Government response to the
Parliamentary Crime and Misconduct Committee
Report No. 64 - Three Year Review of the Crime and Misconduct Commission.

The headings in this response are not the Committee's headings and have been inserted to assist reading.

Major crime and civil confiscation

Recommendation 1
The Committee recommends that the adequacy of the CMC's funding to meet current and anticipated demands in respect of its civil confiscation function be the subject of ongoing review by the Minister.

Response to recommendation 1—Supported
The Government is aware of the demand on the resources of the Crime and Misconduct Commission (the CMC) as the recently introduced civil confiscation regime settles. It was factored in to the 2004-05 budget for the CMC: an extra $1 million for 2004-05 as part of an additional $4.6 million over four years to enhance the CMC's ability to investigate police and public sector misconduct and to enhance public sector integrity. This takes the CMC's annual budget to more than $33 million a year. A contingency fund of up to $0.2M per annum (from 2004-05 onwards) has also been provided to cover the CMC's expenses associated with the civil confiscation scheme.

For the future, the CMC, like other budget-funded agencies, will continue to be given the opportunity to make submissions through the Premier to the Cabinet Budget Review Committee to seek approval for additional resources. Those requests would be considered in light of the justifications for the request and against the Government's competing funding priorities.

The misconduct function

Recommendation 2
The Committee recommends that the CMC continue its efforts to enhance the capacity of agencies to deal with misconduct.

Response to recommendation 2—Supported
While the recommendation is directed towards the CMC, the Government supports the recommendation. The CMC has advised the Government that it agrees with the recommendation.

The CMC has advised the Government that it will continue to prepare and disseminate a range of publications and educational materials intended to build the capacity of agencies to undertake investigations and generally to enhance agency integrity and increase their level of misconduct resistance.

Recent capacity-building activities include:

- the continuation of the CMC's program of visiting regional and rural areas to consult with agencies at a regional level to identify ways in which they can help improve their responses to preventing and dealing with misconduct; and
- the preparation of the CMC's comprehensive publications, *Facing the facts: a CMC guide for dealing with allegations of suspected official misconduct in public sector agencies* and *Profiling the Queensland public sector*.

These publications, and the CMC's capacity-building work generally, are discussed further below in the response to recommendation 6. The above activities are supported by the CMC's development of materials encouraging members of the public to contact the CMC when they suspect serious official misconduct.

Recommendation 3
The Committee recommends that there be careful oversight and monitoring by the CMC of the performance of agencies in dealing with and preventing misconduct.

Response to recommendation 3—Supported
While the recommendation is directed towards the CMC, the Government supports the recommendation. The CMC has advised the Government that it agrees with the recommendation.

The CMC has advised the Government that it will continue to monitor how agencies deal with complaints referred to them by reviewing and auditing selected matters, and by providing advice and making recommendations. This is to ensure the integrity of the process and enhance the capacity of agencies to prevent and deal with misconduct.

Recommendation 4
The Committee recommends that the agencies be required to report to the CMC, to the Parliament and to the public as fully and openly as possible regarding their performance in these respects [the capacity of agencies to deal with misconduct and the performance of agencies in dealing with and preventing misconduct].

Response to recommendation 4—Supported in part
The Government supports recommendation 4 in part. The Government will introduce a new scheme whereby Directors-General will report annually to the Premier about their departments' performance in building their capacity to prevent and deal with misconduct. More information about this proposed reporting scheme is provided in the Government response to recommendation 6 below.

However, the Government is not convinced at this time that agencies should be required to report to (i) the CMC and (ii) the public/Parliament about their performance in building their capacity to prevent and deal with misconduct.

In relation to a legislative requirement for such reporting to the CMC, the Government considers that the provisions of the *Crime and Misconduct Act 2001* (the CMA) are adequate already to ensure that the CMC receives sufficient information from agencies about how agencies are dealing with and preventing misconduct, and how they will do so in the future. Under ss 33-35 and 47-48 of the CMA, the CMC maintains a monitoring role for police misconduct and official misconduct in relation to those cases of alleged misconduct that the CMC does not investigate itself. The CMC receives very

specific information as part of that monitoring role, and the CMC also generates quality information about agencies' capacity to resist misconduct through its agency compliance audits and analyses of agency trends for systemic problems.

The Government is also not convinced at this time that a legislative requirement for agencies to report to the public or Parliament about their performance in building their capacity to prevent or deal with misconduct. The Government notes that agencies are not required to report in general terms about how they prevent and deal with maladministration under the *Ombudsman Act 2001*, nor are agencies required to report in general terms about how they combat fraud or financial maladministration under the *Financial Administration and Audit Act 1977.*

Recommendation 5
The Committee recommends that the agencies be adequately resourced to ensure they are able to fulfil their responsibilities to deal with and prevent misconduct.

Response to recommendation 5—Supported in principle
As noted in the response to recommendation 1, agencies that seek funding to ensure that they are able to fulfil their responsibilities to deal with and prevent misconduct have the opportunity to make submissions to the Cabinet Budget Review Committee. Such requests would be considered in light of the justifications for the request and against the Government's competing funding priorities. It is considered, however, that agencies' base funding should already have some provision for preventing and dealing with misconduct. In addition to agencies' responsibilities for preventing and dealing with misconduct under the CMA, part 5 of the *Public Sector Ethics Act 1994* requires agencies to ensure that their officers are given sufficient education and training about public sector ethics and obligations, including the obligation of integrity under that Act.

A role for the Department of the Premier and Cabinet in overseeing devolution of the misconduct function?

Recommendation 6
The Committee recommends that the Department of Premier and Cabinet have the primary role in monitoring and ensuring:
- that agencies take up CMC capacity building initiatives in a timely and responsive manner;
- that there is adequate public reporting by agencies of information on misconduct prevention initiatives and outcomes; and
- the adequacy of the resources of agencies to deal with and prevent misconduct.

Response to recommendation 6—Supported in part
The Government supports recommendation 6 in part.

The Government will introduce a new administrative scheme whereby Directors-General will report annually to the Premier about departments':
- capacity to prevent and deal with misconduct; and
- performance in preventing and dealing with misconduct, including the extent to which they have taken up CMC misconduct prevention initiatives.

The Government will consider whether it is appropriate and desirable to add any other units of public administration to the proposed reporting scheme. However, the

Government does not support extending the proposed reporting scheme to all units of public administration, of which there are more than 300.

The Government it is not convinced that the statutory scheme in the CMA relating to the principles of devolution and capacity-building is inadequate or that the CMC has lost real oversight capacity in relation to units of public administration preventing misconduct and undertaking misconduct investigations. Under s 33 of the Act, the CMC has the following functions with regard to misconduct: '*(a) to raise the standards of integrity and conduct in units of public administration; (b) to ensure a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way, having regard to the principles set out in section 34*'.

The principles set out in s 34 are cooperation (with a heavy emphasis on the CMC and units of public administration working cooperatively to prevent and deal with misconduct), capacity-building, devolution and public interest. Sections 33 and 34 mean that the CMC's job is not finished in the event that it refers a matter to an agency for resolution or investigation. This is supported by s 46(2)(b), which provides that the CMC's ability to refer a complaint to a unit of public administration is nevertheless '*subject to the commission's monitoring role*'. The statutory scheme is about agencies working closely with the CMC and providing the CMC with substantial information about their activities relating to misconduct to facilitate the CMC's monitoring role.

The CMC is doing a great deal of work on both capacity-building and monitoring to ensure that complaints of police misconduct and official misconduct are dealt with appropriately by units of public administration. During 2003-04, the CMC conducted reviews of 531 files dealt with by agencies; those reviews being either individual files identified for review during the CMC's assessment process or files audited as part of the CMC's Audit Program.

The CMC also used the results of the quality assurance reports for a number of key agencies to prepare its 118-page March 2004 publication, *Facing the facts: A CMC guide for dealing with suspected official misconduct in Queensland public sector agencies.*

On a number of occasions the CMC has resumed responsibility for an investigation where a unit of public administration reached the stage where they could not progress a misconduct investigation further. The CMC combines the expertise of its prevention, investigative and monitoring staff to undertake system reviews to address specific or generic risks to agencies; and will in 2004-05 continue with the full range of monitoring and capacity-building activities.

The CMC's June 2004 report, *Profiling the Queensland public sector*, was prepared as a companion volume to the New South Wales Independent Commission Against Corruption's *Profiling the New South Wales public sector*, which was published in 2003.

This report represents the cooperation of 234 Queensland public sector agencies who participated in the CMC's Responding to Misconduct survey—a survey designed to provide the CMC with the sort of information it needs to help build the capacity of Queensland public sector agencies to deal with and prevent misconduct.

The CMC's complaints and prevention areas are using the data gathered by the survey to ascertain where the CMC can further assist agencies. The survey results also provide

information to help individual agencies understand themselves better and be better able to identify areas requiring further attention.

The Government will continue to support, in a strategic sense, CMC efforts to build the capacity of agencies to resist misconduct. For example, on 30 August 2004 on behalf of the Premier, the Director-General of the Department of the Premier and Cabinet wrote to all Directors-General about the CMC's July 2004 survey report, *Profiling the Queensland public sector*.

The Director-General asked Directors-General to encourage (i) their departments and (ii) the units of public administration related to their departments to:

- make every effort to work collaboratively with the CMC to build the agency's capacity to prevent and deal with misconduct;
- participate in future CMC surveys and capacity-building activities; and
- implement, as appropriate, the suggestions for strengthening resistance to misconduct made by the CMC in its survey report.

On the same day, the Premier wrote to all Ministers informing them of the Director-General's letter.

Recommendation 7
The Committee recommends that there be close monitoring by the Department of Premier and Cabinet of the extent (if any) to which the devolution process has reduced the effectiveness of oversight by the Committee and the Parliamentary Commissioner of the CMC's misconduct function.

Response to recommendation 7—Supported in principle
The Government supports recommendation 7 in principle. As indicated in the response to recommendation 6, the chief executive officers of individual agencies must remain primarily responsible for the management of integrity systems and accountable for their respective agencies. The Department of the Premier and Cabinet should not be responsible for the integrity of all agencies across government. As part of its continual monitoring of the effect of the devolution process generally, the Government will consider any effect of devolution on the Committee and the Parliamentary Crime and Misconduct Commissioner's oversight of the CMC's misconduct function. No doubt, the Committee will itself be monitoring the effectiveness of its oversight in light of devolution and would consider writing to the Premier or reporting to Parliament on the matter if it believed it necessary.

Further recommendations about the misconduct function

Recommendation 8
The Committee recommends strongly that the timeliness of misconduct assessments and investigations by agencies and by the CMC continue to be rigorously addressed and monitored by the CMC and by the incoming Committee.

Response to recommendation 8—Supported
While the recommendation is directed towards the CMC (and the Committee), the Government supports the recommendation. The CMC has advised the Government that it agrees with the recommendation.

The Government appreciates that this is a longstanding concern, as reflected in the Committee's comment that:

> *Undoubtedly the strongest theme in submissions to this review, and indeed the reviews conducted by predecessor committees, is the need for the CMC to complete its assessment and investigation of allegations of misconduct in a timely manner.* (section 4.5.1)

The Government notes that, in its report, the Committee stated:

- the CMC is aware of the need for better performance with respect to timeliness;
- the CMC's statistics regularly provided to the Committee show that improvements have been made in recent times; and
- that this improvement is encouraging, particularly in light of increasing numbers of misconduct complaints made to the CMC.

The CMC has advised the Government that it will continue to focus on timeliness in all aspects of its work, including the handling of complaints. The CMC has advised it will continually deploy resources during 2004-05 to keep to a minimum the time taken to assess, monitor and investigate complaints. If necessary, additional temporary staff will be engaged to handle any backlog. Despite an increase in the number of complaints received, the CMC has advised that in 2003-04 it assessed 63 per cent of matters within one week of registration and 85 per cent within four weeks, achieving their target for the year.

Recommendation 9
The Committee recommends that the CMC continue to take steps to minimise the impact of its investigations on individual subject officers, complainants, and agencies.

Recommendation 10
The Committee recommends that the CMC, as part of its capacity building activities, continue to take steps to educate agencies on strategies to minimise the impact of their investigations.

Response to recommendations 9 and 10—Supported
Whilst recommendations 9 and 10 are directed towards the CMC, the Government supports the recommendations. The CMC has advised the Government that it agrees with the recommendations.

The CMC has advised the Government that it will continue to take steps to minimise the impact of its investigations on individual subject officers, complainants and agencies. In this regard, Chapter 9 of the recent CMC publication, *Facing the facts: a CMC guide for dealing with allegations of suspected official misconduct in public sector agencies*, specifically addresses this issue in a comprehensive manner.

Recommendation 11
The Committee recommends that the CMC continue to improve its communication strategies, particularly in communicating progress and outcomes to, as appropriate, the complainant, the subject officer, any relevant agency, the media, and the public.

Response to recommendation 11—Supported
While the recommendation is directed towards the CMC, the Government supports the recommendation. The CMC has advised the Government that it agrees with the recommendation.

The CMC has advised the Government that it recently implemented its *Strategic Communication Plan 2004-2006*. The aim of the plan is to improve communication to enhance public confidence that there is vigilant oversight in Queensland of both the police service and public sector, and that there is a powerful agent for protecting Queenslanders from major crime. The organisation acknowledges its stakeholders are many and varied, and strives to provide relevant, timely and accurate information to all those concerned.

The communication plan outlines strategies to:
- establish and maintain effective relationships with stakeholders;
- promote the CMC's commitment to combating crime and misconduct;
- ensure the CMC is accountable in its relationship with the media;
- raise staff awareness of the need to communicate effectively with stakeholders;
- provide accurate, relevant and readily accessible information to Queenslanders and stakeholder agencies; and
- enhance staff pride in the CMC.

Extending the CMC's jurisdiction over 'private' bodies

Recommendation 12
The Committee recommends that careful consideration be given to legislative amendment, at an appropriate time, so that the misconduct jurisdiction of the CMC is extended to private entities that exercise public functions and utilise public monies.

Response to recommendation 12—Supported in principle
The Government notes that, in the lead-up to recommendations 12 and 13, the Committee commented:

> *... it is too soon after the commencement of the CMC to make what would be another major change regarding the jurisdiction of the CMC. The CMA added jurisdiction over major and organised crime to the functions of what was the CJC. It also introduced significant changes in the approach of the CMC to its misconduct role, as seen from the discussion earlier in this chapter on capacity building and devolution. Those changes are still relatively recent, and are important and worthwhile changes. They have had, and continue to have, significant impact on the processes and operations of the CMC. The Committee does not support any further significant change to the jurisdiction of the CMC until such time as these changes are fully implemented, assessed, and where necessary 'fine-tuned'.* (section 4.8.3)

The Government supports the sentiment that now is not the time for any broad extension to the jurisdiction of the CMC. In the future, when the operation of the new Act is further settled, the Government might reconsider the ambit of the operation of the Act, especially if the matter is the subject of a recommendation in the Committee's next three-year review report. However, no examples of particular accountability failures or concerns that require addressing are given in the current Committee report.

Extending the jurisdiction of the CMC to 'private entities that exercise public functions and utilise public monies' would require careful consideration. Significant definitional issues arise. The phrase encompasses a wide range of organisations potentially, and the Government would have to be convinced that any broad extension of the CMC's jurisdiction was appropriate and did not unduly divert the CMC's attention away from its existing misconduct and major crime workload.

Recommendation 13
The Committee recommends any extension of the CMC's jurisdiction in this regard would need to be accompanied by adequate resourcing of the CMC and of the entities involved.

Response to recommendation 13—Supported in principle
See response to recommendation 12. The Government would consider resource implications for the CMC of any legislative amendment at the appropriate time.

The Office of the Director of Public Prosecutions and charging

Recommendation 14
The Committee recommends the *Crime and Misconduct Act 2001* be amended to provide that where the CMC decides that prosecution proceedings should be considered, the CMC must refer the matter to a police officer seconded to the CMC to decide whether criminal charges should be laid and, where appropriate, lay charges.

Recommendation 15
The Committee recommends the *Crime and Misconduct Act 2001* provide an exception to this requirement for those matters that relate to a CMC officer or fall into a limited category of cases that having regard to the nature and seriousness of the misconduct, and/or the public office held by the subject officer, it is necessary in the interests of justice that the matter be referred to the DPP to consider whether to lay criminal charges.

Recommendation 16
The Committee recommends future parliamentary Committees closely monitor those matters referred by the CMC to the DPP in accordance with the above exceptions in order to ensure that referrals to the DPP appropriately fall within the exceptions.

Response to recommendations 14-16—Legislative amendment not supported at this time
Police officers seconded to the CMC presently have—and in practice, usually after the Director of Public Prosecution's (DPP's) advice has been obtained, exercise—the power to charge for offences arising from CMC investigations. The Government is not convinced that a legislative amendment is required in order to address the issues of potential delay and resource duplication. Following consultations with the DPP and the CMC, the Government understands that those agencies have been working together and will continue to do so in order to address the issues on an administrative basis. The Government will continue to monitor the situation.

Amendments concerning the Public Interest Monitor

Recommendation 17
The Committee recommends that the *Crime and Misconduct Act 2001* and the *Police Powers and Responsibilities Act 2000* be amended to remove the requirement that a report on the exercise of the powers under a covert search warrant be provided to the issuing judge.

Recommendation 18
The Committee recommends that section 326 of the *Crime and Misconduct Act 2001* and section 159 of the *Police Powers and Responsibilities Act 2000* be amended to permit the Public Interest Monitor, whenever the Public Interest Monitor considers it appropriate, to report and apply to the Supreme Court for directions in relation to any matter concerning the exercise of powers under a covert search warrant or surveillance warrant, including:

- anything seized or photographed under a covert search warrant;
- information obtained under a surveillance warrant; and
- transcripts of recordings or photographs made or taken under a surveillance warrant.

Response to recommendations 17 and 18—Not supported at this time
Recommendation 17 is that the CMA and the *Police Powers and Responsibilities Act 2001* (the PPRA) should be amended to remove the requirement that law enforcement officers report back to the issuing judge (a 'return hearing'), as well as the Public Interest Monitor (PIM), on the exercise of the powers granted under a covert search warrant. (The Government notes that, even if this mandatory provision was to be removed, a judge issuing a court search warrant could still impose in the warrant a condition to the same or similar effect).

In relation to surveillance warrants in Queensland there is no corresponding legislative requirement that law enforcement officers report back to the issuing judge on the exercise of the surveillance powers. Rather, the PIM has adopted a practice of requesting that the issuing judge impose a condition requiring a detailed affidavit of compliance by the relevant agency be provided to the PIM.

The Government does not support recommendation 17 at this time.

This is because the Government will revisit this matter, as it considers the preparation of legislation to implement the Government's March 2004 agreement to give effect to (the minimum standards contained in) the national model laws for cross-border investigative powers (Joint Working Group of the Standing Committee of Attorneys-General and Australasian Police Ministers Council, *Report on cross-border investigative powers for law enforcement*, November 2003). That is the appropriate process for Government to consider return hearings. The Government notes the national model laws include a bill concerning surveillance devices that contains a requirement for a report back to the issuing judge on the exercise of the powers under a surveillance warrant.

The Government will need to consider whether it will adopt that model provision or whether it will instead seek recognition from other jurisdictions of a provision that is more akin to Queensland's current position in relation to surveillance warrants, namely, a provision that provides for reporting back to the PIM instead of the issuing judge. When it agreed to the model laws, the Government made it clear to the other

jurisdictions that Queensland would retain the PIM as part of its accountability regime at the 'front end' of the warrant process.

Recommendation 18 is that the CMA and the PPRA be amended to permit the PIM, whenever the PIM considers it appropriate, to apply to the Supreme Court for directions in relation to any matter concerning the exercise of powers under a convert search warrant or surveillance warrant. Recommendation 18 follows from recommendation 17 to a large extent.

In light of its response to recommendation 17, the Government also does not support recommendation 18 at this time. However, the Government will reconsider recommendations 17 and 18 as a result of the national investigation powers process referred to above.

Recommendation 19
The Committee recommends that section 326(1)(d) of the *Crime and Misconduct Act 2001* be amended to require that any report by the Public Interest Monitor on non-compliance by the CMC with the *Crime and Misconduct Act 2001* be provided to the CMC and the Committee.

Response to recommendation 19—Supported
The Government supports amending s326(1)(d) of the CMA to provide that the PIM has the function of providing any report on non-compliance by the CMC with the Act to the CMC and the Committee (not just to the CMC, which is currently the case).

The Government notes that the current PIM has adopted the practice of providing such reports to the Committee as well as the CMC and agrees it is desirable for the CMA to prescribe this. The PIM advises that there have been only a relatively small number of instances where non-compliance has been suggested.

Recommendation 20
The Committee recommends that section 159(2) of the *Police Powers and Responsibilities Act 2000* be amended to include a requirement that a report by the Public Interest Monitor on non-compliance by a police officer who is a 'commission officer' be given to the Commissioner of Police, the CMC and the Committee.

Response to recommendation 20—Supported in principle
The Government supports a legislative amendment to provide that the PIM has the function of giving any report on non-compliance by a police officer working for the CMC to the Commissioner of Police, the CMC and the Committee (that is, not just to the Commissioner of Police, which is currently the case). This recommendation follows on from recommendation 19. However, the Government will give careful attention to the drafting of the proposed amendments, particularly in relation to the definition of 'commission officer' in this context.

Terrorism powers – substantially implemented

Recommendation 21
The Committee recommends that the *Crime and Misconduct Act 2001* and the *Police Powers and Responsibilities Act 2000* be amended to allow a surveillance warrant to be issued in respect of specified premises on the basis that there are reasonable grounds for the believing that:

- a major crime which constitutes a 'terrorist act' has been, is being, or is likely to be, committed; and
- the use of a surveillance device at the premises is necessary for the purpose of an investigation into that major crime or suspected major crime or enabling evidence to be obtained of the major crime or suspected major crime.

Response to recommendation 21—Already substantively implemented
The Government has already substantively implemented recommendation 21 as a matter that required immediate attention. The *Terrorism (Community Safety) Amendment Act 2004* amended ss 121, 123 and 124 of the CMA to provide for 'place' warrants. The terrorism legislation made corresponding amendments to the PPRA. The amendments were not limited to a 'terrorist act' being a condition precedent for an application for such warrants. Rather, these warrants are available to the CMC for investigating 'major crime' (which, due to the terrorism legislation, now includes terrorist acts) and are available to the QPS for investigating 'serious indictable offences' (which likewise now includes terrorist acts).

Recommendation 22
The Committee recommends that the *Crime and Misconduct Act 2001* and the *Police Powers and Responsibilities Act 2000* be amended to provide for the exercise of covert search powers without a warrant where the Chairperson of the CMC (or in the case of the *Police Powers and Responsibilities Act 2000* a police officer of at least the rank of inspector) reasonably believes:

- a major crime which constitutes a 'terrorist act' has been, is being, or is likely to be, committed;
- a thing at a place is evidence of the major crime; and
- unless the place is immediately entered and searched the evidence may be concealed or destroyed or its forensic value diminished.

Recommendation 23
The Committee recommends that the *Crime and Misconduct Act 2001* and the *Police Powers and Responsibilities Act 2000* be amended to provide (in terms similar to those applicable to the emergent use of surveillance devices) that:

- within two business days after the emergency use of the covert search powers was authorised, an application must be made to a Supreme Court judge for approval of the exercise of the powers; and
- the Public Interest Monitor must be advised of the application and may appear and make submissions to the judge regarding the approval application.

Response to recommendations 22 and 23—Not supported
The Government considered recommendations 22 and 23 during its preparation of the *Terrorism (Community Safety) Amendment Act 2004.* The Government did not support the recommendations. The Premier wrote to the Committee following the passage of the terrorism legislation informing the Committee that the Government considered there

was not adequate justification to override the current fundamental safeguard requiring officers to apply to the Supreme Court for covert search warrants.

Recommendation 24
The Committee recommends that the present provisions in the *Crime and Misconduct Act 2001* relating to additional powers warrants be amended so that such warrants may be utilised by the CMC in its major crime investigations.

Response to recommendation 24—Already implemented in part
The Committee recommended extending the availability of additional powers warrants to all major crime investigations. The Government, in preparing the *Terrorism (Community Safety) Amendment Act 2004*, implemented this recommendation to extend the availability of additional powers warrants but restricted the extension to terrorism-related investigations. This is because these warrants appear never to have been used and the Government considered there was no clear justification to extend them beyond terrorism investigations.

Recommendation 25
The Committee recommends that the definition of 'serious indictable offence' in the *Police Powers and Responsibilities Act 2000* be amended to include the extensive destruction of property in circumstances that constitute a terrorist act.

Response to recommendation 25—Supported
This recommendation will be actioned when the definition of 'serious indictable offence' in the PPRA is reviewed as the Government prepares legislation to give effect to the national model laws for cross-border investigative powers referred to in the response to recommendation 17 above.

Special constables

Recommendation 26
The Committee recommends that the definition of 'police officer' in the *Police Powers and Responsibilities Act 2000* be amended to include special constables appointed under the *Police Service Administration Act 1990* who are at the time of appointment serving police officers of the Australian Federal Police or a police force of an Australian State or Territory or the New Zealand Police Force.

Response to recommendation 26—Not supported
The Government does not support recommendation 26.

Section 5.16 of the PSAA provides that the Commissioner of Police may in writing appoint special constables on such terms and conditions as the Commissioner thinks fit. Section 3.2(3) of the PSAA provides that an officer (including a special constable, through the operation of ss 1.4 and 2.2(2) of the PSAA) has and may exercise the powers of a constable at common law or under any other Act or law. Accordingly, a special constable can exercise any power in the PPRA that is contained in the terms and conditions of appointment by the commissioner. This is so despite the lack of reference to special constables in the definition of 'police officer' in the PPRA (There is some reference to interstate and federal police officers in definition of 'police officer' in the PPRA.). The Government considers that nominating specific PPRA powers in a special constable's instrument of appointment is preferable to a referral of all PPRA powers

through a general PPRA amendment that simply stated that 'police officers' include special constables.

Nevertheless, issues remain in relation to affording special constables protections from liability that are enjoyed by police officers. The matter of appointing special constables who are members of other jurisdictions' police forces or services, and the issue of liability specifically, is currently the subject of attention on a national basis by police commissioners, who are considering papers on the subject prepared by the Police Commissioners' Policy Advisory Group. It may be that the police commissioners' process results in proposals to amend Queensland's legislation relating to special constables and the Government would consider the proposals at that time.

In addition, the Government notes that the CMC's submission to the Committee seeking an amendment to the PPRA to include special constables within the definition of a police officer was made under the heading of 'terrorism'. The Government has already acted to ensure that, if a terrorist act has occurred or is imminent, the Commissioner of Police can authorise officers of a police force or service of another State or federal police officers to be called into Queensland and exercise the powers of a State police officer (and be granted the same protections from liability). The Government did so by introducing the *Terrorism (Community Safety) Amendment Act 2004*, which inserted new s 5.17 into the *Police Service Administration Act 1990* (PSAA). The emphasis of new s 5.17 is emergent situations, where the usual special constable provisions might not be able to be invoked in a sufficiently timely manner.

Recommendation 27
The Committee recommends that the question of whether other special constables (i.e. those who are not serving police officers as described) should be included in the definition of 'police officer' under the *Police Powers and Responsibilities Act 2000* be the subject of further consideration by the Queensland Government.

Response to recommendation 27—Not supported
The CMC submitted to the Committee that it uses civilian operatives to carry out some of its surveillance and investigative duties. The CMC sought the amendments referred to in recommendation 27 so that civilians (duly commissioned by the Commissioner of Police as special constables) could:

- assist in carrying out certain police activities, such as executing search warrants; and
- be afforded the protections from liability that police are afforded when carrying out duties like physical surveillance of subjects, which may on occasion require breaches of the law to be committed, such as traffic offences or trespass on private property.

However, it appears that the CMC has not sought the appointment of special constables for quite some time.

The Government agrees with the reported concerns of the Parliamentary Crime and Misconduct Commissioner about the suggestion that the PPRA definition of police officer be simply amended to include special constables. Such an amendment in effect would give civilians all the powers of a police officer under the PPRA. The Government does not support such an approach. The proposal is formulated too broadly to address

appropriately the CMC's concerns about using civilians to enhance its effectiveness or efficiency.

In addition, the Government notes the assistance provisions in ss 172 and 173 of the CMA. Section 172 of the CMA empowers commission officers (including police officers seconded to the CMC) exercising a power under the CMA:

- to seek the assistance of another person (an assistant) the officer reasonably requires for performing a function of the commission; or
- to take onto a place any assistant the officer reasonably requires for exercising the power.

Examples are given in the provision. For example, a commission officer may seek the help of an electrician to install a listening device under a surveillance warrant. Section 172 enables the commission officer to authorise the assistant to take certain action or exercise stated powers the commission officer is able to exercise, excluding the power to apprehend a person. Section 173 provides that an assistant does not incur civil liability for their actions done honestly and without negligence. Any liability instead attaches to the State. However, the section is silent on criminal liability.

The Government considers that the assistance provisions in the CMA could be invoked to provide some of the functions that the CMC envisages for civilians. The provisions would also allay at least some of the concerns that the CMC has about protections for civilians. However, the CMC did not refer to the provisions in its submission to the Committee seeking the amendment to the PPRA to include special constables in the definition of 'police officer'. Nor did the Committee refer to the provisions in its report in this regard.

Despite the Government's rejection of the amendments suggested in recommendation 27, it would welcome any approach from the CMC for appropriate legislative changes to deal with their concerns about civilian operatives that was justified with reference to the assistance provisions.

CMC hearings

Recommendation 28
The Committee recommends that the *Crime and Misconduct Act 2001* be amended to allow presiding officers at CMC hearings to order the production of documents or things, in terms similar to the power under the *Independent Commission Against Corruption Act 1988* (NSW).

Response to recommendation 28—Supported
The Government supports the recommendation that presiding officers at CMC hearings should have power to order the production of documents or things.

Telecommunications interception

Recommendation 29
The Committee recommends that the Queensland Government introduce legislation to enable the CMC and QPS to intercept telecommunications.

Recommendation 30
The Committee recommends that any telecommunications scheme should include a role for an Inspector, such as the Public Interest Monitor, in the application process for a telecommunications interception warrant.

Recommendation 31
The Committee recommends that the CMC be able to operate its own telecommunications interception facility and receive adequate funding to allow it to do so.

Response to recommendations 29-31—Remains under consideration
On 12 May 2004, during debate on the Terrorism (Community Safety) Amendment Bill 2004, the Premier stated that:

- he has asked the Minister for Police and Corrective Services to bring to Cabinet a submission on telecommunications interception powers; and
- Queensland has written to the Commonwealth asking whether the Commonwealth would consider amending the Commonwealth telecommunications interception legislation to enable states, in a constitutional sense, to introduce additional safeguards, such as Queensland providing for its Public Interest Monitor to be present during the warrant application process.

Cabinet has considered the matter and will continue to do so, especially in light of the Commonwealth-State constitutional dimensions.

The intelligence function

Recommendation 32
The Committee recommends that the CMC continue to maintain its criminal and misconduct intelligence in a single unit.

Response to recommendation 32—Supported
While the recommendation is directed towards the CMC, the Government supports the recommendation. The CMC has advised the Government that it agrees with the recommendation and supports the continuation of its current intelligence arrangements. The Government observes that one of the main considerations in its decision to amalgamate the former Criminal Justice Commission and the former Queensland Crime Commission in the 2001 Act was to improve the efficiency and effectiveness of their respective intelligence capacities. The Government accepts that a single intelligence facility supporting the CMC's crime and misconduct functions should be maintained.

Recommendation 33
The Committee recommends that the CMC continue to have a dedicated intelligence unit that is independent of all other agencies.

Recommendation 34
The Committee recommends that the CMC retain its ability to share relevant information with other law enforcement agencies.

Recommendation 35
The Committee recommends that the CMC continue to maintain its own intelligence database independently of other agencies.

Response to recommendations 33-35—Supported
The Government supports recommendations 33-35. The Government accepts that the CMC should continue to have an intelligence capacity independent of other agencies. This is crucial for the impartial discharge of the CMC's functions. The CMC should also continue to be able to share information with other law enforcement agencies, while maintaining its own intelligence database. To the extent that these are matters for the CMC, the CMC has advised the Government that it agrees with the recommendations.

Witness protection

Recommendation 36
The Committee recommends that sections 6 and 7 of the *Witness Protection Act 2000* be amended to allow the CMC to make short-term protection agreements for the purpose of providing court-only protection and that the Chairperson be allowed to delegate the power to enter into such agreements.

Response to recommendation 36—Supported
The Government agrees that it is desirable that the CMC has available to it the option of a streamlined approval process for short-term protection for witnesses who do not seek relocation or an assumed identity but instead seek protection for their court appearances only. The Government agrees that in such circumstances the Chairperson's power to make such a short-term agreement for protection for court appearances should be delegable. The CMC states that applications for such short-term protection are usually received with very short notice. The Government notes, and agrees with, the CMC's view that s 9 interim protection agreements are inappropriate for this type of short-term protection for impending court appearances.

Recommendation 37
The Committee recommends that consideration be given to whether the power to enter into short-term protection agreements should also be available in circumstances other than solely 'court-security only' situations.

Response to recommendation 37—Supported in principle
The Government agrees that it give consideration for short-term protection agreements in cases other than for court security. The Government will consider this possible extension as it drafts amendments to give effect to recommendation 36. However, at this stage, the Government has not seen compelling evidence for a general power to grant short-term protection agreements with a streamlined approval process, other than for court appearances. Care must be taken not to weaken the strict existing legislative scheme, whereby there are protection agreements that are signed by the Chairperson only after a good deal of regard and checking, augmented by interim agreements when urgent protection is needed while the protection agreement proper is being settled and considered.

Recommendation 38
The Committee recommends that the *Witness Protection Act 2000* be amended to give the Chairperson power to suspend a protection agreement where, in the opinion of the Chairperson, the protected witness's conduct is a threat to the integrity of the program, subject to the witness being afforded adequate alternative protection during the period of suspension to ensure the safety of the witness.

Response to recommendation 38—Supported in part
The Government agrees that the Chairperson should be enabled under s 12 to suspend a protection agreement in circumstances where the Chairperson is satisfied the protected witness's conduct is a threat to the integrity of the witness program. (This is currently a ground for ending a protection agreement under s 14, after the protected witness has been given an opportunity to show cause why the agreement should not end.) Currently, suspension is only available where the Chairperson is satisfied the protected witness cannot be properly protected under the program because of something the witness has done or intends to do that stops the person from being properly protected.

However, the Government does not support the proviso at the end of recommendation 38. Witness protection is provided under the statutory scheme to persons accepted into the protection program under agreed conditions. There is no alternative protection scheme provided by the Commission and there should be none.

Recommendation 39
The Committee recommends that a new section be included in the *Witness Protection Act 2000* to expressly state that the acquisition and use of assumed identities by witness protection officers may be authorised by the Chairperson.

Response to recommendation 39—Already implemented
The Government has already implemented recommendation 39. The *Terrorism (Community Safety) Amendment Act 2004* inserted new s 20A (New identity for witness protection officer) into the *Witness Protection Act 2000*. New s 20A provides that the Chairperson may authorise a witness protection officer to use a new identity for the proper administration of the program or to ensure the officer's safety while administering the program.

Recommendation 40
The Committee recommends that section 36 of the *Witness Protection Act 2000* be amended to provide that it is an offence to disclose or record information about the Witness Protection Program that may compromise its integrity, even in cases where such information does not relate to a protected witness.

Response to recommendation 40—Supported
The Government agrees that the *Witness Protection Act 2000* s 36 (Offence of disclosures about protected witnesses) would be improved if amended in the manner suggested.

Recommendation 41
The Committee recommends that the CMC be given the power to issue notices in terms similar to those in sections 74, 74A and 75 of the *Crime and Misconduct Act 2001* for the purposes of protecting a person who has been admitted to the Witness Protection Program or of protecting the integrity of the Witness Protection Program.

Response to recommendation 41—Supported in principle
The Government agrees that these notice to produce powers should be available to the CMC in relation to its witness protection function for the purposes of protecting:

- a person who has been admitted to the witness protection program (including for locating the protected person in appropriate circumstances); or

- the integrity of the program (including for monitoring the location or activities of a person considered to be a threat to a protected witness or to be compromising protection arrangements).

However, the Government notes that some care will need to be taken in drafting the provisions and, more importantly, when the CMC settles its arrangements for using the resultant powers. This is because, in instances where such a proposed notice: (i) refers to a protected witness that the CMC might be trying to locate (not someone threatening a protected witness); and (ii) does so by referring to their actual (not assumed) name; the notice might tend to indicate to the recipient of the notice that the person is a protected witness.

The CMC has indicated that its witness protection area would routinely consider any risk involved in issuing the notices against the seriousness of the situation, and that notices would not be used in circumstances that might put a witness at undue risk. The CMC also advised that it would be possible for it to make arrangements with liaison officers in banks (the majority of recipients of the notices) to minimise any risk to the integrity of the program through the use of notices.

Recommendation 42
The Committee recommends that witness protection officers be effectively managed, supervised and trained to ensure that officers maintain the highest professional standards in their dealings with protected witnesses.

Response to recommendation 42—Supported
This is a matter for the CMC. The CMC has advised the Government that it agrees with the recommendation. The Government notes that the Committee's report does not identify particular problems in this regard. Instead, the report notes the importance for vigilance in this area in light of the psychological demands placed on witness protection officers and the power imbalance that can arise between witness protection officers and protected witnesses.

Whistleblower protection

Recommendation 43
The Committee recommends that the Government give consideration to a full review of whistleblower protection in Queensland and the *Whistleblowers Protection Act 1994* in accordance with the recommendations of the 4th PCJC in Report No. 55.

Response to recommendation 43—Supported in part
It is ten years since the *Whistleblowers Protection Act 1994* commenced and the Government supports a review of the Act. However, the Government is not convinced that a full review of the Act (re-opening the Act's core principles and purpose to public consideration) is required. Instead, the Government will conduct a whole-of-Government review of the experience of public service agencies in relation to the operation of the Act and make any necessary amendments to the Act in light of the review.

The Government notes that, since its 2001 response to the 4th Parliamentary Criminal Justice Committee's three-year review report no. 55 (recommendations 33 and 34 referred to whistleblower support), the Office of Public Service Merit and Equity, as part of its administration of the *Whistleblowers Protection Act 1994*, has:

- reminded all entities under the *Whistleblowers Protection Act* of their reporting

obligations (in February 2002);
- worked with agencies to review strategies relating to whistleblowing matters, including assisting agencies to use statistics and other indicators to analyse trends, and implement prevention programs and remedial actions;
- produced two Fact Sheets to assist agencies in managing public interest disclosures and provide the answers to frequently asked questions about the Act;
- participated in the Integrity Committee—an inter-office Committee of the Public Service Commissioner, the Ombudsman, the Chairperson of the CMC, the Auditor-General and the Integrity Commissioner—which meets regularly to discuss matters such as whistleblowing and other ethics issues;
- continued to coordinate the Queensland Public Sector Ethics Network (QPSEN), a whole-of-Government forum for specialist practitioners aimed at sharing knowledge and practices, and improving how agencies deal with ethics matters, including the handling of public interest disclosures; and
- continued to respond to agency inquiries about the administration of the Act across Government and within agencies.

Office of General Counsel

Recommendation 44
The Committee recommends the continued retention of the Office of General Counsel as an independent unit within the CMC, answerable directly to the Commissioners.

Response to recommendation 44—Not a matter for Government
This is a matter for the CMC. There is no reference in the *Crime and Misconduct Act 2001* to the Office of General Counsel. The CMC has advised the Government that it agrees with the recommendation.

Recommendation 45
The Committee recommends that the Office of General Counsel be reviewed by the CMC or the Premier, with a view to increasing the capacity of the Office to provide independent, balanced and objective legal advice.

Response to recommendation 45—CMC to implement
The CMC has advised the Government that it has resolved to undertake a review of the Office of General Counsel.

Miscellaneous

Recommendation 46
The Committee recommends that the *Crime and Misconduct Act 2001* be amended so that the usual requirements for consultation with, and the bipartisan support of, the Parliamentary Committee apply to any appointment as acting chairperson of the CMC for a period or periods totalling in excess of six months.

Response to recommendation 46—Not supported
The Government does not support recommendation 46. The appointment of an acting chairperson has historically been approved by the Governor in Council as a standing arrangement to expire at the same time as the term of the incumbent chairperson. This arrangement ensures that an acting chairperson immediately takes office in the event of

any absence from duty of the chairperson, in circumstance either planned or unforeseen (which would rarely be in excess of six months in any event).

The acting chairperson has by custom been a senior part-time commissioner, whose initial appointment as a commissioner has been made in consultation with the parliamentary committee in the first place. Accordingly, the Government does not consider there is any demonstrated need for the recommended amendment to the Act.

Recommendation 47
The Committee recommends that the *Crime and Misconduct Act 2001* be amended to make it clear that sections 329 and 295 extend to former officers of the former Criminal Justice Commission and former officers of the former Queensland Crime Commission.

Response to recommendation 47—Supported
The Government supports the Committee's view on this technical matter, that the CMA be amended to clarify that ss 329 (Duty of chairperson to notify improper conduct to the parliamentary committee) and 295 (Referral of concerns by parliamentary committee) apply not only to past CMC officers (which is currently the case clearly on the face of those provisions) but to past officers of the former Criminal Justice Commission and the former Queensland Crime Commission as well. This proposed clarification is in line with s 220 (Establishment), which states that the Criminal Justice Commission and the Queensland Crime Commission are merged into a single body corporate to be known as the CMC.

Recommendation 48
The Committee recommends legislative amendment so that there is a statutory requirement for the annual report of the Misconduct Tribunals to be tabled by the responsible Minister within four months and fourteen days of the end of the financial year.

Response to recommendation 48—Supported
The Government supports the amendment, which would formalise the practice of tabling the annual report of the Misconduct Tribunals.

Recommendation 49
The Committee recommends that there be no restriction on the persons that can be required by the Parliamentary Crime and Misconduct Commissioner to give evidence at a hearing.

Response to recommendation 49—Not supported
Recommendation 49 is about extending the class of people that the Parliamentary Crime and Misconduct Commissioner can require to give evidence at a hearing (under s 318(4) of the CMA) from a 'commission officer' and a person who holds or held an appointment in a 'unit of public administration' (which is currently the case) to 'any person'. Subject to the specific amendment supported in the response to recommendation 50 below, the Government does not support recommendation 49.

Under the CMA, the role of the Parliamentary Commissioner is about ensuring the accountability of the CMC to the Committee. Accordingly, the power to compel any witness is not necessary. The Government is not convinced that this boundary concerning compellable witnesses—which mirrors the ambit of the CMA as a whole—

is unsatisfactory. The Government acknowledges that, under the broadly worded s 118W of the previous *Criminal Justice Act 1989*, the former Parliamentary Criminal Justice Commissioner had, for what was then termed 'investigations', all the powers of a royal commission and, accordingly, could compel any witness. However, the policy underpinning the new Act, with its specifically-worded conferrals of power, does not support plenary royal commission style powers.

Compared to s 318(4), the power of the Parliamentary Commissioner to require the production of, or access to, documents generally (that is, the power available to the Commissioner before the preconditions of a hearing are met – s 317) is likewise limited to documents of the CMC or a 'unit of public administration'. Section 321 (Confidentiality obligations not to apply) is similarly restricted to information held by the CMC or a 'unit of public administration', and to past and present CMC officers and 'unit of public administration' officers.

Recommendation 50

The Committee recommends in the event that the last recommendation [49] is not adopted, that the *Crime and Misconduct Act 2001* be amended to make it clear that former officers of the former Queensland Crime Commission can be required by the Parliamentary Commissioner to give evidence at a hearing.

Response to recommendation 50—Supported

The Government agrees that s 318 of the CMA should be amended so that the Parliamentary Crime and Misconduct Commissioner can require not only former Criminal Justice Commission officers (amongst other people) to give evidence at a Commissioner hearing (which is currently the case) but also former Queensland Crime Commission officers. This disparity should be addressed.

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