happens with some of our commissioned officers is that they wish to show the CJC that they are not soft on their own people, in other words, they are accountable. So what happens is our people are receiving treatment which I believe is over the top in a lot of cases. I am not saying that they do this to please the CJC but to show the CJC that they are not soft on their own people.

The CHAIRMAN: I do not know the circumstances so I cannot comment on them, but the example you have given would seem to me to be a matter where the police had the matter referred to them to resolve, not where the CJC has sought to resolve it. If there are going to be systemic changes, I do not have any difficulty with your proposition that if things take too long it is a problem for the officers and the complainants involved. If you are saying that there is going to be further devolution, that will not address the issue you have raised in terms of that because that was not a matter that was dealt with on a devolved basis anyway.

Mr Bainbridge: If we move from there, then, to the CJC themselves investigating matters, that is, police attached to the CJC supervised. I have the example of a young sergeant, female, who was sexually assaulted at the academy. Eleven months went by before she received advice that the offender is not going to be prosecuted. We as a union have taken up her cause with respect to it, and we will prosecute. The DPP did not see that it was in the public interest to prosecute. In my dealings there with the CJC, this police officer was not treated like a complainant, as far as I was concerned. She was treated with complete disrespect, and as a person who has daughters, I found it disgusting, the way she was treated. This was by the CJC's own officers. They were police officers attached to the CJC. So it does not matter whether the CJC do the investigation or whether it is police; there are problems with timeliness.

What we had in this matter was probably what would be called an aggravated assault, and it took approximately eight to nine months for the CJC to investigate, for God's sake, and then another couple of months down at the DPP. So it had nearly had its 12-month anniversary when the young lady was advised of what was happening.

The CHAIRMAN: We do not want to get into the facts of particular circumstances here; that is not the purpose of our hearing. As I said before, if you believe that there are systemic issues that ought to be addressed in terms of delay, we invite the union to make a confidential submission, if it needs to be done that way, to the Committee.

Mr HEGARTY: I think you have canvassed the points I was going to raise. In terms of timeliness, in my mind, it does not appear to be much different whether it is police seconded to the CJC investigating or the police themselves through the QPS. It is the method of investigation. I suspect whether it is investigating police officers or other criminals, they all take the length of time that they do in order to gather sufficient evidence for a prima facie case to refer to the DPP. So the whole system seems to be undergoing problems in relation to timeliness.

I will just touch on the other matter you mentioned in relation to certain elements of the community who are under investigation and likely to be prosecuted who initiate a complaint against an officer as part of their defence. Whether the CJC are investigating it or whether the QPS are investigating it, it would still be brought up as part of the trial that the officer is under some sort of a cloud.

Mr Bainbridge: It doesn't matter whether the CJC or the QPS is investigating it; that allegation will still be thrown up in court.

The CHAIRMAN: Can I take you to a different area? One of the issues that has been canvassed is resignation of police or public servants. In cases where there is not sufficient evidence for a criminal prosecution, proceedings are sometimes preferred before the Misconduct Tribunal. As we are all aware, the ultimate sanction a Misconduct Tribunal can prefer is dismissal in any case, and in certain circumstances, people resign prior to proceedings, for whatever reason. What does the union say about the possibility of, for example, a provision like in New South Wales—not that they have a Misconduct Tribunal—where proceedings can be continued notwithstanding resignation? Could you elaborate?

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

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

Let us be quite clear on what some of these people have been allowed to resign for. One I know of, without going into it, was misuse of a computer. Obviously the matter never came to fruition, but it was alleged that a person was carrying out business in terms of being a private inquiry agent. So what we had was a person looking up drivers' licences and registration particulars in order to put addresses to names. That cost this person, as I said before, in those two matters. Do I think he has been punished enough? I think he has. Why pursue him?

The CHAIRMAN: Could I explore that a bit further with you, and not from the point of view of the punishment, because all that you could do in the tribunal would be to order that they be dismissed in any case. So the point you make, there would not be any difference in that sense. The purpose of tribunals is not to stop people being employed ever again so that they are forever and ever on unemployment benefits. Say, for example, you have someone who is facing that

particular situation. Is the appropriate mechanism to allow them to continue proceedings before the tribunal, or is there some administrative method of dealing with it? If that person resigns from the Police Service in those circumstances, whilst there might be no problem about them getting a job in a vast variety of fields, what if they want to apply for a job in the Public Service in the Department of Transport? In those circumstances, that might be relevant. So is there some scope in limited circumstances—maybe not a tribunals proceeding; it has been suggested, maybe on an administrative note, that in those circumstances, that might be able to be—

Mr Bainbridge: I see no grey area here. It is like a police officer dealing with a suspect. You either have the evidence to charge them or you shut your mouth and walk away and let them go. You either have it or you don't. If these people walk away and they have not been charged with any matter, as I said, they have those disadvantages. People do not understand that some of our people who do go before some of our police tribunals—and I will come back to the computer matter. That saw a senior sergeant reduced in rank from senior sergeant to senior constable, a \$350 a fortnight reduction in pay—nearly \$9,000 a year in pay—and a \$200,000 drop in superannuation because he engaged in the old famous "helping a mate out", allegedly.

The CHAIRMAN: We don't want to get into specifics.

Mr Bainbridge: Right, not the specifics, but when you talk of police or public servants and we are talking of either punishment - and that is what it is: punishment—or sanctions or whatever, just bear in mind that you don't get a \$200,000 fine for killing someone in a road accident if you are drunk. These are some of the sanctions that our people are facing. I know I am moving away from it, but back to originally, if they walk away from it and resign—and I can only speak of the Police Service—the service have three months to do something about it and to put that person through, and if they have not, that person walks away, and they walk away like anyone else who has not been charged.

Ms STRUTHERS: Just picking up on those kinds of examples, without getting into the specifics of them and making judgment about the specifics, it seems to me that there may be some merit in external bodies having that strong role of police investigation on the basis of different standards being applied to the judgment about that behaviour. So, for instance, disclosure of information - say it is a woman who has escaped a violent partner and changes her identity or whatever; the husband, who is police officer, cannot track her down. On the face of it, a colleague might think, "Look, it is not a big deal, mate. I will get her details for you."

Mr Bainbridge: That is a very serious matter to me.

Ms STRUTHERS: Yes, but what I am suggesting is that there may be a culture, because of colleagues working together, whereby that, on the face of it, is not necessarily a serious matter. You may consider it to be. I just see that there may be some merit in having the external investigations, because of the need to break a culture or break a standard. I am not speaking on a matter of fact here; I am just suggesting that there seem to me to be some advantages in applying an outside perspective on some of these matters which may, on the face of it, seem simple matters.

Mr Bainbridge: Even with the CJC handling the matter, I do not think you would find them any easier. In the examples that I give, I believe our people have been treated very harshly. I do not think, by the CJC handling the matter, it would be treated any differently, to be honest.

Ms STRUTHERS: I suppose it can work either way. The external perspective, in bringing that outside perspective, need not be a harsher view of things but a different view. Anyway, I just put that to you. There may be some merit in taking that external look at these sorts of situations.

The CHAIRMAN: Thanks very much, Mr Bainbridge. We appreciate your coming today. As I said to you, if there are any issues on which the union would like to submit further to the Committee, you are welcome to do so. The purpose of the review is not to deal with matters of individual complaint. There is a procedure for us to deal with those. But if there is anything you wish to put to the Committee in a confidential submission, you are welcome to do that as well.

Mr Bainbridge: Those couple of matters I raised with respect to the loss in salary and the downgrading—when you consider things like police discipline, etc., you should be aware of some of the punishments. In one example I gave, the officer was disadvantaged by \$9,000 a year in salary and \$200,000 in superannuation. You as a solicitor know the sentences handed out by some of our magistrates in our courts. To me, if anyone suggests that those police have been

treated lightly or the system at the moment is very loose and needs a little tightening up or anything like that, I think nothing could be further from the truth. If anything, the pendulum has gone too far one way. But that is my perspective.

The CHAIRMAN: Thanks. We will have a very short break and then we will hear from our Public Sector Union and Teachers Union witnesses.

The Committee adjourned at 11.29 a.m.

The Committee resumed at 11.30 a.m.

JEFFREY JOHN BACKEN, examined:

JONATHON THOMAS LUNN, examined:

The CHAIRMAN: We will reconvene. We now have representatives from the Queensland Teachers Union and the Queensland Public Sector Union. We might as well take you alphabetically, on surname, I suppose, or we could take it on union and do it the other way. Mr Backen, if you might identify yourself, speak to the union's point of view in relation to the matter and then Mr Lunn, and then we might ask some questions.

Mr Backen: Thank you, Mr Chairman. I am Assistant Secretary of the Queensland Teachers Union. I am here today on behalf of John Battams, the General Secretary. A submission has been provided to the committee. I am not going to read through that. I just want to say a couple of things.

The union thanks the Committee for the invitation to provide evidence in relation to the matters under consideration, in particular the amendments to the CJC Act in relation to laying charges of official misconduct against employees who may resign or retire and amendments to the Public Service Act to prevent officers from resigning during an investigation or other relevant circumstances.

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

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

To some extent, we would say in relation to our members it is probably operating too well. The example I would give there is that at the moment we have a number of supply or casual employees who have a D notice on their file who, during the course of their casual work, have been involved in or been investigated in relation to allegations and as a result of that they have had a D notice placed on their file. They are now prevented from seeking employment and we have a number of people who are in dispute with the department about that.

So my view in relation to that example is that, if anything, the current system I believe is working very well. Certainly, if you went and spoke to those casual employees who are our members they would actually probably have some concerns with the current system. The current system—notwithstanding that they have been given some due process in relation to the allegations—in their view would be the reaction by the department has been overly harsh and unfair in the circumstances.

I want to also address the issue of the Board of Teacher Registration because it seemed, with all due respect to the chairman in terms of your letter to us, in terms of the dot points presented there that the Board of Teacher Registration is sort of limited in being able to investigate situations or cases where our members would resign or retire during an investigation. The Education (Teacher Registration) Act does provide, I suppose from a legislative point of view, some specific situations where employing authorities have to notify the board in terms of teachers or other people involved in the education system who might be our members—where the board should be notified, that is, they have been dismissed, they have been convicted. Even in situations where they resign, there is a specific reference in the Act to cater for the situation where—I think in relation to sexual allegations—if someone were to resign within a particular time frame that matter should be referred to the board for its investigation as to whether or not that person's character is sufficient for them to maintain their registration.

In our submission we put to you we have said, notwithstanding to some extent what some people might view as the limitations to that Act, we believe the board has a power to investigate other matters that are referred to it by employing authorities. If to date in this case the Department of Education has not sought to refer matters that might go beyond the Act, then what we are putting to you, and our view would be, is that the board—and I have had this confirmed just in the last week or so—will investigate matters that are brought to their attention. In fact, they have indicated to us that probably more so employing authorities in the private sector at times—whilst in some cases, obviously, certainly those have been reported in the media—there have been some cases perhaps where in the private sector cases have not been brought to the board's attention but certainly in other cases they have and the board has conducted its own investigation once those matters are raised with it.

So I suppose our view as outlined in the submission is, in terms of the board, it is up to the employing authority—that if they believe someone has resigned during an investigation where that might have led to disciplinary action but the situation does not conform with the Education (Teacher Registration) Act, our view would be the department has the capacity to refer that and the board can conduct its own investigation. So if there is a concern that someone resigning from the department might go off and work in the private sector, then we believe in terms of the board's current operation that the Department of Education should refer such matters to the board.

In addition, there are three representatives on the board from the department and we believe that is also another avenue for the department, in this case the Department of Education, to ensure any concerns it might have about the circumstance of an employee departing or separating from the department. That is referred by those people, if necessary, to the board. The one suggestion we have made to perhaps enhance the current circumstances would be—and we have not got specifics on this, but in discussions with the CJC in recent times about its review of the child protection policy, a view was expressed to us—that there was a concern, I think it has been canvassed by the Committee with Mr Bainbridge giving evidence, that an employee might resign and seek employment somewhere else in the public sector. I suppose our suggestion would be, without being able to provide the Committee with the specifics, that perhaps the Government, Office of the Public Service, should have a look at perhaps information sharing in terms of recruitment and selection so that—

The CHAIRMAN: You say that is a more efficient and effective way of doing it than having a misconduct tribunal continuing to exist?

Mr Backen: Yes, because it seems to me that the view, whether it be of the CJC or anyone else, is that by being able to prosecute a matter to the situation where someone is dismissed because they have been found guilty of official misconduct, it seems to us that the employee may not necessarily—if their motives are not proper—may not necessarily divulge that they have been dismissed in any subsequent application to future employers, whether it be in the Government or otherwise. So our view would be, particularly in those matters—and it would not just be those who perhaps might end up with a finding of official misconduct, but in terms of other matters where people do resign which may have led to a disciplinary finding, if people have concern—in this case, a member of ours—if there was some concern that the matter under investigation with the department might have an impact somewhere else in the public sector if they were to work, we believe it might be appropriate for there to be some reference back to the Department of Education. One would think that, hopefully, with referee checks or checks with former employers that that might occur anyway but, obviously, that may not. So to some extent it would rely on future employers checking with—I suppose in this case the Department of Education—to see if there were any circumstances of concern under which the person resigned. I might leave my comments at that. Thank you.

The CHAIRMAN: Mr Lunn?

Mr Lunn: I am the Manager of Industrial Services for the Queensland Public Sector Union of Employees. I appear here today in lieu of Gordon Rennie, the General Secretary. I understand we have not made a submission. I will just proceed on the basis of particular comments.

Our major concern with the matters under discussion would be an amendment to the Public Service Act that would somehow or other preclude a person from resigning or retiring if they were under investigation. Our concerns there are based on what we see as current practices,

current reality. My comments here are not necessarily directed as criticisms of the Criminal Justice Commission, but rather to the employers as to how they deal with matters.

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

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

It would seem to us it would really be a travesty if they were prevented in any way under the Public Service Act from doing that. Our views are generally similar to the teachers union and the police union, but we are somewhat of a different union compared to those two. Those two are rather homogenous unions in terms of the employer and their occupational group. On the other hand, we cover a plethora of employers, departments, agencies, statutory authorities and also we have a plethora of coverage in terms of occupational groups.

Some of our members are subject to registration boards, similar to what Jeff has talked about. Some of those registration boards do not have a similar provision to the Teachers Registration Board where there is an obligation on the employer to refer certain matters to them. The bulk of our members would not be covered by registration boards—work for different employers. There is certainly no homogeneity in the disciplinary investigation process across the public sector. Maybe there should be, but there is not. We see some rather poor attempts by employers to investigate matters, to receive complaints in the first place, be unsure what to do with those, perhaps in a lot of cases are quite overzealous and refer what we would regard as minor matters to the CJC. That is not a criticism, obviously, of the CJC. In those cases, though, it just adds to the time frames.

Given that mixture of circumstances we face, we would be very opposed to the sort of amendment to the Public Service Act that is being discussed, particularly bearing in mind that, while all of our areas of coverage are not public servants, they are predominantly public sector employees, and provisions of the Public Service Act can and are applied to public sector workers who are not public servants. That is our major concern.

The CHAIRMAN: Thank you. Mr Backen, I wish to put a few propositions to you. The D notice system, you say, is placed on a former employee's file. Is that entirely satisfactory from the union's point of view? How does that then give the former employee an opportunity to resolve that issue? Can you comment on that briefly?

Mr Backen: In terms of what the Committee is looking at, you are looking at situations where an employee might resign. I suppose in that circumstance the employee is making a judgment that he or she wants to resign and separate. The example I used of the casual employees was just by the way in terms of saying that that system, if anything, is probably working too well. From our point of view, those people who resign during an investigation that may have led to some form of disciplinary action effectively cannot get employment again with the department. As I said, there is a reference to the Director of Human Resources. These are matters that probably would not, say, go to official misconduct matters. There have been a couple of cases, even with casual employees, where after a period of time they have come back and put a case to the department and the department has had a look at that. I am talking here about what I would call, on the scale of disciplinary matters, minor matters. But, yes, if they had a D notice on their file and they came back with some information, in a very strict, limited sense the department is prepared perhaps to look at further employment. But in terms of the more serious matters that may have led to official misconduct, history seems to show that those people who resign are never employed again in the department.

The CHAIRMAN: Teaching is topical in the sense that we have seen a number of instances where it appears that teachers have resigned from the Government system to go into the private system and we have had problems with similar conduct occurring. Can you tell us what changes there have been that may not necessitate what is being contended in terms of

investigations after resignation as per the New South Wales Public Service Act? Have there been any other changes or are there now systems that would mean that that is not necessary, that is, in terms of mandatory notifications? You mentioned that things are reported to the Board of Teacher Registration, but it is not an investigative body with the powers and abilities of the CJC. Can you tell us how that operates to prevent someone hopping from one school system to the other? Can you help us with that?

Mr Backen: The Queensland Teachers Union does not have, apart from, I suppose, the anecdotal evidence that you are referring to in the media, any evidence in recent times—say, anywhere in the last two to five years—of there being some systematic process of people going from the public sector to the private sector. It seems to me that, if someone resigns from the department and the matter under investigation is a serious matter to do with perhaps their relationship with children, whether it be physical contact or even allegations of possible sexual misconduct, they are matters that can be and should be referred to the Board of Teacher Registration. As I said, there may well be cases where people have moved off to the private system. We are not as an organisation aware that that is a trend and that that is happening.

Mr WILSON: You seemed to be saying earlier, firstly, that there is the ability of the employing authority to refer to the Board of Teacher Registration. But you seem to be implying that that power is very seldom used and, by implication, it could be better used, and to good effect, to cover this concern or this issue that we have been talking about? Is that what you are saying; that at a management level that avenue is not being used by the employing authority? If you are saying that, what are your observations about why that is so?

Mr Backen: We are saying that because it appears that the Committee is saying through the documentation we received that there perhaps is some concern because the CJC, for example, does not have the power to continue in circumstances where people resign through to laying a charge of official misconduct and possibly dismissal or in other circumstances where people resign from the department and it may have led to dismissal; that those matters might somehow not be referred off to the board. I suppose our contention is that there appears to be nothing in the legislation to prevent, in this case the Department of Education, from referring those matters over. I cannot necessarily think of a case where that has occurred in recent times. Again, I have to say that for those limited numbers of cases where our members resign, if I am involved we certainly make sure that we give them advice saying, "If you resign, the board will receive that information and in every likelihood there will be a subsequent investigation into your good character."

Mr WILSON: Do resigning employees get notice of the D notice being placed on their file and the basis upon which that notice is placed on the file? Secondly, whilst the existence of that D notice might be an impediment for future re-employment with Education Queensland, is the existence of that D notice communicated to a prospective private sector employer or to another Government department as a prospective employer?

Mr Backen: The answer to the first question is, yes, they do get a letter saying, "You have resigned. You need to be aware that this notice has been placed on your file, because you have resigned during an investigative process." Also, a D notice is used when people resign during the performance process, which has nothing to do with contact with children or anything like that. There is a level of accountability there. If you basically resign through a performance process or an investigation, generally speaking, you will get a D notice. Are they notified? I would imagine that if a private school employer contacted the department—I suppose the department would be best to answer this—the department would be at liberty to indicate that this person resigned and, further, it was a resignation under those circumstances. But I cannot say whether the department would actually say that. I think there was another part to your question?

Mr WILSON: If some other public sector employer inquired of Education Queensland, would they be advised of the existence of the D notice?

Mr Backen: I cannot say for certain.

The CHAIRMAN: In New South Wales, the Ombudsman, who in this regard exercises a similar jurisdiction to the CJC, has jurisdiction over teachers in both the public and the private sectors. The parliamentary committee has no concern with respect to issues of standard of performance. That is not a matter within the purview of the CJC and that is not what we are interested in exploring. But in New South Wales, if there was an allegation that a teacher had a

relationship with a 16 year old student who is therefore above the age of consent and, therefore, it is not a criminal offence, the Ombudsman's office could investigate in the private school system. Do you have any comment to make about the fact that that part does not exist in the Queensland jurisdiction?

Mr Backen: You might want to ask the Queensland Independent Education Union about its views in relation to that. Certainly, our view would be similar to what Mr Bainbridge said in terms of accountability. We obviously believe our members are subject to a high level of accountability. As has been identified in some well-known cases in the media recently, there are private schools, dare I say even elite private schools, where it appears over the past few years the same levels of accountability have not been evident. Certainly, from our point of view, yes, in relation to the standards of accountability set for our members in the public system we would certainly, as an organisation, have no problems having the same benchmark standards set for teachers who work in the private system.

Ms STRUTHERS: One of the arguments in favour of extending the jurisdiction of the CJC to investigate former public servants after they have resigned and continue on with that investigation is to pursue disciplinary procedures. But quite apart from that, one of the arguments seems to be that it allows an assessment of other factors that may be part of some systemic corruption, malpractice or whatever it might be that otherwise would be not investigated and not brought to the fore. Do you have a view about that? I am not sure of a specific example to describe that. It may be something in relation to misappropriate use of computers for child pornography or whatever. If the person resigns, that particular establishment may leave that issue alone and not have picked up failings of a supervisor or behaviour of other staff that may have been involved. Do you see merit in that argument?

Mr Lunn: I do not have a considered view. I could give a response on the basis that we have not seen such systemic corruption anywhere in the public sector so we would question the logic being put forward for that. We have not seen, for a long time, anything verging on systemic corruption. So what you are saying is a valid point, but it is seen to us to be impractical that it does not occur or it has not.

Ms STRUTHERS: What about the idea, though, that it might not be about others complicit in any form of misconduct but about failing to have correct supervisory practices in place or other checks and balances? That may not then be picked up if an investigation is not pursued.

Mr Lunn: Certainly, if the member comes to the union with the issue, that is one of the first things we look at. The union is very vigilant in those matters in terms of due processes and so forth. That is all I can say, I think.

The CHAIRMAN: Mr Lunn, I have two totally unrelated issues. This is particularly directed to you and perhaps to a lesser extent Mr Bracken. We would invite you to submit in writing to us on this. I refer to whistleblowers and also contracting out. Obviously, our supervisory jurisdiction is over the CJC and not the private sector. We would invite you to submit to us what your members' concerns are or those of your organisation with respect to current whistleblowing protection. Is it adequate? To what extent is the public sector addressing itself to these issues? What is the nature of reforms that you might see? I am not sure if you are properly in a position to respond to that today. Are you in a position to do that?

Mr Lunn: Yes. Something arrived in my pigeonhole yesterday in relation to providing formal comment on the proposed changes next week. But just responding in general terms to how things have been and are in relation to that Act, firstly—and this is not necessarily in any order of priority—it seems to us that there is a lack of knowledge about the Act, what it means and what protection is there. It seems to us that there is a very low level of knowledge. Even though employers for a number of years now at the point of engagement of people have always put its existence in front of people, nevertheless, there seems to us to be a very low level of knowledge. That in turn leads to misunderstandings both ways, if you like. There are persons who should really be seeking protection under the Whistleblowers Act who do not and, conversely, those who think they can use it and are not able to or should not because it is not appropriate. My general comment is that there is a high level of ignorance about it.

The CHAIRMAN: Has there been uniformity across Government departments? Is there a greater need for that?

Mr Lunn: By and large, yes. That ignorance is reasonably uniform.

The CHAIRMAN: Do you have any comment on that, Mr Backen?

Mr Backen: No.

The CHAIRMAN: We invite you to submit. Something that I suppose has related to the school system for a long time but is of more recent import to the general Public Service is the issue of contracting out. If a public sector employee is involved in, say, certifying a building approval or an inspection and there is an allegation that they have miscondacted themselves in relation to that—perhaps there is an allegation of taking a bribe—that is clearly a matter that the CJC has jurisdiction over. Increasingly, we are seeing circumstances where public functions are being contracted out privately. Maybe a private sector organisation performs exactly the same role as the public sector person does. However, in an instance of a complaint, arguably there would not be jurisdiction for the CJC.

There is a continuum, I suppose. At one end you can get bodies that perform essentially very core public sector functions that are from the private or non-Government sector. You can go all the way to, perhaps, the local bowls club that gets a grant from the Gaming Machine Community Benefit Fund. It is administering funds which are publicly granted, but I presume most people would say that they would not want the CJC investigating every dispute over who gets elected to the committee. There has to be some sort of line drawn. Would you care to comment on that general issue? Again, you are welcome to submit in detail about it.

Mr Lunn: I have to say firstly that the incidence and the issue of contracting out is in substantial decline given recent enterprise bargaining agreements in the key areas of the public sector. Really, it is almost a non-issue now. Going back some time, there were a lot of revolving doors—persons leaving with VER packages and turning up the next week as a consultant. There were cases there that are well known. Speaking for the union, I do not think I have heard of any similar things now for quite some time.

The CHAIRMAN: We are asking with respect to principle. What is the union's view on the extent to which there should or should not be jurisdiction of the CJC to investigate complaints against persons in the private sector who are performing essentially what are public sector functions?

Mr Lunn: Our view is that that should not occur, but—

The CHAIRMAN: That is not for this Committee to decide.

Mr Lunn: No, we do not have a view on that.

Mr WILSON: We had some evidence yesterday from the Office of Public Service Merit and Equity about the role it plays, in collaboration with Government departments, in establishing a network to raise the issue of, for want of a better description, anti-corruption initiatives and systemic change within the Public Service to identify and eliminate or reduce the systems and processes in place that actually might generate official misconduct behaviour, falling within official misconduct. Do you have any observation in general terms on the level of importance attached by senior management across different Government departments and, secondly, any views about a different approach to the way in which that issue is being addressed across Government departments?

Mr Lunn: The union clearly has a view similar to, if not identical to, employers about corruption. Clearly, we cannot tolerate it. In terms of our views on what has happened in the past decade in terms of education programs across the public sector, I tend to think that they are somewhat ineffective in the perverse sense that employees just tend to get bombarded at any point in time with codes of conduct and the like that are not necessarily easy for the individual employee to absorb, let alone understand and let alone agree with. How that will affect the individual employee in terms of the future is really unclear to us.

Clearly, there are sufficient warnings put out in all of this—whether you have to put those warnings out or not, but they are. So in that sense no employee in the public sector could say that they were never warned about not doing A, B, C or D. I suppose it is effective to that extent, but in terms of the broader, general day-to-day activities of individuals and groups of individuals, we believe, as I said before, that they have really been bombarded and probably overloaded with an overzealous approach to the thing.

The CHAIRMAN: Thanks very much for attending today. On any other issues that you wish to submit to us, you are welcome to do that.

Mr Backen: Will there be any further correspondence to us in relation to those issues you raised regarding whistleblowers or contracting out? Will we take it on notice that they are issues that we can address in terms of an additional submission?

The CHAIRMAN: You are welcome to do that. We do not deal with matters of individual complaint in this forum, so if you wish to make a confidential submission you are welcome to do that. On general issues we are keen to hear from you in terms of a further submission.

The Committee adjourned at 12.08 p.m.

The Committee resumed at 12.11 p.m.

CRIMINAL JUSTICE COMMISSION

The CHAIRMAN: I invite Mr Butler to make submissions in response to what we have heard thus far. I indicate for the record that the Committee has not concluded its public hearings. There are a number of other people or bodies that we may wish to hear from in the new year. In any case, we invite you to submit in relation to any matters that you wish to arising from the proceedings that have taken place over the last two days.

Mr Butler: Thank you very much for the opportunity of responding at this stage. I note that the Committee has invited various of the witnesses to provide further material. We would obviously be very happy to assist the Committee in responding to any further issues that the Committee needed to deliberate on. I had intended to touch on some matters that have arisen in the evidence, but just before I do that I would like to invite Dr Steinberg to respond to some of the matters Dr Prenzler raised in respect of research.

Dr Steinberg: I will respond to two aspects that he raised, really from my experience as a senior research director at the University of Queensland in my own right and also as a former public servant, particularly one who was working with most of the Government departments in a whole-of-Government approach to policy and services across broad spectrum areas.

I make the point that policy research is a being in its own right and is often quite different and does not fall within the traditional system of academic goals and rewards, especially in terms of the emphasis on publications. So if you are involved in policy research you are often working in a different context, for example, Queensland rather than international. You are often working in different time frames, for example, you want the data fitting immediately into policy work rather than waiting two or so years for publications to come out. The type of analysis is often quite different. The level of negotiation over the recommendations is certainly usually very different. That sort of policy research really strengthens prevention enormously and is very important in preventive activities. It certainly strengthens outcomes and the integration of outcomes from various areas.

That was the first point I wanted to make. I see a need for integration of a number of types of research. Academic research falls in a number of different ways to the type of in-house research that I see as fundamentally very important to many of the activities of the sort of work that the CJC does.

The other area I wanted to talk about was in terms of some of the models. I have had a Churchill Fellowship in disability, a National Health and Medical Research Council fellowship in telecommunications and a WHO fellowship in HIV/AIDS. I have gone around the world to learn, and in all of those areas I have taught as much as I have learnt. I am now invited to expert groups around the world. At the last one, I was the only person from the southern hemisphere at the ILO/WHO meeting in Geneva on the future of work pensions and retirement.

Because of the nature of our State, Queensland models are often very innovative. One should not necessarily dismiss the Queensland model because it is different from other models. I recently spoke to the Government of Canada. It was amazed at the amount of integration of policy research and policy negotiations that we could have. It was not possible within their system. I want to caution about rejecting or discounting or diminishing Queensland models simply because they are Queensland models. They are often very innovative and quite often leading the world in areas like telemedicine and HIV. Those were two points I wanted to make from my experience.

Mr Butler: Perhaps I might start by addressing some of the matters raised by the recent witnesses, more particularly the issue of resignation. I spoke about this earlier, and I do not need to go over all the detail of the recommendation we made in the Safeguarding Students report. However, some issues have been raised by the Queensland Teachers Union about the procedures already in place. As I understand it, it was argued that those procedures should be adequate to address the sorts of concerns that might arise. It seems from our examination of what is already in place that there are indeed gaps in the systems. We address this in our report. If you look to the report at pages 39 and 40, it talks about the I notice—what used to be called the D notice. At 40 it talks about the provision of section 44A of the Education (Teachers

Registration) Act 1998 which provides for, in some instances, the Education Department to notify the board of certain matters.

In respect of the I notice, that is a useful mechanism for the department to protect itself in relation to a person reapplying. It is not a mechanism, though, that relates to automatically preventing a person being reappointed in the department. It is simply a mechanism that alerts the HR manager if a person seeks reappointment and then it is a matter for the HR manager to determine how to deal with the situation. We understand from Education Queensland that normally what happens is there is then an investigation of the original allegation in an attempt to try to resolve that matter by way of investigation. A lot of that might depend upon the amount of time that has passed in between, because an investigation of that form some years later might be fairly wellnigh impossible. The opportunity might have been lost in the meantime.

Much of the thrust of our recommendation was to prevent agencies pushing their problem off to someone else. Very often agencies—and it is true of private employers, too—will be quite happy for a person to resign and they see the last of them. The issue is whether that problem moves on elsewhere. From our point of view, because we have a broader supervision of the public sector, we are obviously concerned about how that might impact upon the public sector generally. It is true that hundreds of public sector employees have resigned following CJC investigations commencing. In respect of the Police Service, we know that there are investigator positions in many departments that are filled by former police officers. At least some of those would have been subject to investigation before they left.

In terms of the provision relating to the Board of Teacher Registration and section 44A, it does place requirements on Education Queensland but they are quite limited. They relate to a situation where the matter has reached a point where a show cause notice has been served upon the employee. Where that has happened, there is an obligation upon Education Queensland to report the matter to the Board of Teacher Registration. Of course, if the resignation occurs promptly, it is likely that that point would not have been reached. The points that need to be made are that it would seem that the I notice process would not prevent a person obtaining employment elsewhere in the public sector or perhaps in the private sector.

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

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

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

In terms of the Safeguarding Students issues, our consultation with the Board of Teacher Registration indicates that the board would support the concept of some extension of the ability

for disciplinary proceedings to be continued. One of the recommendations we do make in the report is that there should be an extension of the period of time that the board of registration can itself investigate teachers who have been dismissed. There is a one-year time limitation at the moment. We suggest that that should be extended to two. The other matter that we need to note is that the Board of Teacher Registration only protects in terms of a person having a position as a registered teacher. There are many education-type roles that can be filled by people with teaching qualifications, such as positions in juvenile justice facilities and so on, that do not get caught by those registration requirements.

The only other thing I wanted to say on that aspect was a technical one. I thought that Mr Long seemed to suggest in some of his comments that it might be possible for a misconduct tribunal to continue and finalise its proceedings. He recognised that it could not arrive at any penalty or outcome following that. It seems to me that the provisions in the Criminal Justice Act would prevent that, because at section 55 the Criminal Justice Act provides that only a prescribed person can be charged under that legislation. To be a prescribed person, the person must hold an appointment in a unit of public administration. It would seem that once the person no longer held an appointment in the unit of public administration there no longer would be a valid charge standing.

I suppose I should just say in passing something about the question that was asked of Mr Rennie about systemic misconduct or corruption in the public sector. He responded by saying that, to his knowledge, there had been none. Of course, it might depend upon the definition that has been applied of "systemic", but one can readily think from a number of the public reports of the CJC over the years—the Basil Stafford report; our recent preventive report in relation to prison industries, which followed on investigations that clearly identified systemic issues; the Safeguarding Students report refers to what, in effect, are systemic issues; the recent investigations in respect of the Transport Department in relation to issuing of licences and the connection to organised crime that I spoke about yesterday—all of those indicate that, although we are not talking about problems which represent any great percentage of the employees in the public sector, the Queensland public sector continues not to be free of systemic misconduct problems.

Mr WILSON: To be fair to Mr Rennie, I think he was responding not so much to the existence of systemic corruption as found but to my question about whether he was aware of initiatives or activity by departments to address, in a systematic way, anti-corruption initiatives of some sort.

Mr Butler: Right. Thank you, Mr Wilson. I take that on board. You might need to forgive me. One of the difficulties I have had is that I have found it very difficult to hear many of the witnesses from where we were. Apparently the amplification was not on.

I just mention briefly the evidence of Mr Bainbridge. I should like to just recognise the involvement that the Queensland Police Union has had in recent inquiries by the CJC and to acknowledge their willingness to participate in consultation. I think that is a very healthy thing. Indeed, both in the strip searching hearings and also in the hearings relating to the misuse of information within the QPS, the Police Union attended and made helpful and thoughtful submissions to both those hearings.

In the same way, I should say that some of the points that Mr Bainbridge made today are consistent with some of the points that I made in terms of the steps the CJC has been taking to further the Project Resolve direction and looking for ways, with less serious misconduct matters, to address them in a managerial way that can be quicker and also perhaps more effective in terms of dealing with the complainants' problems. Of course, you heard from Ms Couper about the steps the CJC is taking to continuously improve its own processes in relation to the timeliness of investigations.

On that point, I might say that it is often the case that the CJC's work in relation to complaints gets confused with what is happening within the QPS or, indeed, other agencies. There are aspects of this whole system that are outside the CJC's control. An example I can think of is: I travelled to Townsville earlier this year, and police officers there, at a meeting I had with them, complained about what was happening to particular complaints and the delay involved. We chased one down and we found that it had left the CJC a considerable time earlier and had been apparently in QPS processes for a number of weeks. In fact, in spite of the fact that the CJC was

the butt of the complaints, it was sitting on the local Assistant Commissioner's desk. Another officer attended and raised concern that he was still waiting on the CJC to report on an investigation two years old. When we tracked it down, we found there was a complaint that the CJC had immediately rejected. It had come externally. The CJC had no knowledge that the officer was aware of it at all. It had been resolved two years earlier. Someone in the Police Service apparently had told him he was under investigation, and he was waiting for the outcome of it.

So there are systemic issues in terms of dealing with the administrative processes. One of the things the CJC recognises is that subject officers, whether they be police or public servants, are deserving of quality service as much as complainants are, and that our complaints processes need to address that. In talking of a charter of service, we will be talking about a charter of service that addresses not only the needs of complainants but also of subject officers.

Turning to what Commissioner Atkinson had to say, I must say that I welcome very much the view which he reiterated on two occasions in the course of his delivery, and that was that the CJC, in his view—notwithstanding the submission the Police Service is making about their increased involvement with misconduct matters—will always have the right to access any misconduct complaint and, as he put it, to call for any investigative file and review that file at any time. I think that the Commissioner, in saying that, really is expressing the same view that I was expressing yesterday about the sort of effective oversight that the CJC would see as appropriate to maintain, even though the primary responsibility for the resolution or, in some cases, the investigation of misconduct is devolved to the police. Of course, to just remove the jurisdiction of the CJC to investigate misconduct would be to rob the CJC of the ability to have that sort of oversight that the Police Commissioner himself recognises is appropriate.

So what the CJC has submitted in that area is that, through Project Resolve, we, in collaboration with the QPS, are designing, if you like, an administrative process that, without the need for legislative reform, will allow appropriate devolution of responsibility to police managers but, at the same time, will maintain effective oversight by the CJC because of its continuing misconduct jurisdiction, which is really basically a parallel jurisdiction with the one that the Police Commissioner has, because the Police Commissioner, of course, has responsibility also for misconduct.

In that area, I should just point out that, to some extent, confusion sometimes arises about exactly what is meant by "misconduct", and I know you heard the definition yesterday, but some of what is said, for example, in the police submission seems to be talking not only about misconduct but what is called breach of discipline under police regulations. Breach of discipline matters are those matters that relate to, if you like, customer service by the police—incivility, for example. So if there is an allegation, as there are many, that a police officer has been rude to a person when taking a breathalyser sample from them in a traffic situation, that does not amount to misconduct. If a complaint like that is made to the CJC, it is immediately identified as being outside our jurisdiction—because we have no jurisdiction over breach of discipline matters—and immediately referred to the Police Service and they deal with it, and we hear no more about it because we have no legal entitlement to hear any more about it.

It was said in the police submission, and I think repeated by the Commissioner, that there has been a significant fall in complaints against police on the basis of complaints per thousand police over the years. That is only true if you are talking about breach of discipline complaints. There has been a continuing fall in breach of discipline complaints against sworn officers. So they have fallen, on a basis of complaints per thousand officers, from in 1993-94 somewhere about 270 down to perhaps 110 on that basis in the most recent year, 1999-2000. However, if you look at complaints of misconduct, you do not see that trend. In fact, there has been, over the last three years, a moderate increase in complaints of misconduct against police year by year. If you look at it over the full period, with one little blip in 1996-97 where it was a little higher, it is basically a straight line on the basis of rate per thousand officers. So that in 1992-93 the rate of misconduct complaints per thousand officers was around about 900, and in 1999-2000 it is around about 900. So in terms of the misconduct jurisdiction, there is not evidence that there has been continuous improvement. Of course, the fall in breach of discipline matters might relate to the way in which they are recorded or dealt with or whatever. One would need to examine whether that reflects a true fall in dissatisfaction of citizens with the customer service they are getting or whether it relates to other factors.

I very much would acknowledge and support the comments by Commissioner Atkinson in relation to the need to avoid slippage in the Police Service and the need for effective oversight to ensure that.

Comments were made about the need for resourcing matters to be canvassed when recommendations are made by the CJC. I would fully agree with that. I believe the CJC has taken a great deal of care to consult with the Police Service wherever it is aware that resourcing issues are involved, and certainly in the recent report in relation to the use of information, the CJC consulted extensively and comprehensively with the Police Service in that regard, and we tried to formulate recommendations which did not place the Police Service in the situation where there was undue pressure to make changes within time frames that were not realistic.

Of course, there will always be competition for resources within Government and within departments, and the tendency to want to put the resources into the productive aspects that perhaps involve some political sensitivity for the particular department; but the CJC's point would be that integrity flows through in many ways to efficiency in the system, and that was recognised by Commissioner Atkinson who said, "Well, people will not bring us information about drug offenders if they think that police officers might themselves be corruptly involved in drugs." So integrity processes do pay dividends at the end but perhaps a little more indirectly, and it is important that agencies recognise in the allocation of resources that resources need to be modified. The allocation of resources needs to have regard to that.

There was specific mention, for example, of a recommendation in relation to microcassette hand-held tape recorders. The CJC has raised this issue over a number of years. As was pointed out, the CJC has never sought to direct the Police Commissioner in relation to these matters but has attempted, through either its public reporting processes or by way of correspondence with the agency, to bring these matters to a head. In that regard, the Police Service, in conjunction with the CJC, has looked at the idea of a trial to try to determine both what the effectiveness of implementation with hand-held tape recorders might be and also what the cost effectiveness of it might be. I think that, in that regard, it is a rather poor example, if it is advanced to indicate somehow or other a lack of consideration in the making of such recommendations. Indeed, it is a matter that has been pursued over many years and in terms of looking for a very graduated response. If anything, it might be said that the CJC's position in that regard indicates how the CJC can recommend, but the agency ultimately bears the responsibility for determining.

One thing that was said by the Police Union is that police have been hampered in their day-to-day duties by perhaps too much oversight and accountability. That is a claim which, I suppose, is easily made, and no doubt the union hears from individual officers and responds to those sorts of concerns that are raised, but there is an objective way of testing this claim. We would contend that it can be tested by looking at the extent to which police officers are enforcing discretionary offences. Because if police officers are afraid that in exercising their discretion, for example, in good order offences where they make the choice whether or not they act against the person or in the minor drug offences, the minor possession type offences where they make the judgment whether they act—if they were concerned about getting into trouble about performing their duties, well, you would expect to see a drop-off in those offences being prosecuted by police, being charged by police. In fact, that is exactly what we saw during the period of the Fitzgerald inquiry. There was a dramatic drop-off in the charging of these sorts of offences. But, in fact, since Fitzgerald there has not been such a drop. In fact, the evidence shows that the number of recorded minor drug and good order offences per officer has actually increased steadily over the past decade. So the objective evidence seems to contradict the assertion that police officers are actually being hampered in their activity.

It has been drawn to my attention by Dr Brereton that although the point I made to you in relation to the rate per thousand officers was a valid one, the actual figure I gave you was inaccurate, so perhaps I had best correct that. I talked about a straight line graph which, of course, is in front of me and I used the figure "about 900". In fact, the figure of rate per thousand officers is about 240 at the moment and in 92-93 it was also about 240, so forgive my inability to read graphs. It perhaps comes with being a lawyer.

The CHAIRMAN: I thought you were going to say hyperbole comes with being a lawyer.

Mr Butler: The other brief points I would wish to make are these: we heard yesterday from Mr Smith from the QEA Legal Services in respect of Aboriginal and Torres Strait Islanders and their perception of the system. I would agree very much that the CJC needs to continue to work to develop its response in this area. Clearly, there are certain categories of complainants who are going to have difficulty accessing a body like the CJC.

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

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

The point I should make, though, about the dissatisfaction that is expressed by the Aboriginal Legal Services is that we must ask the question about what the expectation is of their clients and the complainants in respect of those complaints. I have said earlier, and I think it is recognised, that the adversarial system of resolving issues of fact and prosecuting people is one that, particularly for these excessive force type complaints, finds it very difficult to achieve positive results. You have word on word.

The situation often arises where it is very hard to get independent evidence of exactly what occurred and it is hard to get positive results in terms of prosecution action or indeed exoneration of the officers the subject of complaint. That is a difficulty, but it is a difficulty that relates to investigative and legal processes, not so much to the CJC as a body itself. It may be that these legal aid bodies staffed by lawyers are thinking very much in terms of legal responses to problems. One of the things the CJC is trying to have all stakeholders in the system acknowledge is that if we are going to improve police conduct, if we are going to minimise complaints, we need to be looking for non-legal and more administrative and managerial responses to address some of these problems and look for a broader package of responses to complainants. Partly that is about educating complainants. There might be a response that might provide a degree of satisfaction for their complaint which is not the legal prosecution of an officer, for example, but rather perhaps an apology from the service, a recognition of poor client service by the agency involved or whatever. There are other responses that we need to be seeking and examining.

Finally, I need to address some of the submissions that were made by Mr Richard Perry, the Public Interest Monitor. I would like to, in making my response, acknowledge the important work that Mr Perry does, to recognise that the Public Interest Monitor has proved to be an effective and important instrument for transparency in the Queensland law enforcement system and that, in particular, Mr Perry has proved to be very effective and consultative in that role and has performed it, in my respectful opinion, very well.

I do, though, differ with Mr Perry's view that consistency between the various legislation that relate to the issue of listening devices warrants is a predominant requirement. I note that Mr Perry himself, although he calls for consistency, seems to recognise that there are certain aspects that cannot be consistent and acknowledges some of them.

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

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

which was drafted, of course, under the responsibility of the Police Service and had a focus upon the needs of the police and their jurisdiction.

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

The CHAIRMAN: Does he have a point when he commented on the ability to have conditions?

Mr Butler: I made some comments about this yesterday.

The CHAIRMAN: It seemed that he contradicted, in some respects, what you said?

Mr Butler: Yes, I thought he did. I do not resile from my comments. In fact, I note what Mr Perry said in response, that is, that the section does not allow the imposition of conditions. I am not certain what he is saying there, because the section we are talking about is section 123 of the Criminal Justice Act. It provides that the order of the Supreme Court judge may confer on officers of the Commission such powers and authority as the judge considers appropriate in the public interest and specifies in the order in relation to the approved use of a listening device, including authority to enter and so on.

The CHAIRMAN: We are the ones who do not see the warrant. You see them and he sees them, but we do not. You say one thing and he says the other.

Mr Butler: I have one of them before me. It says "subject to the following conditions" and it has 10 conditions. That is being monitored by Mr Perry. It is a matter for the Supreme Court judge and for the practice that develops exactly what the conditions are. There are some conditions that are developed in relation to the police powers and responsibilities warrants—I have one here; it has 10 conditions, too. There is some difference in the conditions. However, to some extent that difference is addressed by the way in which the CJC obtains these warrants. It is done by way of an affidavit, which is made by me as the chairperson. That affidavit actually describes for the judge exactly how the operation is going to occur and the certain constraints that will be placed upon the officers and how that will occur. And then the warrant is issued with conditions. There are, of course, constraints that are described in the affidavit which are not necessarily described in the conditions.

The CHAIRMAN: It is not necessary for us to go into detail.

Mr Butler: All of this is within the knowledge of the judge. There is a process and a condition requiring the matter to be reported back to the judge. The conditions constrain the time limits and the number of devices, where they will be placed and all sorts of things.

The CHAIRMAN: So you do not have a problem if it states that the judge might impose conditions, but you say that is really only a question of form and not substance because it happens, anyway?

Mr Butler: What I am saying is that the system is working. If it is not broken, why fix it? Mr Perry's argument seems to be—and I do acknowledge that on some specific issues he has raised specific considerations that he says need to be addressed—because you have legislation here, the legislation there must be consistent. I do not think there is much logic in that when, as I say, the CJC's jurisdiction is quite different from these other bodies.

The CHAIRMAN: That relates to the other issue. That does not relate to this issue, does it? You say that because of the nature of misconduct—and it is not necessarily offence based—there is a reason for a difference. We will put that to one side. But in relation to these other things, such as conditions, what is the problem with uniformity in that case? Do you say it is just not necessary?

Mr Butler: One could go about changing it, but it seems, to my mind, that we are dealing with Supreme Court judges here and not with kindergarten students. The judges have all the powers under this legislation. I think what Mr Perry is saying is that, because in the more recent police legislation some of these powers are spelt out more comprehensively—and he admits himself that in some regards they might need to be revisited—that should be done here. I suppose the point is that it seems to be unnecessary to me, and one would need to be careful

before you went down that road that you did not end up with an unintended result. For example, Mr Perry says he thinks that the 30-day limit that applies should perhaps be looked at, but since it is the 30-day limit for the police it should be for the CJC. I can tell you that, typically, the CJC warrants do relate to 30-day limits. It seems to me that the argument should be about matters of substance, not about consistency for the sake of consistency, and that would be the response.

The CHAIRMAN: It has been well agitated, anyway.

Mr Butler: Those were all the matters that I wished to raise at this stage. But, of course, I would be happy to respond to questions.

The CHAIRMAN: To what extent do you take a longitudinal view in terms of these police complaint issues? Mr Bainbridge was saying some of those issues take time and there are complaints about time periods. It seems that some might relate to the CJC and some may not. To what extent do you examine that on an ongoing basis? It is never very helpful to do individual cases. Sometimes it might be, but often it is not. You need to have a look at trends. To what extent does the Commission look at that?

Mr Butler: You are referring to trends in relation to timeliness?

The CHAIRMAN: Yes, timeliness, appropriateness of resolution and what people think about those issues.

Mr Butler: We are, of course, monitoring that. The functionality of the COMPASS system has considerably improved our ability to do that. That has been in place only for a few months. The COMPASS system allows us to case manage the progress of complaints under investigation. We do that by way of exception reporting. So in fact there is a process of bringing up all the older complaints and reviewing them on a regular basis and determining whether there is some impediment there that is causing the length of time.

The CHAIRMAN: The Police Union was quite strong in its view in terms of resignation and its belief that when someone resigns from the Police Service they often—and this seems to me to be correct—cost themselves a substantial amount of forgone income or superannuation entitlements they might otherwise have accrued. What do you say to that in terms of an argument that, "Look, you shouldn't have the ability to pursue people after resignation?" Do you say you are looking at a protective issue there? They appear to be arguing a disciplinary issue. What do you say on that point?

Mr Butler: It must be said that the CJC has approached this issue not from the point of view of the police but from the point of view of the Public Service and looking at it there. As I said earlier, there are some differing considerations that apply in the police area. Nevertheless, we would be saying that the agency and the CJC should have that last resort ability where the behaviour involved falls short of criminal behaviour but would amount to official misconduct and a serious disciplinary matter to determine whether or not the issue should be finalised in terms of the disciplinary action. I would think that that would happen very infrequently in the Public Service generally.

The CHAIRMAN: Could you give us some public interest cases where you think it might happen?

Mr Butler: I think it more typically arises where there would be a real concern about the re-employment of that person somewhere or other. I gave an example yesterday in relation to a teacher. It more typically arises in that situation where you have a person who is involved in the caring professions, if you like. But it might also involve somebody who has demonstrated very significant dishonesty and might be likely to be re-employed in another agency where that might arise.

The CHAIRMAN: Are there other ways of dealing with that? Mr O'Gorman canvassed the possibility of alternative notification systems. In teaching perhaps there is a question of whether you ought to have jurisdiction over private schools, given that they are essentially performing a public function; it is the duty of the State to ensure its citizens are educated. Has the Commission given consideration to other mechanisms that might achieve it but perhaps which may not be of such a concern in relation to civil liberties issues?

Mr Butler: I think the real civil liberties issues arise in relation to other mechanisms. What we are saying is that the person gets their day in court and they either get cleared or there is a determination. The other mechanism is that you say, "Because the allegation has been made

against the person, we are going to pass that blot around to everybody and it is going to be used against them. The difficulty then is that what does whoever gets told about that—if indeed they are able to be told; and there are considerable constraints on that, I would think—do with it? They are told, "These allegations were made. They are serious. They have never been resolved." How do you use it?

The CHAIRMAN: Should there be a costs jurisdiction in circumstances where somebody is dealt with before a tribunal after they have left the public sector?

Mr Butler: I have not given any thought to that. That is obviously an option.

The CHAIRMAN: Thank you very much, Mr Butler, Commissioners and Commission staff. Ms Goold?

Ms Goold: I am sorry, but it would be extremely remiss of me if I did not comment on the issue as far as Aboriginal and Torres Strait Islander people and policing are concerned. I could not walk out of this room without making a comment.

The CHAIRMAN: Absolutely.

Ms Goold: I need to say as far as effective policing and effective service in all Public Service areas, wherever it is, that we have to stop the victim blaming, for a start, and start to treat people as human beings and also to get over the concept that we are just one step above the primates with the social Darwinism. I think that if police and others who provide public service would take these issues on board we would have a much better relationship in all areas between providers and receivers.

The CHAIRMAN: Would you care to give your views as a commissioner as to the extent the CJC is seeking to address indigenous issues?

Ms Goold: Certainly. We have two liaison officers—one Aboriginal and one Torres Strait Islander. We also have an Aboriginal and Torres Strait Islander Advisory Council Committee. It is newly formed and I believe it will be most effective. Also, tenders have been called to develop a cultural awareness training package to be delivered first to the Complaints Section. The CJC will be made more user friendly. As it is at this time, I believe it is fairly intimidating for Aboriginal and Torres Strait Islander people to come in unless they have someone there as a support for them—people who have some basic understanding.

The CHAIRMAN: That is what the CJC is doing. Do you feel that is an appropriate level or ought there be more?

Ms Goold: I think it is a very good start. Certainly as time goes by that will be built on. All members of staff in all areas should undertake this cultural awareness training program to have some basic understanding. People cannot ever have any basic understanding of the issues unless they are aware of the historical background.

The CHAIRMAN: With your professional expertise in nursing, where service delivery and cultural awareness is critical, because you are dealing with health issues, do you get the sense that the commission staff are aware of that importance?

Ms Goold: I believe so. I believe that it is filtering through. The people I have spoken with are basically good people. People do not know what they do not know unless it is pointed out to them.

The CHAIRMAN: Is it getting pointed out to them? That is the point.

Ms Goold: It is. I believe so. It is a start. I believe there is always room for improvement. We had a meeting the other day and the police came and presented their training package. That is a very good training package. We can have all these really great training packages, but if they are not implemented on the ground it is really quite a waste. I think there ought to be a monitoring process in the system to ensure that what is being taught is implemented out there.

The CHAIRMAN: Do you have any comment to make, Mr Rinaudo?

Mr Rinaudo: No.

Mr WILSON: From your insights relating to indigenous issues and how better to tailor the CJC to address those issues, would you have any observations to make about what I think were the disturbing comments made by the representative of the Youth Advocacy Centre yesterday

about the alienation of young people from the Police Service generally and also their remoteness from the CJC process?

Ms Goold: I was not here to hear that. However, I think we all have a responsibility—politicians and everyone—to make the system much more user friendly. We would not have the numbers of youth suicide if the systems were more user friendly so these kids can approach these areas. Whilst we know that Australia has the highest youth suicide rate in the world, we have an extremely high suicide rate with young Aboriginal and Torres Strait Islander men particularly. I think we all have a lot of work to do to overcome these major difficulties. We are starting, but we have a long way to go.

Mr WILSON: I should have raised this earlier, but the youth issue and some of the things said yesterday are really quite challenging.

Mr Butler: Yes. It is something we were already aware of, as I said. Our surveys had indicated that to us. Partly it is about dealing with the ability of people to know how to complain to your organisation and then, when they do, having them feel that they are able to communicate effectively. Part of it is about writing letters in plain English and having good telephone response. It is also about having, I suppose, a greater public profile for that complaints function. One of the things we have found is that knowledge about the CJC's role in receiving complaints seems to decrease the further you go from Brisbane. We obviously need to address that as well.

There are probably several issues there that need to be looked at. It is not an easy one because I suppose young people tend to be within their own culture and to some extent draw their information from within that culture. It does not include many of the sources of mass communication that you and I might typically be referring to, such as newspapers, ABC Radio and so on. The vast number of young people are actually listening and reading elsewhere. So the typical sources of information about the CJC are not in their spectrum. We need to address that. We are certainly looking at ways to do it.

Mr Chairman, you asked me a question yesterday about section 22 of the Act. I thought I should add to that. You were asking about whether it should be extended to include CJC staff as well as refer to the commission. We view the section as basically referring to the commission, but we address the issue of the staff having the commensurate responsibility through the code of conduct, which, of course, makes any breach the subject of disciplinary action. Principle 1 in part 3 of our code of conduct states that it is the obligation of all members of the CJC, that is, staff and commissioners, to carry out the obligations of their position independently, impartially and fairly, as prescribed by section 22 of the Criminal Justice Act. So we linked the obligations of the staff in terms of the commission's obligations under section 22 into the code of conduct.

The CHAIRMAN: Thank you for your attendance.

The Committee adjourned at 1.23 p.m.