



# ***PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE***

**MEMBERS PRESENT:** Mr G. J. WILSON, MP (Chairperson)

Ms D. BOYLE, MP

Mr S. W. COPELAND, MP

Mr W. B. I. FLYNN, MP

Mr H. W. T. HOBBS, MP

Mr A. I. McNAMARA, MP

Mr K. G. SHINE, MP

**STAFF PRESENT:** Mr S. FINNIMORE (Research Director)

## **THREE-YEARLY REVIEW OF THE CRIME AND MISCONDUCT COMMISSION**

**TRANSCRIPT OF PROCEEDINGS**

**Thursday, 19 June 2003  
Brisbane**

## WITNESSES

BRENDAN BUTLER .....	3
MARGARET STEINBERG .....	3
BOB ATKINSON .....	6
CLIFF JOHN CRAWFORD .....	6
ROBERT WILLIAM GEE .....	6
BRENDAN BUTLER .....	15
JOHN CALLANAN .....	19
STEPHEN LAMBRIDES .....	27
JEFF BACKEN .....	37
PAUL ROGER .....	41
KATHY RYNDERS .....	43
PAUL MAZEROLLE .....	47
ROBERT SIBLEY .....	53
ROBERT NEEDHAM .....	58

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The committee commenced at 9.07 a.m.

**The CHAIR:** Good morning and welcome, ladies and gentlemen. I am pleased to declare open this public hearing of the Parliamentary Crime and Misconduct Committee's three-year review of the Crime and Misconduct Commission. The Parliamentary Crime and Misconduct Committee is an all-party committee of the Legislative Assembly of Queensland. The main functions of the committee are to monitor and review the performance of the Crime and Misconduct Commission—the CMC—and to report to the Legislative Assembly. Section 292 of the Crime and Misconduct Act, like its predecessor the Criminal Justice Act, specifically requires the committee to conduct a three-year review of the activities of the CMC and to table a report in the Legislative Assembly about any further action that should be taken in relation to the Crime and Misconduct Act or the functions, the powers and operation of the CMC. The last three-year review was conducted in 2000.

Just by way of background, these hearings follow a number of actions taken by the committee. On 7 February 2003 the committee advertised in the *Courier-Mail* calling for public submissions in relation to the review. The closing date for submissions was 4 April. The committee wrote to the Crime and Misconduct Commission and some 70 other agencies, organisations and individuals advising of the committee's call for submissions and inviting submissions to the review. A number of agencies, including the CMC, sought an extension of time in which to provide the submission. The committee will carefully consider every submission received.

On 13 June, the committee tabled in the Legislative Assembly the submissions considered appropriate for tabling. Most of the submissions received were tabled. The committee would like to acknowledge the assistance provided by the CMC, other stakeholders and members of the public who have provided written submissions to the committee. The committee would like to particularly acknowledge the assistance of Mr Butler, the other commissioners of the CMC and the senior officers of the CMC. The CMC was invited to make a submission on all aspects of the operations of the commission and of the Crime and Misconduct Act. The committee refrained from limiting or defining the scope of the CMC submission. The CMC responded by providing the committee with a most comprehensive submission in April.

The committee will take evidence at these public hearings from representatives of various community and professional organisations, government agencies and the CMC. The purpose of the hearings is to hear the various viewpoints on relevant issues and to allow the committee to ask questions of representatives from a cross-section of interested organisations.

The program for the two days is as follows. Each invitee will have an opportunity to elaborate upon any written submission they may have made to the committee. They will then be given an opportunity to answer questions put by members of the committee. The public hearings will commence with representatives of the CMC. Firstly, the committee will hear from the Chairperson, Mr Butler, and the available part-time commissioners, Mr Ray Rinaudo and Associate Professor Margaret Steinberg. The committee will then hear from senior officers of the CMC as follows: Mr John Callanan, Assistant Commissioner, Crime; Mr Stephen Lambrides, Assistant Commissioner, Misconduct; Mr Paul Roger, Director, Intelligence and Information; Assistant Commissioner of Police Kathy Rynders, Director, Witness Protection and Operations Support; and Dr Paul Mazerolle, Director, Research and Prevention.

The committee will also hear from the Commissioner of the Queensland Police Service, Bob Atkinson, APM; Mr Robert Sibley, Public Interest Monitor; Mr Robert Needham, Parliamentary Crime and Misconduct Commissioner; Mr Terry O'Gorman, Vice-President of the Queensland Council for Civil Liberties and President of the Australian Council for Civil Liberties; and Dr Noel Preston. The committee will hear from representatives from the Queensland Police Union of Employees, Education Queensland, the Queensland Teachers Union and the Youth Advocacy Centre.

The hearings will conclude tomorrow with final submissions from the CMC chairperson, who will have an opportunity to respond to any submission made by other speakers and to wrap up any additional issue that has not been covered. Finally, if any agency or interested member of the public wishes to forward a written submission or supplementary submission to the committee they are most welcome to do so.

I now invite Mr Butler and other members of the Crime and Misconduct Commission available today to come forward and present a submission on behalf of the Commission. The committee notes an apology from Mrs Sally Goold, who is not able to be with us today. Mr Bill Pincus QC will be able to join this afternoon. Mr Butler, would you like to make an opening address?

**BRENDAN BUTLER**, examined:

**MARGARET STEINBERG**, examined:

**Mr Butler:** Yes, thank you, Mr Chair. I should mention that on my right is Professor Margaret Steinberg, one of my fellow commissioners. Mr Ray Rinaudo will join us, I hope, in about half an hour when an unavoidable commitment of his is finished. As the chair said, the Hon. Bill Pincus QC will be able to join us this afternoon. Mrs Goold, who is interstate today, will be here for the hearings tomorrow.

I speak on behalf of me and my fellow commissioners. I need to acknowledge the role that all five commissioners play in the management and direction of the CMC. The commission welcomes the three-year review process. It is a process that is provided for in legislation, but I think it is a very important process for accountability and transparency for the organisation. The parliamentary committee is a keystone in the accountability structure for the CMC. These three-year reviews which are provided for in the legislation are an important part of the committee's process of maintaining oversight of the commission.

I believe these hearings provide an opportunity for the CMC to communicate its achievements, to provide feedback to both the committee and the public on our vision for the future and, of course, to raise constructive suggestions and criticisms. That is an important part of the process. It is very important for the commission to always be listening and be responsive to such suggestions and criticisms.

Indeed, as you said, Mr Chairman, the three-year review process is not a new one. It is one that has continued over the years in relation to our predecessor commission, the CJC. I was chairperson of the CJC at the time of the last three-year review. I found that a very constructive and productive process and, as a result, there was a significant report by the then Parliamentary Criminal Justice Committee. That report provided numbers of recommendations which were considered as part of the drafting by government of the new Crime and Misconduct Act. That act, which came into effect on 1 January last year, has had a very important influence on the way in which the CMC is operating today. So I look forward to the opportunity ultimately of these hearings and the total review process providing further guidance into the future for the successful continuation of the CMC and the important work that it does.

The CMC and its predecessor commissions, the CJC and the QCC, delivered and continue to deliver very significant outcomes for the people of Queensland. Let me, just in brief, point to some of the outcomes that have been delivered this very month, June 2003. Yesterday in Toowoomba the CMC launched a significant 142-page research report on beat policing in Queensland. This is just one example of the CMC's internationally recognised research into policing issues. Earlier this month Queensland's Chief Magistrate was convicted of a criminal offence after a prompt and focused CMC investigation. At this very time the commission is protecting 65 persons who have given assistance to the police and might be at risk because of having done so. Last week the CMC made the first arrest under the new section 218A of the Criminal Code which was introduced as a result of the recent sexual offences amendments. A man was detected on the Internet by our paedophile investigators and he has been charged with using the Internet with intent to procure a child under 16 years of age and using the Internet with intending to expose a child to indecent matter.

Today and over the last four days in Toowoomba, officers of the CMC have been delivering a comprehensive series of presentations and workshops as part of our capacity building endeavours with both local government and the Public Service. That concentrated effort in Toowoomba is part of an ongoing program which is reaching out to regional and remote Queensland to provide information and assistance to local government and members of the public sector in relation to dealing with complaints, preventing and managing misconduct and the role the CMC plays in all of that.

Later this month we will launch a misconduct prevention web page designed to be a comprehensive resource for agencies seeking assistance on how to introduce prevention measures. That web page, which provides a great deal of information and detailed resources and detailed references, will be constantly available to officers in departments whose task is to prevent and deal with misconduct. Next week we will present to the parliament a major research report arising from our public hearings into the way sexual offences are handled by the Queensland criminal justice system.

These are by no means all of the achievements and outcomes that the commission will be producing this month, June 2003. But it does give a snapshot of the sort of work that our hardworking staff are doing every month of the year, and every month of the year we are producing these sorts of outcomes for the people of Queensland. I think these results point to just how productive the commission is at present. I can confidently flag that investigations already under way and projects already under way will continue to deliver significant outcomes in the future, as is happening at the present.

My submission to the committee would be that the commission provides very good value to the people of Queensland. In the budget process the CMC did not seek any special additional funding. What we have sought to do is to do more with our existing budget. We have, for example, created a new Confiscation of Proceeds of Crime Unit from within our existing resources. That unit is already proving to be highly productive. In the period since 1 January 2003, just a little over \$8 million in assets have been restrained. In New South Wales there are five different agencies carrying out the equivalent work to that performed in Queensland by the CMC. Those agencies are the Independent Commission Against Corruption, the New South Wales Crime Commission, the Police Integrity Commission, the Police Complaints Unit of the New South Wales Ombudsman's office and the New South Wales Police Witness Protection Unit. None of those agencies perform the additional significant research function that is also carried out within the CMC. I can assure you that the work performed for Queensland by the CMC for its budget of about \$31.5 million, equivalent as it is to what is produced by all those agencies in New South Wales, is produced at massively significantly greater cost in that state.

If we look to the full period of this review in looking back the three years, the achievements over that period of the review are really too numerous to mention. But it is the case that in all aspects of our work the commission continues to both manage the day-to-day workloads and at the same time constantly produce major outcomes. In crime, for example, in January of this year, the CMC, in an operation that had taken life within the commission, was able to involve all other law enforcement agencies operating in Queensland in the finalisation of a major investigation into an amphetamine drug network that resulted in 20 persons being charged with criminal offences and \$4.2 million in assets being restrained. Those are the sorts of significant outcomes we are achieving in the field of the fight against drugs and the fight against organised crime.

We were also the first Australian law enforcement agency to uncover an international paedophile network communicating on the Internet. The CMC did this after it identified a Queensland man. It pursued investigations utilising its powers of search. It was able to seize his computer and obtain evidence of a network spreading across North America and Europe of men who were sharing information about child sexual abuse. That Queensland man has been charged and is now before the courts.

In our misconduct jurisdiction, a series of major reports into allegations of misconduct or corruption have been delivered over the period. I do not need to go into great detail with you, but it is probably just worth remembering the Shepherdson inquiry, a CMC investigation that unearthed instances of electoral misbehaviour resulting, as you will remember, in the then Deputy Premier admitting to impropriety in the witness box before the hearings and resigning. You will recall the Cutting Edge inquiry, a significant probe into allegations of favouritism in awarding grants. In that case, no official misconduct was detected at the end of the day, but in these areas of public confidence it is just as important to be able to reassure the public that corruption has not occurred as it is to unearth it where it has occurred. Of course, in that inquiry we did recognise that the complaints probably arose because of inappropriate decisions that were made within the department and recommendations were made to deal with those process matters.

More recently, there was a significant investigation report issued into allegations relating to political interference in the prosecution of Mr Volkert. As you would recall, once again a report was able to lay open the decision-making process there and to provide public assurance that what had occurred was not official misconduct but did reflect some mistakes in decision making. You might recall the Button report into the provision of forensic services in a case where a man had been wrongly convicted. That was a report where there was a necessity to probe that miscarriage of justice which had occurred. We were able to make important recommendations as to how forensic evidence might be dealt with within this state.

Throughout the period there have been numbers of persons who have been charged as a result of CMC investigations. You will recall police officers who were convicted of drug offences as a result of a CMC covert operation. You would be aware of public servants convicted of fraud and other officers convicted of sexual offences in the course of their duties as public servants. Those are the sorts of outcomes that you find in our core jurisdiction, which deals with investigating organised crime, paedophilia, corruption and other misconduct within the public sector. But, of course, there have been a whole range of research and intelligence reports which have informed good decision making in Queensland and have provided advice, recommendations and guidance for the future.

**The CHAIR:** Excuse me, would this be a convenient time to break and interpose the Police Commissioner, who, as you would be aware, has a commitment this morning?

**Mr Butler:** Yes, that is fine. That is quite appropriate.

**The CHAIR:** Thank you very much, Mr Butler and Professor Steinberg.

**BOB ATKINSON**, examined:

**CLIFF JOHN CRAWFORD**, examined:

**ROBERT WILLIAM GEE**, examined:

**The CHAIR:** Could I just remind the press that the time for silent footage has now concluded and we would appreciate if you would finish up with your filming. Thank you very much and thank you for coming this morning. Good morning, gentlemen and commissioner. Thank you very much for coming this morning. We very much appreciate your time. We understand that you have another commitment later this morning and we are very happy to make arrangements so that you can speak with us this morning.

**Mr Atkinson:** Thanks for the opportunity to appear before you. I make myself available to the committee at any time. If you want me to come back at any time I would be happy to do that. I introduce my colleagues, Chief Superintendent Cliff Crawford from the Ethical Standards Command and Inspector Bob Gee from the Ethical Standards Command as well.

**The CHAIR:** Commissioner, if you would like to present us with a short address, we would appreciate that. Then we might proceed to a number of questions based upon your comments this morning and the submission that you were good enough to provide to the committee.

**Mr Atkinson:** I understand that time is short so I will try to be succinct. We, as you know and as you just indicated, did provide a submission. Yesterday we received correspondence indicating that there were three further areas that your committee would like to examine, and they are, firstly, cooperation and effective use of resources for the Queensland Police Service and the Crime and Misconduct Commission; secondly, the impact of investigations upon subject officers and upon the Queensland Police Service and how such impact could be reduced; and, thirdly—and I am not sure if you have a copy of this correspondence currently, but there was a bit of perhaps misunderstanding in terms of the intent of the last issue. I understand that it is best described as building the capacity of the Queensland Police Service to prevent and deal with misconduct by police officers.

I am happy to speak to those three points now if you wish, but we thought we might provide a further written submission to you to fully cover all of those issues. I just had a concern that in the time we have available today it would not be possible for me to provide a full submission and response to those important topics and for you to perhaps ask whatever questions you might have of me. Can I put the proposition—if you accept it—that we provide a written submission to you about those issues?

**The CHAIR:** Certainly. That is fine. I just indicate that the cameras are going to take two minutes of silent footage in relation to this part of the hearing.

**Mr Atkinson:** That is fine. Thank you for that. Given that that is the case, I might just make some broader comments in terms of issues generally. I have been the Police Commissioner now for two years and eight months. One of the things that I and we and the executive are trying to do and have, to date, successfully achieved is to introduce a process called operational performance review. I am very mindful of the fact that the service has a substantial budget and 11,500 people. Essentially, as part of that performance review process we are endeavouring to police in three ways. The first is traditional reactive investigative responsive policing, which will always be the bulk and the core of what we do; the second is prevention; and the third is causal factors and problem solving.

I am very much strongly committed to the proposition, however, that whatever it is we attempt to do in terms of those three aspects of policing, community support and confidence is fundamentally critical to our success in that community support and confidence will only exist if the public and the community have a belief that the people in their police department are ethical and honest and that they can have faith and confidence in them. It follows from that, of course, that we have to maintain standards.

One of the issues, again, that I am very mindful of is that the majority of sworn members of the service today would have joined the organisation after 1990. Of course that is almost some 13 years ago. The Fitzgerald inquiry took place between 1987 and 1989 and most of our officers today were not in the organisation at that time. Mr Crawford and I both were. Those of us who were would remember quite vividly what happened at that time—I do not mean in any sense that it was not necessary and that the Fitzgerald report and inquiry and recommendations were not

absolutely correct. But the police officers themselves, most of whom were honest, went through a great deal of angst. Those of us who went through that would be determined that we would never go through that again.

I guess the point I am trying to make is that the majority of officers today did not go through that experience and, as time goes by, the number of those of us who did will be less and less. There is a need for a return to constant vigilance. There is a history in some police departments in the Western World where there have been cycles which have basically been corruption, reform, slippage and back to corruption. At all costs, I want to avoid the slippage that would lead us back into corruption. I think we are well placed to do that, but equally you cannot afford to be complacent.

I indicate my support for the CMC and particularly the current chair, Brendan Butler, who has been very supportive of me. I find that he is someone I can ring at any time, and in many cases it is any time because situations as they arise are not locked into the 9 to 5 Monday to Friday time set. The fundamental concept of having a body such as the CMC so that, as the commissioner, I can refer matters to them in terms of maintaining both the credibility of the Police Service and public confidence is something that I would continue to very, very strongly support.

In simple terms, if I am to appear before the media in relation to an issue it is a good thing, from my point of view, that I can say to the community through the media, 'This is a matter that has been referred to the CMC.' In many cases, if not most, the matters that are referred are sent back to the police department to investigate the CMC oversight or overview, whether that is during the course of that investigation or subsequently. It is important from my point of view—and I thank you for listening—that I make that statement, because I think the continued performance of the police department is totally predicated on community support. Without an ethical, transparent police department's approach to that, we would slip and move into that zone of slippage.

I understand as well—and it is only an understanding; it is not based on having read the material—that the CMC may have submitted to you that they wish to have a role in terms of the investigation of terrorist activity and may be seeking additional powers in that context. If my understanding is correct in that regard, I indicate my support for that. Terrorism can be in many contexts. At the upper level it can, of course, be highly organised groups that were responsible for activities like 11 September in the United States. At the lower level it could simply be an individual who may even be slightly mentally disturbed but who has particular views and may engage in an act of terrorism. In between those two extremes, of course, there is a whole range of areas of possibilities.

I think we need to have an inclusive approach rather than an exclusive one. While it is true that the federal government agencies do have powers, I guess the point I would like to make is that if there were multiple incidents Australiawide in other states as well as Queensland, I suspect that the capacity of those federal agencies that do have the powers would be very limited. So if we had a capacity here in Queensland through the CMC, I think that would be a positive thing. It may never be used, but even if it was only that reserve capability it would be a useful thing.

Apart from that, broadly the police department's association with the CMC is positive. Obviously we will not always agree on issues and will have differing views on some matters, but that perhaps is really a healthy thing in some ways rather than a negative thing. Again, I would like to endorse, if I could, the high regard I have for the chair and the fact that, as commissioner, I get a level of support from the chair, Brendan Butler, which I regard as very important and I value highly. With that, if I have not appropriately addressed any topic that you want me to, please indicate and I would be happy to take questions.

**The CHAIR:** Thank you very much, Commissioner. We will have a number of questions that we would like to follow up with you in no particular order of importance. These are questions that are drawn from your written submission plus some of your comments this morning. I think very much in the forefront of the general public's mind are issues relating to either perceived or actual delay in investigations either by the CMC or by units of public administration—different government departments. What sort of strategies does the Queensland Police Service have in place to ensure that the increasing number of investigations devolved to you are in fact handled as quickly as possible consistent with thoroughness and effective outcomes?



**Mr Atkinson:** Thank you. It is a very important topic. I will just touch on some of the things we are doing in that regard. I say at the outset that the average time taken to finalise complaints in the year 2001-02 was 180 days. In this financial year, which is about to conclude, we have been able to reduce that to 97 days. So it has reduced from 180 days to 97. That is still a long time. Part of the difficulty in this area is that, whilst it is highly desirable to have all complaints dealt with as quickly as possible—and that is in everyone's interests, including the police officer who is the subject of the complaint—sometimes, in fairness to the officer and the complainant, it is necessary to have a full and thorough and comprehensive investigation, and the two do not always meet nicely. So there are unavoidably times when investigations can take longer than we would have liked.

We have introduced extended training. This will be the subject of more detail in terms of the further documented submission that we provide to you. We have introduced regional complaint managers in all regions at the rank of inspector. We have conducted a number of training courses and workshops. The training has national accreditation. We have introduced five additional commissioned officers at the rank of inspector at the Ethical Standards Command in terms of auditing complaints. We are examining the possibility of further expanding the process in terms of the possibility of introducing something that you might perhaps describe—I think it is an American term—as a 'no contest' situation.

So where an officer is the subject of a complaint—of course, this would obviously have to be approved at the appropriate levels—an officer might be able to say, 'I am not saying that I am guilty of something significantly inappropriate here, but I accept responsibility for my behaviour on this occasion.' There might be a speedy and quick resolution with perhaps a set of prescribed sanctions in terms broadly of the sort of behaviour. My understanding is that—if you do not mind, I will ask my colleagues about this—at the end of the day the number of complaints that result in a finding of misconduct is very small.

**Insp. Gee:** Less than one per cent, I think. In terms of demotion or any sort of penalty, it is less than one per cent. So roughly, of 2,500 complaints 20 might end up substantiated with some sort of penalty. I think we might have three or four dismissals a year on average. It is a lot of work for very limited outcomes sometimes.

**Ms BOYLE:** I have seen the regional complaints unit work. In Cairns it works very well. I have had business associated with a couple of matters recently, and the response has been quick and timely and the communication style with the people who have been complaining has been excellent, I must say. So that is a really good process. Nonetheless, I am still aware that when people come into my office and want to complain about the police a lot of them do not have trust that it will be properly done. They really want it to go to the CMC because they cannot be sure that the police will really look at themselves closely, even though on the occasions I have followed it through and seen the outcome it has been for most people a satisfactory outcome.

If you would hold that issue, that parallels another issue, which is that to them their complaint is very important. They are using big words such as 'corruption' when in fact, when you get down to the nub of it, often they are complaining about maybe being brushed off or some unpleasant behaviour that really is not misconduct let alone corruption but maybe is not good service from the perspective of the client, as it were, at the time.

Keeping in mind those issues and the fact that those complaints, from your professional point of view, might not be major complaints but nonetheless are major to the little person who is making them: how are you better going about increasing confidence and trust on the part of the public so that more of these complaints can be handled directly by yourselves without recourse to the CMC, unless there really is evidence of some significant level or potentially significant level of misconduct or worse?

**Mr Crawford:** I think the major thing we have to do is conduct a marketing campaign to explain how the complaints process actually works. Our ultimate aim from the complaints process is to in fact prevent that behaviour happening again, by addressing it through a causation approach, and at the same time let the community know that at the end of the day all of our complaints are subject to monitor, audit or review by the CMC. So I really think it is a process that we have to look at in marketing and explaining the process more than anything else, and perhaps even in conjunction with the CMC developing something along those lines.

We have in fact developed a brochure on how to make a complaint against a police officer. That outlines the various processes to a degree, but I think that is one strategy we will have to look at. Ultimately, at the end of the day, with the new regional complaints managers the whole process is working far more effectively. We have a handle on the timeliness, to get these matters dealt with in an appropriate time frame. Again, at the end of the day it will come down to the regional complaints manager explaining and being available to explain to the complainant what we hoped to achieve and whether we did achieve it.

**Mr Atkinson:** Most of the complaints against police are in relation to the sorts of things that I think you have alluded to in the sense of being rude, discourteous or not providing feedback—those sorts of things. I would think that in most of those cases the member of the public who makes the complaint does not want a six-month investigation. They want the officer to be spoken to, they want some assurance that the officer acknowledges that the behaviour was inappropriate and then they want to move on with life quickly. I think that probably is the case. If we continue to try to develop our capacity to do that, I think that will be worth while as well.

I share your interest, obviously, in terms of community confidence. Again, one way we will do that is through our daily interaction with the public—if we can be professional, courteous and respectful of people regardless of the circumstances in which we come into contact with them. One of the difficulties is that, regrettably, police interaction with the public is rarely under pleasant circumstances. It is because the person concerned has a missing child, has been the victim of a crime or is involved in some sort of domestic argument. It is usually not under the most ideal of circumstances. We do not tend to see the public at their best, either, when that happens. That is a factor as well.

To respond to that particular question about community confidence, I think the bottom line for us is that on a day-to-day basis, in the thousands of interactions we have with the community, we maintain the highest levels of professionalism. The police department needs to improve in this area. It is part of that operational performance review process that I talked about at the beginning. It is a component of that. We need to improve our client service standards. One of the things we need to recognise in that regard is that just because we are the only police department does not mean we can have lesser standards than people who are in competitive businesses, where if they are not providing a service they go out the back door. We have to lift ourselves to the same level as industry and business and provide that level of client service standard, the same as they do. We have a little way to go with that yet.

**Mr HOBBS:** An issue of concern worldwide and in Australia is terrorism. We are very fortunate, but we are not immune to terrorism. A while ago you mentioned that you supported the CMC seeking additional powers to tackle terrorism in Queensland. What would you envisage those powers would be? How many officers would you have in Queensland actively working on terrorism investigations? If the CMC had those powers, how would you envisage the QPS and the CMC coming together to help protect us in relation to terrorism?

**Mr Atkinson:** In relation to the first part of that question, I did say, and it is the case, that I have not had the opportunity—I hope I have not been remiss in that regard; I do not think I have—to see the CMC submission to you, but it is my understanding that as part of that submission it has commented on the topic of terrorism and raised the issue of additional powers. My comments were in a very broad context. Regrettably, I am not able to indicate specifically what that might or might not be. My comments were in the broad context that I would be broadly supportive of that approach on the basis, at the risk of sounding a little repetitive, that I think we need an inclusive rather than exclusive approach and that the federal authorities, if there were multiple terrorist incidents throughout Australia—for example in the ACT, New South Wales, Victoria and Queensland—may not have the capacity to respond to all. So it is a question of capacity and potential.

In relation to the second part of your question, I believe we are well placed here in Queensland. We have two support commands—State Crime Operations Command, which has some 600 detectives, and Operation Support Command, which again has some 600 personnel, which is all of the specialist support units. As well, we have recently established a terrorism unit—not in an operational sense, because we already have that with our Special Emergency Response Team. The terrorism unit parallels the unit that has been set up in the Premier's

Department. It is a policy, training and procedural unit. The approach generally, consistently, is one of prevention first, response capacity second and consequence management capacity third.

I think we are as well placed as anyone in this area. Having said that, I would like to assure you and the committee that we are not complacent about this, either. It really is a day-to-day proposition. There have been some positive things. We have recently hosted here in Queensland—the state government and the police department together with the FBI—the largest law enforcement conference ever held in Australia. The theme was terrorism. We organised that before Bali, so I would like to think that we are a bit alert. At that conference we had over 420 representatives, 16 countries represented, and some leading keynote speakers from the United States that the FBI provided. There are other things that I am yet to discuss with the Police Minister that I would like to put in train, but I think we are as well prepared as anyone.

In terms of the investigative capacity and the third part of your question, obviously things would be prioritised. If there were a terrorism incident or reports of possible terrorist activity, we would apply all of the resources necessary to that and, if need be, take people away from other duties to respond, because it would have a priority over other things.

**Mr HOBBS:** Apart from the recent conference you have had, is there constant contact with other jurisdictions and other states about activities that might be occurring in relation to terrorism?

**Mr Atkinson:** Yes. Again, there is always scope for improvement. One of the things that always comes out of terrorist exercises is the need for communication and coordination. That is a constant. The deputy commissioners meet twice a year under what is known as the National Counter-Terrorism Committee, formerly referred to as SACPAV. They maintain a liaison. I have good relationships with the federal government agencies, such as Dennis Richardson, the head of ASIO, and Mick Keelty, the Commissioner of the Australian Federal Police. We have an excellent relationship with the federal government agencies here in Queensland. We meet on a regular basis with ASIO, the AFP and other agencies such as Customs and Immigration if necessary. On the ground here, particularly in Queensland, the relationship with the federal agencies is very good, in my view. We have a capacity to avoid things falling between the cracks, but of course that is something that you can never be complacent about.

**Mr McNAMARA:** I was interested in the suggestion at the end of your submission that you had some concern about a potential conflict of interest between Major Crime and Misconduct. The concern was that having those under the one roof somehow increases the risk of corruption. I guess it is obvious that people investigating corruption are at risk of corruption. It is hard to stay spotless when your job is to muck out the pigpen. Nevertheless, would you like to elaborate on why you have some concerns about Major Crime and Misconduct being together and what it is that you think leads to a greater risk of corruption?

**Mr Atkinson:** As you will recall, the previous structure was that the CJC as it was existed as a separate entity to the Crime Commission. Of course, the two have been merged. It is simply an observation of the need for alertness and awareness. There is no suggestion that there is any corruption there.

Whether police are working at the CMC, in the former Crime Commission role, or in the police department—in the drug squad, the major crime squad or in areas of prostitution—where there is that exposure in terms of organised criminal activity there is always the need for constant vigilance, awareness and alertness. This is my own personal view. Constant exposure, particularly, say, in the area of drugs, can lead to a diminishing of standards and values. I would not say that there is necessarily an aligning of views, but it can lead to a diminishing of standards and values. If you were constantly exposed to persons who are involved in drugs, then you could lower your own standards, in terms of the law particularly, in terms of what is appropriate and what is not appropriate. So I think we just have to be on guard there and be aware of and alert to that.

There are very large sums of money involved in these things at times. Most of my career was spent as a detective. I was stationed for nine years at Noosa Heads. There is a particular lifestyle there that is perhaps trendy. People could fall into accepting that that is the way things are. Of course, it is not. But it is the way things might have been within a certain group of people at a certain place at a certain time. I hope that makes sense.

**Mr McNAMARA:** But you are saying it is an aggregation of potential corruption, that there is not a multiplier effect, that having the two functions together does not make it more likely?

**Mr Atkinson:** No, not at all. It is just that now the function of investigating major and organised crime is within the one body.

**The CHAIR:** The Queensland Police Service itself has a large number of personnel and a large level of resources devoted to major and organised crime. The CMC is not exclusively involved in that activity. Secondly, the Queensland Police Service has the Ethical Standards Command and related units to support the anti-corruption initiatives inside the Queensland Police Service. Would not the same tension that you draw attention to inside the CMC between those involved in major crime and those involved in anticorruption activity exist between those types of activities and people involved in those activities inside the Police Service itself?

**Mr Atkinson:** That is a very good question. Inevitably, that difficulty is going to always perhaps be there. For example, a district officer in Cairns one day may have to take disciplinary action against an officer for being overexuberant in extending the officer's rights within the law to search someone or their car—they have gone too far—and the next day there is a spate of break and enters and the same commissioned officer is saying to those people, 'I want you to get out there and catch these people for these break and enters.' There will always be that tension in terms of the balance. I think, though, that there are some very healthy signs in the Police Service in that regard. One of those is self-reporting, which is increasing. This would never have happened pre-Fitzgerald, in my view—it would have happened very rarely, whereas in recent times in a number of cases police officers have reported another police officer for quite inappropriate conduct, such as stealing drugs from an exhibit room.

I suspect that pre-Fitzgerald the code of silence would have prevented that from happening. I think there are some positives there, too. Your point is well made, but I think we will never avoid that. There will always be a balance between the need for ethical standards and vigorous, enthusiastic investigative policing. In some cases, it is extremely clear; there are certain behaviours that are clearly unacceptable. But there can be borderline cases, too. I think that might have been the point that you are alluding to.

**The CHAIR:** In other words, your observation is not an argument against the merger of the Crime Commission and the CJC?

**Mr Atkinson:** No, not at all. If I have given that impression, please let me be clear that I think that is a good thing. For what it is worth, that is my view. I think it has the capacity and the potential to work very well. I think the investigative crime capacity with the CMC can be a very helpful thing for the Queensland community, especially with the investigative hearing power, which I do not think the Police Service should ever have. But that capacity is needed and it resides with a separate body from the Police Service. I think there is great potential there.

**Mr FLYNN:** I share your support for the functions of the CMC on a broad basis, having had, as you would know, some experience of service life pre-Fitzgerald. I wish to touch briefly on an area not greatly highlighted. You indicated in your submission that there was a tendency by the commission to micro-manage the service in operational areas. Can you give the committee an example of where micro-management is of concern? Could this include the deployment of resources for operational beats, which I would have thought came under a research function?

**Mr Atkinson:** We might have been a touch harsh and oversensitive there.

**The CHAIR:** We are all robust organisations.

**Mr FLYNN:** I understand that. Nevertheless, you have mentioned it.

**Mr Atkinson:** Yes, indeed. To be blunt, it is all very well to make recommendations, but I think there is an increasing demand on the police department, understandably. Regrettably, I think within our society there has been a shift in responsibility to people such as yourselves, to police services, education departments and health departments to pick up a level of responsibility in society that was not there previously in terms of behaviour. It seems to me that every time there is a problem in society there is an expectation that a new law will be created and that the enforcement authorities will be there to deal with it. It is understandable, but I do not know that that is always the best approach.

**Mr FLYNN:** Is this a matter of, hopefully, some resolution between the recommending body, in this case the CMC, and the Police Service?

**Mr Atkinson:** I think that is certainly improving, from our perspective, anyway. I will give one example. The CMC supports police officers being issued with tape-recorders on an individual basis. I have two fundamental difficulties with that. Firstly, there is no evidence at the moment that members of the public or the community are subject to police verbals. There is not evidence of that at all, or not that I am aware of, anyway. There are no longer court cases where the defence to the case is, 'I didn't make that confession or admission.' It is all tape-recorded. If it is not tape-recorded it is not usually admissible. No longer do we have voir dires for three days in District and Supreme Court trials. That has been the case for a long time. There has never, ever been, to my knowledge, a complaint where someone has said, 'Yes, the police have doctored the tape.' I do not think that has ever happened. We estimate that the cost of issuing personal issue tape-recorders to all police would be in the vicinity of \$30 million. To my mind, that money could be far better spent in other ways.

I am sure that in many cases recommendations are well intended. I am sure that other people would come before you and give counterviews to the views I have just expressed about that proposition for the individual issue of tape-recorders. Could I just extrapolate on that again? Theoretically, if every one of the 8,500 police were issued with a tape-recorder and they tape-recorded only one conversation a day, after a week—my maths will not be really great here—there will be 60,000 tape-recordings. They have to be stored, retrieved and perhaps transcribed. I am trying to make the point that there are logical and practical implications sometimes of recommendations that need to be thought through.

**Ms BOYLE:** One of the big issues raised in a number of the submissions—yours and the CMC's—is the problem that arises for the CMC when it has recommended charging to the DPP but there has been a delay due to the workload in the DPP. One of the proposed solutions is that officers of the CMC should have the authority to charge offenders or perhaps even go so far as undertaking prosecutions themselves. I notice that in your submission you have recognised the problem in terms of the implication for officers seconded to the CMC not having, as it were, ongoing practice at arresting, preparing briefs and being engaged in further processes. What do you think would be the most efficient way to manage all of that?

**Mr Atkinson:** I might invite Mr Crawford to comment as well. Broadly, the CMC should be able to initiate its own prosecutions. I cannot see any reason as to why it should not. If it needs some additional legislative power to do that, I think that should be given consideration by the legislators. I think there will always be some cases where it is in the community interest for the CMC or the police department for that matter not to make the decision for it to be referred to the DPP. But I think those cases are rare. Certainly, it is very rare that the police department refers matters to the DPP. I am conscious of its workload and I do not burden it unnecessarily.

However, one good example is the current Nancy Crick investigation on the Gold Coast. The current legislature states that anyone who assists another to take their own life is guilty of an offence punishable by life imprisonment. I think a good police department will be conscious of issues where there is a broad range of community views. I am not saying that is the case with this matter. In terms of the issue of consenting sex between male adults, when I first joined the police department that was a criminal offence but it is no longer a criminal offence. In the period of a couple of decades that has changed from being a criminal offence to no longer being a criminal offence. The law will continue to evolve. People such as yourselves, the elected representatives of the community, will continue to face those challenges. For example, we have referred the Nancy Crick investigation to the DPP. I think it is appropriate for it to make a decision as to whether there should be a prosecution. I see those situations as being rare.

**Mr Crawford:** I was involved in the Professional Standards Unit, which first kicked off following Fitzgerald and prior to the Ethical Standards Command coming into being. The role of the PSU and now ESC has always been that if an investigation is undertaken by the CJC or the CMC it investigates the matter and forwards it to the police department to institute the criminal proceedings. It always amazed me as to why that took place. All that did was require either myself or one of my staff to spend a considerable amount of time reading through the brief to satisfy ourselves that there was a prima facie case before we could institute the proceedings. All we did was take out the summons or institute the proceedings. We took no further part. The

commission went along and gave the evidence, because we had no evidence to give. It had collected it all. That seems to have carried on.

I know of two occasions where it has in fact taken initiative action; it has investigated the matter and then effected the arrest. So it has happened in the past. I cannot see any need for it to come across to us to examine. And similarly with the DPP. I prosecuted for many years in the court as well as being a detective in days gone by. There is no reason why a police officer attached down there cannot, upon the preparation and examination of the evidence—and they have a number of very experienced lawyers down there to provide advice during the course of that investigation—initiate the actual proceedings in the court.

I think there was some provision under their act which required them to report on the matter. Whether that was the requisite requirement for them to report to DPP prior to instituting action, I do not know. But that may have been the basis on which they took that particular course of action. But from a practical perspective, I think the current process only creates further taskings for people in another organisation. Unless the matter is of significant public interest or if there is a concern about the cogency of the evidence or some other issue, I cannot see why a police officer, particularly there, when they have the advice and guidance of other lawyers at hand, cannot initiate proceedings straight off. They are my personal views, having been involved at the other end of having to have my staff and myself take up a considerable amount of time reading a brief that they are already familiar with.

**The CHAIR:** In your experience, have there been many occasions when the brief has been referred over to you by the CMC and, on review by you, there has been a lack of agreement at your level with the recommendation that has come from the CMC about initiating prosecution? In other words, is an effective vetting role being played?

**Mr Crawford:** I know of only one instance, and that was many years ago when I was in the Professional Standards Unit. It came across as a rape brief against a police officer. I examined it and I was not satisfied with the evidence. It had been to the DPP as well. I took it to the Government Medical Officer, because it all related to medical evidence that had been given. As a result, I went back and saw Mr Miller, who was the DPP then, and had discussions with him. We had two witnesses further interviewed and, of course, the matter never proceeded because there was not evidence of a rape at all. But that is the only occasion out of the many we have received where I have had a difference of opinion from the people who forwarded it over. Generally, we agree, because the evidence is there. But what it does do is cause a further vetting process which in all the instances that has been instituted appears unnecessary.

**The CHAIR:** Could I just say that you have already indicated that you are going to provide us with a supplementary submission and that we do appreciate that. Could I invite you to pick up on a couple of issues in that supplementary submission that perhaps time this morning does not permit us to examine? Could I indicate these: firstly, further comments from you regarding the practical systems that the Police Service has in place to monitor the question of timeliness of investigations by police; secondly, you might like to favour us with your detailed views of the CMC's specific suggestions on law reform in the terrorism area—we certainly thank you for your general comments this morning; and thirdly, the issue raised by the CMC's attitudes to police survey 2002, particularly in relation to the negative views of young people towards police and their apparent lack of confidence in the complaints process and negative experiences of the treatment by police of young people. I think the committee would appreciate the service's comments about that aspect of the public attitude survey and what practical initiatives the service sees could be taken in relation to that material and the position of young people, particularly the handling of complaints.

That is my short list. It has been a very interesting discussion this morning and we would really appreciate your further considered views about those matters and any other matters that you want to put to us. All of the submissions, save for a small number, that have been lodged with the committee have been tabled and are available for all members of the public in Queensland and all stakeholders to consider themselves. We would be happy to receive any supplementary submissions in relation to the comments of other agencies.

**Mr Atkinson:** Thank you. We appreciate the opportunity in being able to provide that further submission. Subject to your time and availability, I would be more than pleased to be able to come back before you and take questions on anything we put into the further submissions on

the three topics in the letter yesterday and those three topics. We will do that. Are you in a position to give me a time frame?

**The CHAIR:** At the risk of perhaps seeming to micromanage the service, as soon as you are able, but within a number of weeks if that was possible—three to four weeks.

**Mr Atkinson:** We could definitely achieve that within two weeks easily I would think—three weeks.

**The CHAIR:** I am offering four. You might be wise to take it.

**Mr Atkinson:** Yes, I think I should have done that.

**The CHAIR:** If there are no other questions, thank you very much for your time. We will now hear again from Mr Butler.

**Mr Atkinson:** Thank you and thank you for the opportunity.

**BRENDAN BUTLER**, examination resumed:

**The CHAIR:** Back to you, Mr Butler, and thank you very much for the interposition of Mr Atkinson.

**Mr Butler:** No, that is fine. Thank you, Mr Chair. I will start by making some comments about the effect of the new legislation, if we can call it that—the Crime and Misconduct Act—because I think that it is very important to some of the other issues that will be of concern to the committee, like timeliness and the way in which the commission is handling matters today.

It is often the case in people's memories and submissions that everything over time blurs together so that people are talking about the way things were managed under the CJC some time ago and matters that arose out of that. Meanwhile, hopefully, we have moved on and things have moved on. The CMC has been in existence for just 18 months now. During that time I think that we have been very successful in bringing together the staff and functions of the former Queensland Crime Commission and the CJC. But, as you can imagine, it has been a period of significant change for the organisation. It is undoubtedly the case that an event as significant as this, particularly when you are bringing two rather different organisations together and all that that involves, tends to be destabilising for a time.

Certainly in the period leading up to the merger, when there was uncertainty about decision making, uncertainty about who would be leading the new organisation, uncertainty about the management and so on, all of that had an impact, that I noted, on the productivity of both the organisations in the periods leading up to the beginning of last year. Of course, in the period following the merger, a degree of organisation or attention and effort had to be given to giving effect to that. There was some restructuring of the organisation that was necessitated by the new legislation. On the other hand, the combination of the resources of the two former commissions and the implementation of the significant statutory changes that occurred in the Crime and Misconduct Act provided an opportunity for improvement which we have seized with both hands. I think today the commission is stronger for it.

The changes initiated by the act, particularly from the point of view of the crime arm, has had the benefit of allowing it to share in well-developed research, intelligence, surveillance, IT and corporate services functions that were not available to the crime investigators in the past. As I said, we have been able to create a new unit dedicated to the confiscation of proceeds of crime. We have been able to draw on the strengths of the former Queensland Crime Commission, which I think had been very effective in the work that it had done. There has been no attempt to change the model that was conceived there, which is a model for identifying and prioritising the risk to the Queensland community in the areas of organised crime and paedophilia, and trying to prioritise the work of the commission, which is very small. We have only very limited investigators working in this area, but they work in conjunction with police task forces, value adding to the effort of the Queensland Police Service in these important areas of organised crime, major crime and paedophilia. That is now working very well and is very productive. Indeed, in the past year more investigations than ever have been completed and we are poised, particularly in our paedophile Internet investigations, for a new era of significant productivity.

On the misconduct side of the organisation, the misconduct function has benefited from the clear direction provided by the new act and the enhanced power to oversee the way agencies deal with misconduct complaints. It has given us direction and opportunity which did not exist under the Criminal Justice Act, and I will talk about that a little more now.

I think this period of intense change has been driven within the organisation by a desire to continuously improve the way we do things, to be flexible, to be creative and to learn from criticism and mistakes. I think it is true to say that the former CJC, operating under the old act, struggled in responding to the thousands of complaints received each year. It struggled to manage a backlog of matters that needed to be investigated. That allowed the time taken to finalise some matters to push out to what I would consider to be unacceptable lengths.

With the benefit of the Crime and Misconduct Act and with the focus that we have given to the issue of timeliness since then, we have worked very hard to restructure our approach and to bring about what the figures show are dramatic reductions in the backlog of longer investigations. Of course, this does not mean that there will no longer be long investigations. As Mr Atkinson said, it is the nature of some investigations that, if they are going to be thorough and



effective, then they will take some time. However, the length of any investigation has to be justified and there has to be a focus on delivering timely results.

Of course, critics will point to some specific cases as examples of delay. Some of these may relate to cases that arose from some time ago and we would expect to be handled differently today. In some there is going to be fault on the part of the commission. Like any human organisation, errors will occur from time to time. Processes will need improvement in the light of experience, and in some the delays are not the fault of the commission at all; they are attributable to other agencies or external events.

Where we are at fault, we endeavour to acknowledge that—acknowledge the problem and work hard to ensure that it will not happen again. I think that overall the commission needs to be judged both in terms of the progress we have made and the progress that is evident in reducing backlogs and improving systems. Much has occurred in that regard in the past 18 months.

Also we must be judged against the total number of matters we process. In addition to some 2,900 complaints that are dealt with each year, there is a similar number of matters that come to our complaints officers and are dealt with directly with the complainant because they do not relate to our jurisdiction, but information and assistance is given to those people. There are many thousands—perhaps even tens of thousands—of documents that have to be read and processed as part of all that work.

We would like to think that we could get it right for every single matter. We would like to think that every matter was timely. We certainly are striving for that. But if occasionally in retrospect a matter could have been done better, then we want to acknowledge that and learn from it. Mr Lambrides will, in his presentation, be speaking at considerable length and in considerable detail about how we are managing this issue of timeliness.

One of the significant contributions that the Crime and Misconduct Act made was to increase the powers of the CMC in its monitoring role—the powers to supervise and control the way agencies investigate complaints. In this regard, the act did a lot more than just merge two organisations. As you know, the Criminal Justice Act had been around for well over a decade. It had been cobbled together originally at a time when there was little experience of how to run anti-corruption commissions and over time it clearly had weaknesses. In drafting the new act, the government was able to address much of that. As you know, the new act provides quite definite guidance to the CMC as to the way in which it should carry out its misconduct function.

The logic of all this can be understood by reference to our police jurisdiction. You would be well aware that in 1995, 1998 and 2001 parliamentary committees, reporting on the CJC, supported the progressive devolution to the Police Service of greater responsibility for handling complaints against police. In saying that, it had to be subject to CJC oversight. The Police Service responded. It created the Ethical Standards Command in 1997. In 2000, the CJC and the ESC commenced a joint trial of a new complaints handling process. As you heard from the commissioner today, that process has now been rolled out across Queensland and in many centres it is working very well.

These moves towards giving police more responsibility were all conferred by the Crime and Misconduct Act with the principle, which applies to police and other agencies, that action to prevent and deal with misconduct in an agency should generally happen within that agency. This is subject to the overriding responsibility of the CMC to promote public confidence. I think that that is the right way to go. A truly mature Police Service must accept responsibility for its own integrity. Police managers cannot be expected to accept responsibility if they are not given the ability to manage important aspects of their officers' behaviour.

This was a view that was promoted in New South Wales by the Wood royal commission. As in New South Wales, the Crime and Misconduct Act recognised that if the service were to have substantial additional responsibility for complaints management, then enhanced oversight powers were necessary to provide the checks and balances. The act gave that to the CMC.

What we are doing in response is continuing to develop a comprehensive program for monitoring police handling of complaints. Each year, many hundreds of reviews are carried out out of police internal investigations as part of our monitoring, reviewing and auditing function under the act. We are doing this in a structured way. We are doing it in consultation with the

Police Service. We are also working with the Police Service to build the capacity of the Police Service to assist and deal with complaints of misconduct and other complaints.

That is very much the focus which has been enhanced by the new act. Having said all of that and outlined the importance of police bearing responsibility, it is also necessary to say that, while the majority of complaints against police relate to less serious matters or one-off events, we do know that a small proportion of police are capable of real criminality. Drug dealing, bribery and the theft of exhibits are not beyond those few individuals. Such behaviour is beyond soft approaches. It requires effective enforcement processes which are usually deployed against other criminals.

The commission has effective proactive, covert investigative techniques and it uses those to detect, investigate and prosecute that serious behaviour. We have those resources and capabilities. It is fundamentally necessary for the organisation to maintain those resources and capabilities if we are going to provide the sort of deterrent and responsiveness to prevent true corruption re-emerging within the Police Service or other units in the Queensland public sector.

I entirely endorse what Commissioner Atkinson said about being very careful that backsliding does not occur. Continuing vigilance is required. Fortunately, I think, for Queensland the CMC is able to provide that vigilance, but does it in a way which ensures that the Police Service itself is able to deal with the vast majority of complaints in a way that the public can have confidence in.

I think it is true to say that the relationship with the Queensland Police Service has changed dramatically in recent times. The CMC has a very significant partnership with the Police Service in its crime function. The nature of our act provides for police task forces to carry forward the major crime investigations. The commission tends to be a catalyst, an initiator. Through its intelligence processes and through its development of operations it is able to identify real risks in the area of organised crime, pursue those, convince the Queensland Police Service to accommodate those, and take them forward.

With our misconduct function we have another important partnership. I acknowledge the very important role that the Commissioner of Police plays in all of that. He has shown very significant positive leadership in this area of rejecting backsliding and of upholding strong standards within his organisation. He has continued to be very supportive of the role of the CMC—an oversight body for the Police Service.

As the public attitude survey you spoke about shows, over 90 per cent of the public consider the police generally—or mostly—behave well. That is a very positive message about the way things are in Queensland at the moment. If you look carefully at the survey results, of those who were dissatisfied—and they were a very small percentage—overwhelmingly they were dissatisfied with things like rude behaviour, unreasonable behaviour; they were not talking about illegal or rule-breaking behaviour in their concerns. A very low proportion indeed raised issues like corruption.

It is certainly true that the vast majority of complaints that are coming through are in this area where the police themselves need to be responsive to the public's concerns. What the CMC is structured to do, is doing now and will take even further into the future, is comprehensive monitoring through its review and audit functions of the way in which police and other agencies carry out those functions. It supports that, particularly in the public sector jurisdiction, with a coordinated program of building the capacity of departments and local government. I think that is very important.

This has placed a lot more burden on our officers. In the last couple of years the commission has moved from the situation in the past where departments were dealt with on paper, with letters going backwards and forwards. Now we put a positive onus on our officers to deal directly with their counterparts in the departments, to consult when assessments are made, to work with departments, to support them at the time of investigations and to improve communication. That places a greater burden on our officers, but it is very crucial in ensuring that this system works well not only for complainants but also for client departments.

The expectations that are placed upon the commission are something of a challenge. If you read the newspapers or watch the television you find that there is an expectation that every crisis in government in Queensland can somehow or other be dealt with by the CMC. At the end

of the day, compared to other organisations like the Police Service, we are a very small organisation. As I have said, we have a great many jobs to do within the budget that we are given. Those jobs, like witness protection, are very important. It is a dedicated function that we carry out. We have dedicated officers who do that. We have delivered very significant results in that area. It is important for the criminal justice system in Queensland and for good policing. We need to continue to carry out those core functions at the same time as meeting the expectations in other areas.

Our aim is for best practice in each of the areas where we work—whether it is witness protection, whether it is intelligence where we are providing courses for interstate agencies, or whether it is research where we have a national and international reputation. All of that is carried on while we respond to the complaints load and while we deal with crime.

As you heard, very often we have to be flexible enough to respond to emerging matters. As the Commissioner of Police said, sometimes he rings up and indicates that he needs the CMC to get involved in an investigation at very short notice. We respond to that when matters arise in the public sector as well. To do that we need to maintain a degree of flexibility and an ability to move resources to manage those workloads.

Before I finish, I should speak very briefly about accountability, because for the public generally and for some of the people making submissions to the committee, the accountability of the organisation is an important factor. The committee itself would be very aware of the significant role it plays in that accountability. It is a role that allows us to be confident that the committee, either through its own officers or by calling in the assistance of the Parliamentary Commissioner, is able to investigate any allegations or complaints against the commission or its staff.

The issue was raised a bit earlier about the risk for police officers and other officers who are working in areas such as organised crime and corruption to not themselves get caught up in the criminal milieu. We need to be vigilant about that. An organisation like the CMC is constantly analysing the risk, maintaining its systems, ensuring that there are good internal reporting processes and maintaining a separation between our misconduct investigation functions and our crime investigation functions so that the two do not interact and where any suspicions arise we bring those to the attention of the committee so that they can be independently investigated or oversights. I am confident that the accountability processes that are in place are rigorous enough and sufficient to be able to provide the protection that the public requires for an organisation with the sort of powers we have. I think accountability within the organisation starts with the commissioners. As the committee would know, my fellow commissioners come from all walks of life. Each of them is a very distinguished person in their own professional area. We have five commissioners who make the decisions for the organisation and they bring to bear their own life experience and their own experience in their professional areas. There is really no possibility of a deviant point of view developing, because it is always checked by that range of accountability at the top of the organisation.

Even within our investigative teams and our other areas, we work in multidisciplinary contexts. As the commissioner said, there is a risk for investigators investigating organised crime, but our investigators work in teams that involve police officers, civilian investigators, lawyers, civilian intelligence analysts, administrative support and so on. The actual mix of people within those teams provides a degree of accountability in the process and means that if any problem arises the fact that it will be reported is quite certain. I would suggest that the CMC really has more accountability mechanisms in place than any equivalent organisation I can think of. To date, to my knowledge, they have worked effectively and I believe they will stand the test of time.

I think it is probably appropriate that I finalise my comments with that. Later in the sessions there will be an opportunity for us to address some of the submissions we have made and also provide assistance to the committee in relation to some of the matters that have been raised in questions with the commissioner, for example. Much of that will be dealt with in the detailed presentations that will be made by my colleagues the assistant commissioners and directors who will be presenting also. Thank you for the opportunity of making that presentation.

**The CHAIR:** Thank you, Mr Butler. The committee will adjourn for 15 minutes.

The committee adjourned at 10.50 a.m.

The committee commenced at 11.09 a.m.

**JOHN CALLANAN**, examined:

**The CHAIR:** Good morning again, ladies and gentlemen. We will resume this public hearing of the committee. We have with us now Mr John Callanan, Assistant Commissioner of Crime, joining the Commissioner, Mr Butler. Mr Callanan, if you would like to make a few brief opening remarks we would be happy to hear them. We would be particularly keen to move to an opportunity of interactive questions and answers.

**Mr Callanan:** Thanks, Mr Chairman, and I will be brief. I thought I would perhaps comment on or concentrate on the merger and the implications the merger has had for the investigation of major crime and the ways in which it was undertaken by the Crime Commission. Might I confirm what Mr Butler said—that is, essentially there has been little change in the operational philosophy that is applied. The changes have rather been by way of enhancement to a number of our capabilities. There have been resource enhancements, of course. Again, the chairman referred to some of those. The fact of the matter is that, as the Crime Commission, we had six seconded police. We now have nine police full time attached to crime investigative activity. They are spread across, as the submission indicates, three teams—two in organised crime and one in criminal paedophilia. They operate under the direction of an operations coordinator in organised crime and criminal paedophilia and the overall effort is coordinated by our director of crime operations.

Additionally, obviously there has been enhanced corporate support to crimes simply by the availability of more corporate support resources. The savings realised in the process of the merger, again as Mr Butler commented, permitted us to establish an assets confiscation unit which has been, I might say, extremely productive both in terms of real money which has been restrained and also in terms of the disruptive effect that activity has on crime syndicates in Queensland. One thing that I have found is that, as the Crime Commission, we struggled when we needed to backfill vacancies, even quite short-term vacancies, particularly in our investigative staff. We seem to be able to manage that much better because we are able to access police staff across the commission and it is not so much a matter of crying to the QPS to assist us in filling some of those vacancies which occur from time to time. I think the other notable resource implication for crime has been the roll-out of the standardised environment in information technology and our ability to access the Internet through the CMC's enhanced IT capability.

The QCC, I suspect, was one of those organisations Mr Butler referred to as one that was not subject to the same kinds of accountability and transparency requirements that the CJC and now the CMC is, and I think that is probably correct. As the Crime Commission, of course, we were responsible to parliament and the people of Queensland through a management committee, annual reporting and the usual fiscal reporting requirements. As a part of the CMC, we are, of course, accountable to the commission itself—that is, the commissioners. I can certainly again confirm what Mr Butler said about their wide and disparate experience of life, permitting them to look at some of the decisions that need to be made in the crime area, particularly in the case obviously of Mr Pincus, with a particularly strong focus on legal issues and legal implications. I think that has benefited. Under the legislation I am permitted to attend commission meetings—not to vote, of course. But I find the input from commissioners very helpful. It broadens our vision at times and causes us to look at things that are obviously of a high community priority, but perhaps do not fit so readily into our operational philosophy.

Of course, the accountability mechanisms are now in place which ensure our accountability to parliament through this committee. Nothing of that kind existed in the case of the QCC. My experience of it to date is to welcome it. It keeps one's eye firmly fixed on the ball and one tends to make sure at every point that, recognising that what is done may be subject to scrutiny, what is done is wholly appropriate. The merger, of course, again has been emphasised in the submission and in some of Mr Butler's comments. It has enhanced the strategic intelligence approach to organised crime, in particular, investigations. It has also provided a useful impetus to criminal paedophilia investigations. The research and prevention contribution is significant so far as crime is concerned. From an operational point of view, the ability of our investigators to access the covert and technical side of the commission's capacities enormously enhances our operational effectiveness, and I include in that, lest they be forgotten, the people in

the forensic computer area who are attending to quite a deal more work these days generated through the activity of our paedophile investigation team and its Internet activity.

There were some identified risks which needed to be managed during the merger process. My view is that we did identify the risks which were most to the fore to the point that some of them, I do not think, came to fruition at all; others have been managed. One matter which was of some concern is that police might feel some discomfort at the notion that they were expected to work in partnership on the crime fighting side with the same organisation which has responsibility for investigating incidents of misconduct. I think that has been handled in the establishment of the office of the Assistant Commissioner, Crime with independence from the misconduct area.

Continuity in leadership from the Crime Commission to the CMC's crime fighting staffing was a contributor in terms of me and the director of operations. We have developed since the merger—and there have been changes in police administration as well. We found the partnership has become more real—more realised, in fact—than perhaps the legislative notion of task forces. We have put in place administrative arrangements with the QPS, which I have mentioned to the committee in the past, including the participation of our crime operations coordinators in the police operations management board. There is a very high level strategic oversight body that we call the joint executive team, which consists of me and the director of operations, crime; the assistant commissioner, state crime operations command; and the chief superintendent, state crime operations, command. Indeed, I am to be a participant this afternoon—and I apologise that I will not be here this afternoon to attend to this commitment—in the inaugural meeting of the state crime operations command strategic management committee, which is being established to reinforce and ensure that there is alignment between the strategic direction in the QPS's fight against organised crime and the QPS's outputs. All of that signifies the closeness of the partnership and that has filtered down into the operational area.

I noticed, for example, in the submission by the Police Commissioner that there was some reference to duplication. Perhaps the problem is that operating the way we do—as Mr Butler indicated—as a catalyst for some of these things, we do not have the ability to commit to the full range of arrest and brief preparation activity. That has been addressed. It has been addressed at both OMD level and JET level. It rather touches on some sensitive operational areas, but I can assure the committee that that kind of concern is being addressed and, again, in a cooperative way.

Perhaps one of the other risks we apprehended was that the imposition of the new layers of accountability on the crime fighting side of the organisation might have a tendency to distract people from focus on operational areas. Again, that has been, in my view, well managed internally. As a management approach I ensure that operational staff do not get caught up in the reporting except in the way they would in reporting normally on operational outcomes. In relation to things like policies and procedures—this review, budget estimates and the whole range of those things—we endeavour to manage it at the top level to provide a buffer between management issues and operational activity. My executive manager has been freed up from a lot of his corporate support work to devote time to preparing reports and addressing those kinds of issues.

The other thing that has to be said is that it was recognised that there may be real risks to staff morale. There was a view that we were the small fish being swallowed by the big fish, and that has real implications for staff, as Mr Butler observed. It applied across-the-board, but I think for the little fish the realisation tends to be, 'I am not going to have the same freedom and movement. I am going to be tied into a more bureaucratic system.' Again, we have managed to handle that fairly well. Some people have had cause to move from administrative functions within a small organisation into the corporate support area of a large organisation. Again, I owe a debt of gratitude to my executive manager, who was particularly good at handling the concerns that the staff had about those things. With the recent accommodation shift the morale issues have faded.

If I could just touch briefly on one other matter which has already been referred to, and that is the notion that when you bring a crime fighting body together with a corruption fighting body somehow there is a greater risk that members of both bodies are going to be susceptible to corruption. I have seen no evidence of that, I might say. I am not quite sure what the logic

underlying the argument is. It is worth noting that police officers who are involved in the crime fighting side of the organisation—and this extends to outside police who become members of police task forces—are subject, because of that, to scrutiny by this committee and, of course, its parliamentary commissioner.

I have provided to the committee on another occasion a copy of the brochure we provide to all task force police officers. Whilst this is not meant to frighten or deter them it plainly states, 'You should be aware that as a CMC officer you may be subject to the scrutiny of the Parliamentary Crime and Misconduct Committee.' If there is reason to think there is a risk, it is quite plain that there are stricter accountability mechanisms applying to police who work in our crime area even if only through involvement in task forces.

There were a lot of other issues I could refer to that were addressed in the submission. I do not particularly see it as appropriate here to rehearse the long debate and much canvassed views of law enforcement in Queensland in relation to telephone interception. The only additional comment that might be worth making is that, in this day and age when people generally are becoming rather more litigious, it is an emerging issue that covert people who are subject to considerable risks and operate in very dangerous circumstances be permitted to operate more safely with the backup, if I can call it that, of telephone interception and perhaps thereby reduce the litigation that might arise from suggested breaches of duty of care to people who are put in those situations. It is not necessary, as has been pointed out, to break into people's houses to intercept their telephone conversations. It is much safer for people engaged in surveillance and all those sorts of things if the whereabouts of the people who might be a danger to them can be tracked, and they can be tracked safely and efficiently through telephone interception.

**The CHAIR:** Thanks, Mr Callanan. I ask you to elaborate on a significant part of the CMC's submission, that dealing with the issue of terrorism offences. Could you elaborate for us by way of illustration some of the practical situations that you see are likely to be met and in respect of which the existing powers under the Police Powers and Responsibilities Act and the CMC Act are inadequate for you to effectively address those practical situations?

**Mr Callanan:** Perhaps I can background it by saying, as is pointed out in the submission, at the request of the Police Commissioner, the crime reference committee referred to the CMC the investigation of terrorism, and it is terrorism as defined in the Commonwealth legislation. As the commissioner observed, it is really being inclusive—including the whole of Queensland law enforcement in the response to counter-terrorism or planned terrorist activity.

**The CHAIR:** Could I just interrupt you there? Could you just in a very brief way describe what is the distinguishing feature of terrorism as defined in the federal legislation that distinguishes it from normal criminal activity of which it is also?

**Mr Callanan:** By definition it includes a range of actual criminal offences. There was a short description of it in the submission. It is put this way in our submission at page 22, referring to the counter-terrorism referral, which relates to a wide range of organised criminal activity undertaken 'to advance a political, religious or ideological cause and with the intention of coercing or intimidating a government, the public or a section of the public.' What needs to be recognised—and again this reflects something the commissioner said—is that at the highest level and obviously at the international level there may well be, and all the evidence suggests that there are, quite sophisticated terrorist organisations who have a wide range of criminal capacities. That is one end of it. At the other end of it, again as the commissioner suggests, there might be what is referred to as localised terrorism either in the sense that it is a one-off Queensland, unique kind of terrorist activity or it represents perhaps part of a widely orchestrated series of terrorist incidents across the nation.

The thing that characterises terrorist activity is that notion of its being undertaken to advance a political, religious or ideological cause. The reason it was thought necessary that the CMC have a referral to investigate terrorism was simply that it does take time, if confronted with what we would call a serious crime—say, the blowing up of a building or something of that kind—to organise the crime reference committee and to get a referral to the committee and presumably through the committee.

The existence of this referral is, again, as Mr Atkinson described it, a reserve that permits us to exercise particularly the coercive hearings power. To perhaps create a scenario, there may be a suggestion of some localised terrorist-style planning for an attack, say, on the Story Bridge

or something of that kind. Intelligence, whether it comes to the Queensland Police Service from ASIO or any of the other national intelligence agencies, needs to be acted on. It may need to be acted on in a way which would involve the coercive interrogation of the people who have been identified.

One of the difficulties with terrorism—this is picked up in the submission in respect of what we see as powers that would be of assistance in the fight against terrorism—is that for so long terrorists remain unidentified. One of the things that plainly emerged at the terrorism conference to which the Police Commissioner adverted is that terrorist organisations constantly change their modus operandi—they are very good at doing that—but they have two principal vulnerabilities. One is that they have to communicate and the other is that they have to get money. Obviously on the communications side of it, high-level technology involving interception of their communications, particularly their telecommunications, is something that is available at the national level. We may well be able to access that in the event that a response from the CMC is required.

The particular things that are highlighted in our submission are the desirability of our having an additional power in respect of surveillance; that is, that we be able to conduct electronic surveillance without knowing the identity of the persons said to be involved in the planning of a terrorist event—to blow up the Story Bridge, for example. You may know that they are going to meet at a room at the Story Bridge Hotel but you may not know who is involved. Under the current legislative arrangements, you need to identify a person suspected of involvement in the criminal activity. Often speed is of the essence. At the moment the commission—this applies to QPS—has no power to conduct emergent covert searches; that is, simply to move in and conduct the search—on good grounds of course—and afterwards seek judicial imprimatur for that activity.

**The CHAIR:** Is there an argument that that power should be available in relation to criminal activity generally?

**Mr Callanan:** Yes, and it was something that was sought at the time of the development of the Crime and Misconduct Act.

**The CHAIR:** What about the police generally themselves?

**Mr Callanan:** Again, yes.

**The CHAIR:** Is there any basis for distinguishing possible acts of terrorism as a subject of that sort of extra power from all other criminal activity?

**Mr Callanan:** No, I do not think there is. I suppose the recognition that there is a terrorist threat does tend to highlight what we would argue is a deficiency in the legislation.

**Mr HOBBS:** It would seem to me that certainly without telephone interception we are behind the game in trying to actually have a preventative program. What happens in other states? Do other states have these powers that you are talking about needing in Queensland, in relation to getting warrants where the identities of people are not known, et cetera?

**Mr Callanan:** I suspect so. I cannot answer that. I can certainly advise the committee.

**The CHAIR:** So we could be a leading state on this issue in Australia, but we may not be?

**Mr Callanan:** We are obviously a leading state on a lot of issues.

**The CHAIR:** In terms of this proposal?

**Mr Callanan:** I cannot answer that at the moment. I will have the information obtained and let you know what the status is of the law in this area in each of the other jurisdictions.

**Mr Butler:** It is worth mentioning that we are submitting that amendments to the Police Powers and Responsibilities Act would extend to the police. In other words, we are not seeking these powers specifically for the CMC. We are saying that they are really powers that should be available for law enforcement to deal with the potentiality of terrorism.

**The CHAIR:** So the powers would be available to police generally, as with the CMC, but confined to acts of terrorism?

**Mr Butler:** I think the terrorist threat highlights the need. Clearly enough it is a matter for government to determine whether it wants to limit the extension of powers to the terrorist threat, but certainly we say that there are aspects about the way in which you might find yourself wanting to respond to intelligence about a terrorist plan that commends these particular powers. I

suppose you can think of examples in general law enforcement that might be similar, but clearly enough with possible terrorist acts, from what we know from overseas, it may be that it will be very hard to identify the individuals involved in the terrorist acts. If you remember, with the twin towers event it took quite a time for the American agencies even to work out who were the players involved in it in retrospect. So you would not want a situation to develop where law enforcement could not respond in an effective and timely way if a threat were emerging, given the magnitude of these possible threats.

**Mr McNAMARA:** Just in relation to telephone interception, one of the arguments that has been advanced—it is a good argument—is that without TI the commission is required to put covert operatives in the field more often and that puts them in potentially dangerous or life-threatening situations. In the reports of operations that we get, I do not recall reading about any operation that was terminated due to a covert operative's cover being exposed. Do you have a ballpark figure for the last three years, taking in the Crime Commission and the CMC, of the number of operations in which covert operatives have actually had their cover exposed?

**Mr Callanan:** I do not have any figures or even any ballpark figures, but I know from the liaison we engage in with QPS that it is a real problem in their area.

**Mr McNAMARA:** But not yours?

**Mr Callanan:** On the crime side, we ourselves, as it were, do not utilise covert operatives. That is a QPS issue. It has that capacity. Again, I could supply some general figures. I mean, from the last operations management board meeting I recall two matters which came up where the operation had to be put on hold because of the exposure of covert operatives.

**Mr FLYNN:** Mr Callanan, you mentioned earlier the use of warrants obtained retrospectively. That has been the practice in the Police Service for some time now. Has it presented any problem for the CMC? Have there been a significant number of reports of misuse—going in because it is an urgent operation and then being denied a warrant following that?

**Mr Callanan:** There was one occasion. It was an operation in which the QCC was involved where it was thought necessary. The information to hand was to the effect that a group of people in a motel in the inner city were planning a bank robbery. The police and QCC officers conducted an emergent search. When that was reported to the court after the event for approval, the court simply made the observation that better attempts should have been made to contact the available Supreme Court judge before proceeding without warrant.

**Mr FLYNN:** You surprise me with your reply. I thought perhaps the figure might be higher. Do you think there may be a reluctance by the issuing magistrate to upset the applecart, as it were, because it has happened? Unless there is a glaring inconsistency in the grant of a warrant, do you think they are going to sign it anyway?

**Mr Callanan:** I have no experience of what the police attitude—

**Mr FLYNN:** You have answered my principal question.

**Mr Callanan:** I do not know of any. Of course, I do not know all that much of what happens on the misconduct side, but I do not know of any strong judicial criticism of law enforcement in Queensland for, as it were, going off half-cocked.

**The CHAIR:** I go back to the discussion of a moment ago about powers of surveillance in relation to places where the identity may not be known. Just to be clear in my own mind, the CMC's submission is that the power should be enlarged so that in circumstances of possible terrorism those surveillance powers are available in the absence of knowing the identity of named individuals? It is not the CMC's submission that that extra power should be available in relation to all criminal activity but simply to whatever activity falls within the definition of terrorism?

**Mr Butler:** Yes. That is the basis of the submission. It is in the context of the terrorism threat.

**The CHAIR:** I want to ask about the proposal by the commission relating to a perceived deficiency in the definition of 'serious indictable offences' in the Police Powers and Responsibilities Act. Apparently it does not include instances where there is only extensive destruction of property and the proposal is that the definition should be expanded to embrace that situation. Is that submission in relation to terrorism activities specifically or to all general



criminal activity? My understanding is that it is not expressly confined to terrorist activity. Would you have a difficulty if it were?

**Mr Callanan:** The difficulty with destruction of property, of course, is that it can extend from someone who puts their foot through a plate glass window right up to the demolition of a block of buildings. I think what the submission is driving at is that there needs to be a recognition that there can be serious indictable offences that involve just the destruction of property. Perhaps some figure needs to be put on it. The law is quite capable of attaching figures to offending behaviour such as aggravated theft and things of that kind. My own view of it is that it should be there for all kinds of serious property destruction offences, not just terrorist related ones.

**The CHAIR:** I am wanting to be clear whether the CMC's submission in this regard is one directed towards the perceived deficiencies in relation to responding appropriately to terrorism or, more generally, you are proposing that there be such a legislative reform for all activities.

**Mr Callanan:** I think, again, the terrorist threat highlights this deficiency in the law. We would argue that it is a deficiency in the law and that to address it it needs to be made relevant to all kinds of serious property damage.

**Mr McNAMARA:** Mr Pincus, at one of our previous meetings, suggested that he felt that section 28(2) of the act in relation to the process of doing referrals was too narrow, that is, having a basis that the police investigation had been ineffective and would continue to be ineffective. Is that your view?

**Mr Callanan:** This is explained in the submission. We take a particular view of what 'ineffective' means. That view may be wrong, if ever it were to be challenged. One has to look at that in the context of the power that I have as Assistant Commissioner (Crime) to request referrals. Those requests are not subject to the same criteria that need to be met in the case of requests from the Police Commissioner or action by the crime reference committee on its own initiative. The powers that are activated, as it were, by a referral are quite substantial. They of course include coercive interrogation.

In terms of the notion that the Police Service using ordinary police powers has not been able to, say, get to the bottom of a particular offence or is stymied by walls of silence and so on, that is expressed in the legislation in terms of 'ineffective'. Depending on the view you take of 'ineffective', it is my view that it is functioning all right at the moment. There need to be some criteria before those special powers ought to be able to be activated. I understand what Mr Pincus's concerns are in that it may be restrictive and it rather suggests an admission of failure on the part of the police before they can come to us. That is not the way it has worked in practice. It is not the way that our current serious crime investigations—multiple arsons and murderers—have been seen. It is never seen as a recognition of defeat by the police who have been involved in the investigations up to date. Plainly, there needs to be a limitation. That is the language used at the moment. For practical purposes, recognising Mr Pincus's concerns, I think it is working all right.

**The CHAIR:** I have one other question in relation to the commission's submission regarding telephone interception powers. You speak about the limitations that arise in the use of data surveillance devices on computers and in particular the Internet. The absence of telephone interception powers is highlighted by the difficulties surrounding work you do in the data surveillance devices area. Apart from the wider field of utility of TI across crime and across misconduct, what does the CMC say about the civil liberties types of concerns raised regarding the intrusive use and abuse of TI powers?

I noticed in passing in the press over the past couple of days that there was a mention that the use of TI powers federally in the last 12 months has increased by about 17 per cent. I believe there were some figures several months ago indicating that there were 32,000 applications for telephone interceptions in Western Australia in the previous 12 months. I could stand to be corrected, but it was a very large figure. That was reported to us by the chair of the parliamentary committee over there. How does the CMC address that side of the issue and the concerns that some hold about that? I accept that it is not an easy topic.

**Mr Butler:** Firstly, I should say that one needs to be a bit careful about the statistics in this area. The applications can increase. I understand—we do not work in the area—that has to do with the changing technology in this area. As you know, people now have multiple phones in a

way that they did not in previous years. They often have multiple mobile phones. Some criminals operate with multiple SIM cards that they substitute in phones. In order to monitor a single person it is often now necessary for law enforcement agencies to monitor the many more phones that that person will be utilising. I think that tends to push the numbers up. It does not necessarily mean that more people are subject to this intrusion, but rather that the agencies are just responding to the change in the technology.

Telephone interception is operating in all other states in Australia. It does so under a federal regulatory regime which provides safeguards and checks and balances as to the way in which it operates, and it requires transparency in reporting and so on. I think the evidence is that that regime has been working in that the use of telephone interception powers has not been misused in other jurisdictions.

In all situations where you are looking at increases in police powers, one needs to balance that against the need and the community benefit that arises from it. What we know is that telephone interception is really a fundamentally important aid to law enforcement in the carrying out of their investigations. Without it, it is made more difficult. As Mr Callanan said, sometimes it is potentially more risky to carry out the same sorts of investigations. I think it is about reaching that balance. Clearly enough, at the end of the day that is a decision for government to make in balancing civil liberties against the need for effective law enforcement. The position of the commission has been consistent on this over quite some time. As you know, some years ago the CJC, the QCC and the Police Service together made a joint submission supporting the implementation of telecommunication interception in Queensland. I suppose our position has not changed since then.

**Mr FLYNN:** You tried to cover the issue of the statistics relating to the number of applications. That is applications per phone. Do the figures reflect the number of applications per target? If we have those figures available, do they translate into increased success by the CMC? If we have increased the rate of targets by 25 per cent, does that over time reflect itself in the results that you produce? Or could some people say that you are monitoring all of these people's phones and doing nothing with it or getting no results?

**Mr Butler:** We do not monitor anyone's phones, because we do not have the power. We are talking about figures from other states.

**Mr FLYNN:** I understand that.

**Mr Butler:** My recollection of the figures—and we do not need to be too focused on them, because we do not have these powers—is that they count the number of warrants issued, in effect, through the court process. I do not think they count the number of persons surveilled. It is quite clear from the information we receive from our interstate companion agencies that telephone interception is the major weapon, I suppose, in the police and law enforcement arsenal. That is particularly so in the areas that fall in our jurisdiction—organised crime and corruption. In both of those areas, if you look to New South Wales, for example, all the major recent corruption investigations, whether by the ICAC or the Police Integrity Commission, have been founded in interception evidence. You might remember that one into a council where people were sending SMS messages to each other. There was also the one into corruption in the police which was based upon telephone interception.

In the area of organised crime it is very important. We know that from our own experience, because in our work with joint task forces with the Australian Crime Commission and the Australian Federal Police we are able to access the product of telecommunication interceptions that they are lawfully carrying out. Where we have that access—and John can confirm this—it advances our investigations in a very significant way.

**Mr Callanan:** It is particularly potent as an adjunct to the conduct of coercive hearings when you can confront people who are minded to mislead you with their own voices talking to other people about quantities of drugs, for example, or kids by name. You soon have them recanting and telling all, and often 'telling all' from their point of view involves telling more than we knew or we even thought we knew.

**The CHAIR:** Is there any information from the other states that gives some guide as to how blunt or sharp telephone interception is as an instrument? Certainly, it might be argued that in particular cases telephone interception powers have been important, if not crucial, in getting a

result. But measured against the total volume of cases where telephone interception has been used, is it a small number or a very large number? If we know this we can stand back and interpret the relative significance of that policing power that a whole raft of people might be vulnerable to in capturing a relatively small number of people involved in criminal activity. It might not be that at all. It might be far more positive. I do not know. I wonder whether there is any information like that.

**Mr Butler:** There is information. The reporting regime that I spoke about under the federal legislation does require annual reporting by all of the agencies. As well as reporting the number of warrants that have been issued for telecommunications interception it also has a process, on my recollection, of reporting on the outcomes. You can see in that report the sort of connection that you are referring to. I cannot recollect now the extent of success, but I recall that there are tables which indicate outcomes for each of the particular operations. Some, of course, turn out to be unsuccessful. But many are successful.

I suppose one thing that we would say is that telecommunication interception—intercepting a telephone call—is a fairly precise sort of process. You are only going to pick up the two people engaged in the telephone call. Whereas if you use a surveillance device that is placed in someone's home, you can pick up anyone who is in the house and you can pick up all sorts of conversations that occur outside the context of a focused telephone conversation. In some ways a TI is less of an imposition upon privacy than covert surveillance devices are.

**The CHAIR:** Is that a sound argument, because the telephone that is intercepted is not selective as to the conversations had on the telephone that it is intercepting; it is intercepting any conversation had by Mr Smith with whoever Mr Smith might choose to telephone. In that sense the randomness of telephone conversations that are captured by the telephone interception is arguably similar to the randomness of the conversations detected by a listening device in a room.

**Mr Butler:** That might be true, but the sorts of things people communicate over a telephone may be different from what they communicate in the privacy of their own home, for example. The sort of social interactions you pick up on the telephone are limited by the nature of that communication medium.

The other aspect is that technically the information you receive is much better and clearer. The sound quality on telephone intercepts is much higher and less prone to technical failure than other sorts of surveillance devices, and there is no need to risk personnel in installing those devices. So across a number of areas there are advantages but, like any of these things, it does impose upon people's privacy, and civil libertarian concerns need to be properly addressed. I readily accept that.

**The CHAIR:** We will conclude this segment with you, Mr Callanan, and thank you very much for your contribution. It was very interesting, and we will certainly consider what you have said.

**Mr Callanan:** Thank you, Mr Chair, and members of the committee.

**The CHAIR:** We will now proceed to the segment dealing with Mr Lambrides' area of misconduct.

**STEPHEN LAMBRIDES**, examined:

**The CHAIR:** As with previous contributions, we would appreciate a very short preliminary address from you, and then we will be pleased to move into questions and answers.

**Mr Lambrides:** Thank you. I intend to address some of the questions that were raised in the public submissions. I am not going to specifically go to particular submissions but cover the areas generally.

The first matter is that of timeliness. There have been a number of submissions before you which have been critical of the CMC's timeliness in dealing with matters. It is indisputable that timeliness is an important factor in the way we do our business, and we continue to treat it as one of our key focus areas. It is also true that there are some matters that we have dealt with which do us little credit. I will not resile from that; I will not argue with that. That is the case. But what I do say is that that is a very small number in terms of the total number of matters that we deal with, which is in the vicinity of 5,000 matters a year, if not more.

Overall I think our record suggests that we have improved over the last three years, and I can assure you that we intend to keep on improving in that area. Many of the submissions made to the committee acknowledge that there has been some improvement. For example, the Main Roads Department states that, although there are still delays, over the past three years the turnaround has improved. The Queensland Police Union of Employees also agrees that there has been some improvement. So I would urge you to look at how things have progressed over the last three years and to recognise the improvement made in that regard.

As I indicated earlier, we are striving to continue to improve and I will shortly set out the steps that we have taken in relation to three areas—assessment, review and investigation—in that regard. Before I do so, I think it is important to stress that the CMC will not, and should not, compromise the integrity of an investigation for the sake of some arbitrarily determined time frame. Similarly, we should not finalise the assessment of the matter without obtaining all the relevant information, which may require us to seek assistance from external agents.

Turning to investigations and the aspect of why they are often very lengthy, each investigation is different. There are many reasons why investigations cannot be pre-determined in terms of length. An investigation which you may think should only take a very short period of time might be delayed simply because we cannot get hold of the complainant. That happens on a regular basis. They make a complaint to us. We decide that the allegations are serious enough to investigate. We try to track them down and we cannot locate them or they have a message bank and they say they will get back to us. They do not for some period of time. We try again. We go out to their premises. We cannot locate them. That is something that we cannot control. That is beyond our control.

Similarly, witnesses are often travelling overseas, which is another matter beyond our control. Often witnesses and suspects need the services of their legal advisers, and of course on occasions we encourage that. But lawyers unfortunately do not always have clear diaries, so in trying to get a date or a time that is suitable is often very frustrating. In a recent case we have had a particular law firm delay interviewing a suspect on three separate occasions. It is very difficult for us to say, 'Go to another law firm.' We have to accept the excuses given by the law firm and move on, but once again the delay is attributed to the CMC. All these factors bear upon the length of time taken to complete the investigation. We can introduce all the processes in the world, and it will never eliminate that type of delay.

Another matter which bears upon the length of an investigation is the question of whether we have to conduct financial inquiries. As the matters that we retain for investigation are generally the more complex matters, more often than not financial inquiries are required. This often necessitates us going out to institutions with notices to produce and obtaining from them their statements, for example. We then look through those statements when we receive them, see which vouchers we need, send out further notices to get the vouchers back, and then that may lead us to further accounts. That is a very time-consuming process. There is no way we can shortcut that process. Once again it is not within our control. Another thing that we are finding more and more is the fact that there are more complex company structures involved in some conduct. To sort through the finances of these complex structures, or just to work out what the structure is, is a very time-consuming process.

I will repeat what I said before: it is very, very important that we do not compromise the integrity of the investigation because of this need for timeliness. I am fortified very much by the matters which have been recently considered by the Parliamentary Commissioner, some of which were highly publicised. Not one was criticised for the length of the investigation itself. There have been other criticisms, and we accept those, but in terms of the length of the investigation there has been no criticism. For that matter, there has been no criticism in terms of lack of impartiality. It is absolutely imperative that we maintain our integrity and public confidence in the investigations that we conduct. We cannot use as an excuse, 'Oh, we didn't do that because time was ticking'. We will be condemned for not doing those inquiries that we must conduct.

I will turn now to the three areas of assessment, review and investigation. I will start with assessment, and the assessment figures in particular. You have heard from the chairman that we assess something like 2,900 complaints per year. So far we have done something like 2,600. As well as that, we have dealt with something like 2,300 issues. Each of those is a time-consuming exchange with members of the public, normally over the telephone. So in total there are something like 5,000 inquiries a year. We have had a small number of glitches.

In relation to complaints for the financial year to date, 79 per cent were assessed within the one week. That compares with last year's 71 per cent, so there has been about an 8 per cent improvement. I should hasten to add that it very much fluctuates depending on the nature of the complaints we get in, and a figure of 79 per cent for this month might be 75 per cent or 83 per cent the following month.

**Mr HOBBS:** Sorry, you say 79 per cent of complaints assessed within?

**Mr Lambrides:** Within one week, and it was 71 per cent assessed within one week last year. In terms of assessment within four weeks, 90 per cent are assessed within four weeks, and last year it was 87 per cent. You might think that is only a modest improvement, but when you look at it, there has also been an increase in the number of matters that we have dealt with, and it should be seen in that context.

**The CHAIR:** What about the 10 per cent? What is happening to the 10 per cent?

**Mr Lambrides:** I do not have figures for that, but we are looking at the moment at trying to produce a process whereby nothing older than three months remains in the assessment area. But once again, if we are seeking information from external sources we are in their hands, and there is nothing we can do about that. I should hasten to add that there are processes that we have put in place—and I will come to those shortly—so we can keep a close eye on those matters older than one month or two months.

What have we done to improve assessments over the last year or so? The Compass case management computer system now provides for allocation of tasks with expected completion dates. On opening Compass, tasks for the officer are highlighted. Where those tasks have gone beyond the completion date, it comes up in red. Managers and supervisors have access to their staff's task lists. They are required to review those on a regular basis. There is a monthly review of the outstanding assessments. There is a list prepared for senior management of all assessments older than two months and reasons why they have not been assessed and some assessment of the time that it will take before they are finally completed.

We are rotating complaints officers from the phones so they have time to prepare memoranda, time to contact complainants and departments, and time to pursue with agencies whatever material is required. In relation to sensitive matters—such as allegations against politicians, the judiciary, senior public servants—there is a requirement for the complaint to be immediately brought to the attention of the Director (Complaint Services) who then has an obligation to bring it to my attention to be dealt with expeditiously. Procedures have also been introduced to deal with those complaints where the complainants provide us with suitcases of material and then say, 'Look at that.' I am sure you are all aware of those types of complaints.

**The CHAIR:** Yes.

**Mr Lambrides:** We have already notified the committee of those procedures. As I indicated before, we are trying to communicate with agencies over the telephone wherever we possibly can rather than have a war of correspondence going backward and forward. With that in mind, there is an attempt to try to cut down the delays in follow-up documents coming to us from the agencies.

Another initiative we have taken is assigning specific complaints officers to each of the key agencies like Health and Education so that there is continuity between the liaison officer, the department and us. Another initiative we have recently introduced is where complaints are made about our service there is an obligation upon the Director (Complaint Services) to review that complaint and see what lessons we can learn from it and not ignore the message that might be there. This is part of the continuous learning process.

What are we going to do in the future? There are a number of things we are looking to do to try to improve even more. At the moment we do not use emails because of the security issues. We are looking to see how we can introduce communications both to and from the commission through email. Currently we are redrafting the protocols with key agencies. We will require them to notify us of complaints on a complaints pro forma. It will set out the information we need to make an expeditious assessment of the matter. These protocols will also seek to have officers available at specific times so no delay is caused by certain members not being available to attend meetings, to provide information and the like.

Another initiative we are looking to introduce in the near future is the 'matters assessed' reports which we already utilise with the QPS. That will allow UPAs or agencies to advise us electronically on a 'matters assessed' report. We can then notify them on the same form whether it is a matter they can proceed with. We can nominate the specific allegations which they must deal with. Hopefully they will then be able to give us information in the future about each of those allegations.

There has been some suggestion that some preliminary investigation should be allowed to be made before reporting to us. We are looking to issue directions under section 40 which will enable departments to conduct preliminary inquiries—in fact, go beyond that. There will be a list of matters—which will vary for each department—that they will be entitled to investigate straight away—the minor matters. There will be a number of categories where they will be asked not to report to us on a case-by-case basis but rather by way of a schedule at the end of the month, the end of a fortnight, the end of two months, whatever. It will differ from agency to agency. That means that as soon as it happens they can action it straight away and then report to us by way of schedule and ultimately outcome only. That does not mean that we cannot review those matters. It allows departments to commence inquiries straight away. That will obviously have a beneficial effect on delay.

**Mr Butler:** One of the things about timeliness is that delay can occur both in the process of the CMC and in the process of the subject organisation. One of things we are trying to do through this is be aware of the total time line, whomever might be responsible, and put in place processes which not only assist us to be timely in the steps that we take but also assist the agencies we are overlooking in being timely in the steps they take. At the end of the day, this should assist complainants and subject officers in a full range of matters, not just the ones we investigate.

**Mr Lambrides:** The figures in relation to monitoring are: from 1 July to 31 May we have conducted full reviews of 162 Queensland Police Service complaints and 126 relating to other agencies. By 'full reviews' I am referring to a review focusing on the integrity of the complaint itself and how it was dealt with and compliance issues in relation to those complaints. As well as that type of review we have audited 325 Police Service complaints in respect of timeliness and compliance with the obligation to advise the complainants of the results of the police inquiries. Of these 325, 115 we have also reviewed for compliance with other integrity indicators such as the selection of appropriate investigators and the use of tape recordings.

As of 31 May 2003 there were only 12 incomplete full reviews on hand. Once again, this figure fluctuates from month to month. It is a very low figure. The figure as at June 2002 was 38 and the figure at June 2001 was 253. It is true that we have changed the nature of our reviewing and auditing, but when there were 253 outstanding matters there were 253 complainants and subject officers and a number of departments waiting for our action. That clearly was not acceptable.

In the last couple of months 82 per cent of the full reviews have been finalised within four weeks. This figure fluctuates as well, but we are hoping to continue at that level. What have we done to reduce the number of reviews or the outstanding reviews? First of all, as you are probably aware, we had a dedicated backlog project that was specifically aimed at cutting back the number

of old, tired review matters. We have got it down to less than 20. We have also adopted a practice of only requiring further investigation or action by an agency if we think that further action will actually advance the matter. Previously, if there were flaws in the investigation we would ask them to go and rectify those flaws, not always looking at whether that would make a difference to the outcome. Now we highlight the deficiencies and only those that we think may cause a difference in result will we send back to the agency to take further steps.

I turn now to investigations and the figures for finalised investigations. There have been 129 misconduct investigations completed to the end of May 2003. We now expect to complete a total of approximately 145 for the current year. This compares to 232 for the previous year. But, of course, that can be attributed to the reduction in the number of backlog files and also the fact that we are now trying to focus on the more serious, complex and sensitive matters. Of the 129 finalised investigations to the end of May, 21 per cent made recommendations for criminal disciplinary action compared to 19 per cent last year.

It is true that the time frames are not flattering in relation to those investigations, but we have reduced our outstanding investigations from 159 at the end of June to 68 at the end of May this year. I think that is about the level at which we should be operating—that is, about 68 live matters at any one time. We do not have complete control over the matters that come to us. There will be some matters that we have to investigate. We have no discretion. We are the only organisation that should or can do the investigation. I am hoping around about that level is what we take into the following years. That will allow us to be more timely in our responses.

In December 2000 there were 104 investigations older than 12 months. That figure is totally unacceptable. In July 2002 this was reduced to 29 matters older than 12 months. That constituted 33 per cent of all our matters. Of the 68 outstanding matters we have on hand as of the last day of May only 10 are over 12 months. Barring any disaster, I am hoping to have that down to less than a handful by the end of this financial year so that we can start the next financial year with only a very small number of matters in excess of 12 months old.

The number of matters over six months old has fallen from 59 per cent to 40 per cent within the financial year. Encapsulating all that, you can see that we have had a significant impact upon older matters. Our future goal is to complete 90 per cent of all our investigations within 12 months. There will be a vast number that will be dealt with in six months.

**The CHAIR:** If you have a target of 90 per cent for 12 months, and accepting your overall observations about not being unreal about targets, have you got a target for six months?

**Mr Lambrides:** I am still hoping to make it 55 per cent within six months. That is my target. What have we done over the last few years to improve timeliness? With the merger we transferred responsibility for all misconduct investigations to one director—the Director (Misconduct Investigations). This means that he has control of all investigative resources. He has a better feel for them—they are all on the one floor, which assists—and he is now in a position to ensure efficiency and ease of juggling resources. As you are well aware, we have to be flexible in terms of the allocation of resources, because if a sensitive matter comes in we are going to give it priority. Something else has to suffer, but not the sensitive matters. They will get priority.

Case management plans are now required for each investigation or operation. Compass flags tasks when the estimated time has expired. The Compass management system flags the ages of a matter at two-, five-, eight- and 11-month intervals for the attention of the individual officer and manager. It is very much in your face. It may sound very basic, but it is something that is being inculcated into them and they cannot avoid it. Wherever they turn there are reminders of timeliness.

When investigators independent of Misconduct review or audit our files, they are asked specifically to look at these issues: have we conducted inquiries that were unnecessary or could we have possibly done this investigation a little bit trimmer? Our officers are well aware that they do not have the luxury of going down every dry gully, but by the same token they have to make sure that all inquiries that are reasonably necessary are conducted. As I indicated to you at the very beginning, ultimately if the integrity of our investigations does not stand up to scrutiny, then the commission is in real trouble.

There is an emphasis on timeliness in PPRs, or performance reviews, and in all management meetings. More recently, we have introduced a reporting system to the commission

on a two-weekly basis of the 12 oldest matters which we are investigating. As the oldest matter falls off the list, we put the next one on the list. That may not seem like a dramatic thing, but subconsciously I have no doubt it has an effect on all the officers involved in the old matters—that is, knowing that there is a list of old matters before the commissioners for them to consider every time they look at our report. Individually, each of these strategies may not sound like a lot, but I would argue that when looked at in total they have made a considerable difference.

There are a couple of other issues in relation to timeliness. As the chairman indicated, we often get blamed for other agencies holding on to files. We have already commenced audits of the QPS in relation to timeliness and how quickly they deal with matters. We intend to move it to the key agencies in that regard. We will also be looking at key agencies with a view to the systems they have in place to promote timeliness, and we are doing that in the quality assurance review process. Ultimately, we should be able over a period of time to get sufficient information to make comparisons not necessarily between agencies, because each agency has different requirements, but possibly within the agency over a period of time.

You are probably aware that many of the matters we send back to agencies to deal with we only seek outcome advice. In relation to those matters, we are in the process of negotiating a schedule which sets out the time frames for the outstanding matters. So there will be a list of all outstanding matters going out to the departments once a month or once every two months, or whatever—depending on the size of the agency and the size of the reporting requirement—and with that will go time frames to indicate how long they have had the outstanding matters. Once again, it is in their face. They realise that it is a problem that they must manage. Ultimately, the complainants and the subject officers rely on them acting in an expeditious manner, as they rely on us to do the same.

**The CHAIR:** Mr Lambrides, bearing in mind the time, we might adjourn for lunch and resume at 1.30 p.m.

The committee adjourned at 12.33 p.m.

The committee resumed at 1.34 p.m.

**The CHAIR:** Good afternoon, ladies and gentlemen. We will resume our committee hearing. Mr Lambrides, we are wanting to manage some difficulties regarding time this afternoon. So you might give us a summary of what remaining comments you might want to make so that we have some time to ask questions as well.

**Mr Lambrides:** Okay. Just to finalise then in relation to timeliness, although we have made advances and introduced significant processes to enhance the timeliness of assessments, reviews and investigations, we are continually seeking to improve. In that regard, we are in the process of selecting a suitable external experienced consultant to review our complaints services. The consultant will review the existing operations for handling complaints and assess whether the various aspects of the complaints handling process meet best practice standards. The task will be to identify any areas for improvement, including work flow management, and there is a specific emphasis upon the issue of timeliness.

**The CHAIR:** Do you anticipate inviting the consultant to make contact with various clients of the CMC, the different government agencies?

**Mr Lambrides:** At this stage, no. It is simply to look at the work flow processes within the area. I will turn now to another topic, and that is referring matters back to the agencies. In 2002-03 until the last day of May we had held on to about four per cent of complaints that have been forwarded to us. So that four per cent we have investigated ourselves. We have determined that in about 21 per cent of cases no further action should be undertaken in relation to them and the remaining 75 per cent have been sent back to the Queensland Police Service or the agencies. The four per cent that we retained were clearly the most significant ones—the sensitive ones, the most complex ones and the ones which we think we must do to maintain public confidence. They are matters which require the full range of our investigative powers and techniques. The vast majority of the matters that we have sent back are matters which are not serious cases. They are matters which are largely disciplinary, HR and IR matters and matters which involve managerial action. Most of those would have been undertaken by the departments prior to the creation of



the CJC in any event. What we are really saying is that only relatively minor matters get sent back. The matters which require serious investigation are still maintained by ourselves.

**The CHAIR:** Mr Lambrides, in the interests of the way in which we spend our time, would it be convenient for you if the remainder of what you want to put to us you put to us in writing? You are obviously drawing from a prepared document. That will then enable us to proceed with some of the questions that arise out of the submission that the CMC has already made but also gives you the opportunity through that document, if you wanted to submit that to us as a supplementary submission, to know that we are also aware of the extra detail that you are wanting to draw to our attention. Would you be happy with that approach?

**Mr Lambrides:** Absolutely.

**The CHAIR:** I am just mindful that we have about four people this afternoon that we have to manage time with so that everyone has an appropriate amount of time. We might go to questions.

**Mr McNAMARA:** I would like to congratulate you on particularly the time that you have spent addressing the issue of timeliness.

**The CHAIR:** I join you in that congratulations.

**Mr McNAMARA:** It is something that we are delighted to see. I am particularly sympathetic in relation to timeliness criticisms that are levelled at the commission when they are matters out of your hands. Can I particularly take you to the issue of referring matters to the DPP and seek your views on whether, first, the commission should or could have a role in initiating prosecutions. If so, what resources might be required to do that? A further question is this: if you are interested or you think it would be advantageous to initiate prosecutions, would you actually carry them out as distinct from simply charging people? Finally, there are issues that would arise in terms of oversight. If the commission, in a new world, had a prosecutions role, what additional or further oversight might be necessary?

**Mr Lambrides:** Can I just set out the numbers that we are talking about. It has not been made clear this morning. The numbers are relatively small. We send something in the order of about a dozen briefs to the DPP per year. This year I think it was 18 and I think that is the highest amount we have done over the last five years. So the numbers are not huge. In relation to what we have sent to the QPS in recent years, I do not think that we have sent anything to the QPS. So we are not talking about bulk numbers here. There is no doubt that our police officers have the competence and experience to be the prosecutors themselves. But my view is this: I think it is very important to maintain the separation of the investigative from the prosecutorial function. I think it is part of the rich accountability fabric which covers the CMC. I think it is important that we do the investigations and somebody else determines, first of all, whether there is a prima facie case and, secondly, whether prosecution is warranted. I would strongly urge upon you that the situation should remain the same from the point of view of the accountability aspect. That does not in any way suggest that we could not or we would not have the skills. But I would very much urge upon you the importance of the separation of the prosecutorial and the investigative function.

**The CHAIR:** So from your point of view it is not a question of capacity; it is a question of appropriateness given the nature of the CMC.

**Mr Lambrides:** Precisely. I had discussions with the Assistant Commissioner of the Ethical Standards Command just yesterday with a view to seeing whether there are some matters that we could direct away from the DPP to the QPS and whether he could provide some assistance in expeditiously dealing with those matters. We are looking at that issue at the moment. I also understand that we will be speaking to the DPP in the near future trying to arrange for some agreement whereby we will not refer certain matters to her anymore; we will refer them to the QPS where those matters do not involve Queensland police officers, obviously. In summary, I think the status quo should remain. I think it is very important that it remains, especially in a climate where often there are allegations of political bias on our part. It is very comforting to know that there is some independent person who has assessed your material and gone forward with it thinking that it is an appropriate matter to charge.

**The CHAIR:** I want to follow up on Mr McNamara's question. Is there some argument that says the DPP has a prosecution role alone? It does not have an investigative role, as I

understand their broad role. Investigations are done by the Queensland police and any prosecution that the DPP undertakes is a prosecution of a matter investigated by someone else, but not themselves.

**Mr Lambrides:** I do not think that that necessarily follows.

**The CHAIR:** That does not necessarily follow?

**Mr Lambrides:** I think the act allows them to do some inquiries. I am not quite sure about that. I am almost certain that, for example, some inquiries were conducted under the DPP's control in relation to the Mark Le Grand matter. So I do not think that there is any doubt that the office has that power.

**The CHAIR:** I was just wondering whether there is in practice, from the DPP's point of view, a separation of prosecution from investigation in the matters they do. If so, it is equally arguable then that there ought to be a separation of investigation by the CMC from the prosecution role. Even though the DPP might have power to investigate and prosecute, if largely they undertake a prosecution role and others do the investigation, that seems to me to, in fact, endorse in practice the point you are making in relation to the CMC, because it is appropriate to separate the prosecution from the investigation.

**Mr FLYNN:** In practice the DPP would refer their inquiry to the Police Service. As far as I am aware they do not actually have any field people to conduct investigations. They can cause investigations to happen. So to that extent they do have an investigative power, but the police do it on their behalf.

**The CHAIR:** If that, in fact, is the case, arguably a check and balance in the role of the DPP involves separating prosecution from investigation and, equally, there is merit in that position applying also to the CMC.

**Mr Butler:** There are two issues here. One is the question of who will bring the charges or arrest the person and the second is who actually prosecutes the matter before a court. Of course, the Police Service do both in many cases. Obviously, police officers typically arrest or charge. As well as that there are police prosecutors, although within the Police Service those functions are kept separate. The prosecutors are separate from the investigators so investigators do not prosecute; dedicated prosecution officers do it. I would have thought the submission from Justice and Attorney-General was not talking about the prosecution function as such. I do not think there is any suggestion that officers of the CMC should be going into court advancing prosecutions before the court. In the past typically that has been done on our behalf by the DPP if, in fact, we do not rely upon the police prosecutor. Where the DPP does it, if any additional cost is involved of counsel or whatever, that has been met by the commission. So the resourcing issues for the DPP are accommodated through those arrangements.

The issue that is a problem for the Director of Public Prosecutions is this issue of an investigation report being referred to her office and then needing to be considered by one of her officers in order to indicate that a charge is appropriate. We know there have been some long delays in that process. Of course, that is a concern to us. I am very sympathetic to the director's resourcing needs, because we know the DPP's office is a very busy office and is under a lot of workload pressure. I would be very keen for us to be looking at any options that might help relieve that pressure and talking to the DPP about it.

Like Mr Lambrides, I feel that there is more a matter of principle involved here in separating out the exercise of the discretion to prosecute, the decision as to whether or not the matter should proceed by way of the person being charged, from the investigative function. That separation seems to exist in similar bodies to ours. The ICAC, for example, in New South Wales typically refer their reports to the DPP and decisions are made there. Our legislation seems to indicate that that is what is anticipated: the legislation provides for a report to be referred to an appropriate prosecuting agency.

There are situations where the commission police officers have charged, but they have always been in emergent situations, for example, where a covert sting operation is occurring in drugs and the person is apprehended red-handed in the process of selling the drugs. Then the person would be arrested on the spot. That is done by virtue of the powers that police officers in the commission retain, because they retain their police powers in addition to the position in the commission. Outside that sort of exceptional situation, where the matter is investigated in the

normal way by the commission, a report is prepared, the report goes to the commissioners, they determine that it should be referred to the DPP or they could refer it to another prosecuting agency like the Commissioner of Police and then the act provides, in effect, for that person to opine on whether or not the matter should proceed.

There has been the occasional matter when the DPP in the exercise of her discretion has determined that the matter should not proceed. Of course, there are matters that we refer to the DPP where it is clearly a sensitive matter. Sometimes sexual offence matters might fall into that category where investigations have been carried out, there appears to be a prima facie case, but it might well be that the Director of Public Prosecutions in the exercise of the discretion would determine that it is a matter that should not go to trial.

It obviously would be undesirable for us to charge somebody and then find that when the matter comes to committal the DPP is briefed to prosecute it and it is decided not to proceed at that time. That obviously operates adversely to the interests of the person involved. Because of the nature of the matters we do—they tend to be larger, complex, more sensitive matters—it makes sense to have that additional decision-making step in the process.

**The CHAIR:** Can I just clarify something here? The real issue we are talking about at this juncture, as I said, is whether or not the CMC should be not only investigating but also making the decision whether to charge or not. Even if they made the decision to charge it may still be the DPP that actually conducts the prosecution.

**Mr Butler:** Yes.

**The CHAIR:** So it is an issue of whether or not to charge and who makes that decision. Secondly, I gather that presently there is the power in the CMC to make that decision and you do from time to time in emergency situations.

**Mr Butler:** The power does not reside in the CMC. It resides in the individual police officer by virtue of their powers as a police officer.

**The CHAIR:** The clarification I am seeking is that, in effect—are you saying that presently the CMC via that mechanism does have the capacity to make the decision, maybe in all cases, to charge, because you have police officers working with you and they personally carry that authority to charge? But up to now you have made the judgment that, save for exceptional circumstances, it is not appropriate for that available power to be exercised on behalf of the CMC to charge but rather to give it to the DPP?

**Mr Butler:** Yes.

**The CHAIR:** So it is not a question of capacity, it is a question of whether or not that present capacity should actually be used a lot more—maybe even fully used—than what is done now. That is the real issue.

**Mr Butler:** Yes, I think that is so.

**The CHAIR:** There is also an argument—and I think the commissioner referred to it this morning—about duplication between what the CMC does with police officers that might also end up back at the QPS. They have to duplicate the work that has been done at the CMC by police officers and if the CMC made the decision, then it would cut out that duplication. I am not sure whether he was confining his comments to this issue of whether to charge or not to charge, or whether he was talking more broadly.

**Mr Butler:** I think he was referring to this issue of charging. There is no doubt there is duplication. We obviously have well-qualified lawyers who can advise on these things. When it goes to the DPP it has to be looked at again there. If we refer it to the Police Service, as we would be prepared to do in some of the more straightforward matters for a police officer there to charge, then there will be duplication. But I suppose the duplication is the price of the accountability that is provided by the separate step.

**The CHAIR:** So is there an argument from either the DPP or the QPS that instead of the capacity to charge being exercised only in exceptional cases, it is reversed so that, save for identified types of cases, it should be used? But in those exceptional cases, particularly sensitive matters—high profile or whatever you want to describe—in those cases where it is absolutely important for transparency to be there, the CMC refers those matters. Is there an argument from either the QPS or DPP along those lines?

**Mr Butler:** Not much turns on that argument because we are talking about only between 10 and 20 matters a year. There will be little doubt that at least half of those would readily fall into any category of sensitive, or whatever. Given the matters that we now investigate ourselves, increasingly they are sensitive, large, complex matters. However you apply the formula it is only going to affect less than a handful of matters.

**Mr HOBBS:** A while ago, Mr Lambrides, you mentioned that for the year 2002-03 four per cent of complaints were held on to, in 21 per cent it was decided no further action should be undertaken and 75 per cent went back to the agencies. How many were there overall then? I am referring mainly to what went back to the agencies. If 75 per cent go back, can we implement a system whereby you do not need to receive them in the first place? It would save a lot of time if you do not even view all of those.

**Mr Lambrides:** The section 40 directions that we are seeking to implement will allow departments with a large number of matters to deal with them without referring them to us except by way of schedule. So to a large extent those directions that we are seeking to implement will achieve what you are suggesting.

**The CHAIR:** If they are able to get cracking on those at the same time—it would be on a monthly basis or something like that—across go the notes to you on a consolidated schedule so that they do not have to individually in every instance advise you, but they advise you in a global way on a regular basis. In the meantime off they go and get to work.

**Mr Lambrides:** That is right.

**The CHAIR:** You both have to address your immediate frontier of your own workload in terms of timeliness, but then you have these extended frontiers across all of the UPAs. It is important, as you have acknowledged, to be sure about timeliness at each of these other frontiers. Just briefly, what steps are in place to enable you to have some confidence that the sort of timeliness outcomes you are seeking for your own organisation are acknowledged in the other UPAs and there is a commitment to that happening in those UPAs and that there are programs in place for it to actually happen? That is a big question, I know.

**Mr Lambrides:** It is. It is a difficult one. The schedules that we are intending to send out with the time frames will have the impact that you are talking about on the departments themselves. They will be confronted with 200 outstanding matters, 40 per cent of which are older than six months, 30 per cent older than 12 months and the like. That will be the in-your-face information they will get and they will have to start to realise that it is not our problem; it is their problem and they have to address it themselves.

We will give them assistance through the QAR—through the quality assurance reviews of their systems. We will try to give them assistance in terms of making sure they do have processes in place to make things as timely as possible. We will also give them assistance in terms of saying, 'You don't need to investigate these matters. This range of matters does not need investigation. There are other avenues open to you—managerial resolution—some other way rather than an investigation.' It should be only relatively small numbers that go back to the UPAs where there needs a full investigation.

**The CHAIR:** To what level of senior management will notice be brought about this process and the number of matters that are in hand and the number of matters outstanding? To what level of senior management of each of these UPAs is this information going to be provided for? The corollary is to what level of senior management are you obtaining an overt commitment to timeliness processes? Who is ultimately taking responsibility in each UPA?

**Mr Lambrides:** It must be the DG.

**The CHAIR:** That is the theory. What about the practice?

**Mr Lambrides:** We will be sending the schedules to the liaison officers—middle management. One would hope that when Mr Butler addresses the CEO, as he does on a regular basis, he can stress upon them, as he has in the past, issues such as timeliness, professional conduct and the necessity for them to address the issues in their own backyard. In the protocols we are settling with them there will be agreement in relation to certain issues such as timeliness.

**Mr Butler:** The CMC liaison officer in most of these departments is generally the person who heads the internal audit unit or heads the internal investigation unit for that department. In

smaller departments sometimes it is a deputy director-general or somebody at that fairly high level. So you are talking about people one or two steps down from the director-general. Normally those people are reporting directly to the director-general in their department. So we think it would be impacting at a fairly significant level.

**Mr COPELAND:** I refer to the jurisdiction of the CMC over private entities that are carrying out public functions. A couple of submissions actually suggested that there should be an extension of the jurisdiction of the CMC so that you can look at those sorts of groups. What sorts of changes would you see would be necessary to enable that to happen?

**Mr Lambrides:** A lot more resources. That is the first thing. I think it would require more resources for us to deal with that. If I recall correctly, at the last three-year review this issue was specifically canvassed. I think it was recommended that there be some process of looking at it more closely. To be perfectly honest, we have not looked at it particularly closely. It is very hard to gauge how wide the problem is, if there is a problem at all.

**Mr Butler:** Our submission suggests that perhaps a definition similar to that adopted for the jurisdiction of the Independent Commission Against Corruption in New South Wales could be adopted. That broadens out the category of entities to include ones that both carry out public functions and utilise public funds. This is a policy issue, but it seemed to us to be logical that where government money is going into organisations and those organisations are carrying out public functions—you might include government corporations involved in public utilities, for example—government would have a process of scrutiny of those organisations. After all, they are utilising taxpayers' money.

**The CHAIR:** Is there any comparative information—contrasting the definition of UPAs in Queensland to a definition under ICAC—that would help give some feel for the extent of the extra organisations brought in in a Queensland setting were the definition to be increased?

**Mr Butler:** We have not carried out that analysis.

**Mr McNAMARA:** If GOCs such as Ergon and Energex came within your purview, you would immediately try to treat them like fairly sophisticated UPAs and have the capacity building going on for them to try and carry a lot of that weight initially. I am interested in your suggestion that it would take a lot more resources, because a lot of the GOCs are quite sophisticated, large organisations with substantial internal and external audit processes. You suggested a lot more resources, presumably not because you think there is a big problem out there.

**Mr Lambrides:** No, that is correct. There are so many more organisations that would fit the definition. You are talking about the big ones. There are a lot more smaller ones.

**The CHAIR:** Conceivably it would take in any community organisation that received from the Gambling Community Benefit Fund.

**Mr Lambrides:** It could be huge, unless it was drafted very carefully. That was the point I was making. I think it needs very careful consideration before a final conclusion is reached.

**The CHAIR:** Thank you, Mr Lambrides. We will now interpose Mr Jeff Backen from the Queensland Teachers Union.

**JEFF BACKEN**, examined:

**The CHAIR:** Good afternoon and welcome to the committee. Thank you very much for making yourself available on behalf of the Queensland Teachers Union. Would you like to make some brief opening remarks? Then we would be happy to discuss the QTU's submission further in questions and answers.

**Mr Backen:** The Queensland Teachers Union welcomes the opportunity to be present today to make some comments in relation to our submission, brief as it is. We took the opportunity three years ago to appear here in person and we wanted to take the opportunity again. In terms of the submission, I suppose generally speaking we would have to say that we do not have major concerns in relation to the operation of the CMC, but we do have a couple of concerns which we have flagged there. I do not want to spend a lot of time on those today.

It was interesting to hear the former spokesperson for the CMC indicate in terms of the second issue in our submission—about delays—that there may be some procedures put in place to improve the situation. That is the major issue for our members at this stage in terms of the CMC. It is not a large number in any one year. Every now and then we do have cases. The one that is referred to in our submission was a case that had gone to the QPS and came back to the CMC. It stood at the CMC for in excess of two months, when we believed that ultimately it was going to go back to the department for a disciplinary investigation. That is what happened. Notwithstanding our involvement and our encouragement of the Department of Education to pursue the matter, at the end of the day we could not get it back any quicker.

It was very difficult. This person was a small-school principal who lived in rural Queensland. He was residing in a house next to a small school. The school community could see what was happening on a daily basis. He was their principal—not at work, in the principal's residence. It was very difficult for us to explain to him why it was taking so long. Whilst we acknowledge that this type of case does not exist in large numbers in any one year, it certainly is one we wanted to use. In that case it did appear, based on the nature of the allegation—the allegation was about inappropriate physical contact with a student—that what happened at the end of the day would eventually happen. It was just a shame that it took as long as it did.

I suppose it would be easy for me and for the CMC to say that one solution is to provide them with additional resources to ensure the sorts of matters that are going to be referred back to the departments are referred back as soon as possible. At the end of the day, if it had taken a couple of months and that was because there was a CMC investigation proceeding, it would have been much easier to explain to that small-school principal and the community that there was a delay because of that investigation. But we knew what was happening. It was not the fact that there was an investigation going on; it was the fact that there was some delay getting someone to spend some time to look at it and ultimately come to a decision that it should be referred back for disciplinary action. Even when it was referred back to the department, its processes took another month or two before the matter was finalised.

Hopefully, it is apparent from what we sent to the committee that for us that is the major issue. Not a huge number of our members are affected in any one year, but if anything can be done to reduce the number, small though it may be, that can only improve the perception of the CMC in the eyes of our members and the operation of the department and the CMC more generally.

In our submission we have also mentioned the issue of the broad definition of 'official misconduct'. Whilst we would agree that over the decade or so that the relevant legislation has been in place in terms of our members there have not been too many in any one year—too many matters that are the subject of a CMC investigation as such—the fact is that, certainly for our members, the definition has broad coverage. From the early 1990s it has encompassed certainly that area which I describe as that area of physical contact with students.

Notwithstanding the improvements that have been made over the past decade to ensure that not every allegation of physical contact with a student that might involve one of our members is referred over to the CMC, we certainly would believe—I think a member of the committee made mention of it recently—that anything that could be done to narrow what is actually referred to the CMC would be helpful.

Just in the last couple of days I have been involved in a case of a minor matter of physical contact with a student. In fact, a teacher had to intervene to split up two students who were fighting. It is quite clear that the teacher had to do that to ensure the wellbeing of the students. Whilst that matter will be investigated by the department, there are still people in the department and at his school who said that that matter had been referred to the CMC. It concerns us that, 10 or 11 years since the inception of the CJC and now CMC, we still have people, even within a department, who would mistakenly say that to a person when quite clearly that is not the case. That just upsets people and gets them anxious. In this case we had to play a role, as we often do, to say, 'No, it has not gone off to the CMC. It has probably been referred to the CMC liaison officer or whatever and then referred back to the department for investigation.' That still happens because those matters are still of interest to the CMC.

In relation to our members who work for the Department of Education, our view would be that anything that could be done should be done to make clearer the things that might be construed as official misconduct—that is, the very serious matters of assault, all matters of sexual assault or issues that might go to corruption, fraud, or whatever—but are not covered by the definition of official misconduct. We do not dispute that. There are certainly some other matters which are captured by the definition and which still cause our members a deal of concern at times, notwithstanding that ultimately the CMC may not investigate those matters. I did not have anything further to say. If any members of the committee have any questions in terms of clarifying our submission, I would be happy to respond to those.

**The CHAIR:** From your experience in dealing with matters like this on behalf of QTU members, are you able to elaborate on the way in which the department handles these matters? We often hear about the CMC, both publicly and privately, and its processes. Some time ago we commenced moving to a situation of greater devolution back to departments, including Education Queensland, which puts a lot of pressure on their processes and how they manage matters that are subject to investigation. Do you have any comments? You did observe that to some extent you see some delay there with Education Queensland on some occasions. Do you have any other comments you want to make on that matter?

**Mr Backen:** In terms of, again, what I refer to as allegations of physical contact between, say, a teacher and a student, the vast majority of those matters are now dealt with internally. I understand there is a schedule sent over to the CMC on a regular basis from the department. I would have to say that on the whole that process seems to be working okay. In the early nineties that was a major concern for us. That has been remedied for some time now. Not every allegation of physical contact with a student is referred over to the CMC. That does appear to be working okay.

Certainly I would say the Department of Education would need to improve its efficiency at times in relation to disciplinary matters, and not just the ones that the CMC might be involved with. In the case I mentioned before of a small-school principal the problem was that after the CMC dealt with it the department also then played its part in contributing to the ongoing frustration of that person and the school community because it took another month or so for the disciplinary process to be completed. That is not necessarily the focus of this committee, but we would say that at times the department would need to be more efficient in the disciplinary action area in terms of dealing with matters that are both referred back from the CMC and matters that are not.

**The CHAIR:** A number of matters have come before the committee in recent years and have arisen in discussion between the committee and the CMC involving Education Queensland. One issue that comes out of those is the question of the quality of information and communication by Education Queensland officials to the local school administration and the school community about what is going on in relation to an investigation. My observation is that a lot of improvement could be made in that area.

**Mr Backen:** Certainly, at times perhaps from our point of view due to the structure of the Department of Education these days there is indeed a great deal of room for improvement in terms of assisting employees in particular who might be the subject of an investigation. One case was referred to in our letter in terms of an official misconduct issue involving a school principal that attracted some media comment. I believe we had discussion directly with the CMC about that case. That was a very clear case where at the end of the day there was not sufficient support and

explanation from departmental officials to that principal to ensure that his concerns were allayed. Yes, we have said to the department that it has a deal of work to do in that area to try to improve in particular the support it might provide for people who are the subject of those allegations, certainly in terms of just even providing them with information as to where things are at.

**The CHAIR:** What are the lines of communication like between the QTU, the CMC and perhaps other unions and the CMC in terms of the ability to make quick contact with the CMC and be more directly and perhaps more accurately informed about general processes, not necessarily about particular matters? But on occasions in relation to particular matters where you are representing your own members, what level of contact do you have?

**Mr Backen:** In terms of particular cases, I have had to contact the CMC at times and I have found them to be responsive, particularly in following up cases. I have been reluctant at times to do that, because I do not think that is our role. Particularly where the department has referred the matter over, I have attempted wherever possible to get the department to take on that responsibility. That has also been a problem area at times when people in the department have resigned and others have said, 'We can't really do much about it. The CMC has carriage of that,' and they will do with it what they will.

Certainly when I have spoken to them I have found officers over there to be responsive to our inquiries. Notwithstanding that, that still has not fixed up the issue in those rare cases of delays. But they have certainly given us the information: 'Yes, we have got that matter' or 'Someone is going to look at it' or 'Someone is looking at it.' From that point of view, we are okay with that. In terms of beyond that, as I said, I am aware that senior officers of our organisation have at times had discussions with Mr Butler and other people about particular cases. Again, I think they have been useful.

In conclusion, this is not in our submission, but I think it is relevant to an issue raised by Mr Copeland. I do not say this flippantly. I refer to the issue of other organisations that might be in receipt of public money being subject to CMC oversight. As an organisation, we would note with interest that over the past 10 years or so our members, particularly in the early nineties, went through a lot of heartache to get to the point where we are now, particularly in that area, as I said, of physical contact with students, where there were all sorts of delays. Our members were very, to put it crudely, hot and sweaty in the early nineties about the role of the CJC at that time. After a lot of heartache we have got to a point where they are more accepting of things.

It is interesting to compare that to the non-government school sector which, we do note, is in receipt of public moneys. I am sure some members of the Queensland public might have believed over the past few years in particular that a body such as the CMC might have had a useful role to play in that sector. We note with interest that over the past few years with respect to state schools or government schools every now and again there are cases presented in the media; however, it appears that in recent times there have been a disproportionate number of cases from the non-government school sector. I suppose that is somewhat related to the fact that the CMC, government departments more generally and particularly in this case the Department of Education have had a process to deal with allegations.

Notwithstanding the heartache and difficulty our members went through, I think we have got to a point where we would like to think the image and status of state school teachers in relation to this area of misconduct perhaps has improved over that time, notwithstanding that obviously the average QTU member would say, 'Through the nineties we went through a lot of difficulty to get to the point where we are now.' I am not necessarily advocating that the non-government school sector be covered, but as a group of schools that do receive government money one could argue that CMC-type processes would have been useful and may be useful for their operations as well.

**The CHAIR:** Thank you for that comment. I have one further question going to the way in which the Department of Education manages a CMC type of incident in a school setting. From your knowledge of how the department works, who is the departmental officer that takes responsibility for managing the incident, to use that expression loosely, and all of its associated dimensions—for example, what happens in terms of the school administration and how it responds, what happens in the community and how does the P&C respond? At what level within the Department of Education does someone take responsibility for managing information and communication flowing from the notification of an incident?



**Mr Backen:** I think it would vary. Over the past few years we have had a minor incident reporting form process within schools for what I call minor matters associated with physical contact. That is dealt with at the school level. So the principal would have carriage of that and responsibility for dealing with that, if there is a parent involved or whatever. Where it goes beyond the school, it would vary. This is probably a question that the department might like to answer. Generally speaking, the way the department is structured these days is that the executive director of schools for the particular district would have carriage of providing support to whomever might need it, and of working with the principal to communicate things to the community or whatever.

Certainly in the case referred to in the official misconduct section of our letter—the secondary school principal who received some media coverage a little while ago—that process was found to be flawed. In that case the particular executive director and other people did not do sufficiently well to support that person. Certainly, it appears that at times people in central office have the view in terms of these matters and most matters that, 'We have local school based management and, as a result, the EDS, executive director of schools, has that responsibility.' As an organisation we have a slightly more centralised view and we feel in relation to a whole host of matters that central office needs to have a greater role.

**The CHAIR:** Would it be fair to say that your observation about flaws in that particular incident suggests some flaws occurring not just by virtue of the circumstances of that unique matter but because some changes to systems inside Education Queensland might need to be made?

**Mr Backen:** I would like to think they have learnt from that particular case and others. I have to say that there have been other cases that might not have gone to the CMC but which were significant incidents where the lack of support and follow-up has caused additional problems for the department. I would like to think there have been learning experiences for the department as a result of that and other cases.

**Mr COPELAND:** In relation to the incident you referred to concerning the small-school principal, after the delay and investigation was the person able to continue in that community or had too much damage been done by the simple question being asked?

**Mr Backen:** My understanding is that he remained at that school. At the end of the day, I think that occurred because, notwithstanding there was this allegation, it had been investigated by the police, the CMC and whatever. At the end of the day, there may have been—I am not sure—a disciplinary outcome, but it did not go to the issue of his being removed from that school. My understanding is that the school community was supportive of his staying.

**The CHAIR:** Thank you very much, Mr Backen. We appreciate your contribution. Mr Paul Roger?

**PAUL ROGER**, examined:

**The CHAIR:** Thank you, Mr Roger, for coming today. Again, as with previous witnesses, we would appreciate a brief opening comment from you. Then we will be happy to proceed to some questions and answers.

**Mr Roger:** Thank you, Mr Chairman and committee members, for the opportunity to speak to you today. I will attempt to be very brief. You have already heard from Mr Butler, Mr Lambrides and Mr Callanan about some of the roles intelligence plays. Although it is not a highly visible function within the organisation, the commission's intelligence activities are, nevertheless, very important and quite integral to the commission's operations. The commission approaches its intelligence function from both tactical and strategic perspectives. Tactically, intelligence officers are placed within the commission's multidisciplinary teams in both the crime and the misconduct areas. These officers play an active role in supporting the investigation process within the organisation. They also play an active role in sharing information with and disseminating information to other areas. I will come back to the dissemination part a little later, if I may.

From a strategic perspective, the commission, as a result of the merger between the QCC and the CJC, formed a strategic intelligence unit which brought together the strategic capabilities of both the former organisations. This unit is primarily staffed by intelligence personnel but also has within it a research officer, a financial investigator and a civilian investigator. The blend and mix of those skills together with the intelligence skills has been an added advantage to this new unit which was made possible by the change in the organisational structure following the merger.

The SIU has a responsibility to monitor various crime markets in Queensland, identify emerging trends and changes to threat levels. Naturally, the unit does not achieve this in isolation. No single organisation can combat organised crime alone or in isolation. As such, the intelligence area of the CMC works in close partnership with other organisations. If we are going to be successful in tackling organised crime and corruption in Queensland, this is obviously essential.

We have very strong partnerships with the Queensland Police Service in particular. You heard from Mr Atkinson this morning in that respect. We also have very strong partnerships with the newly formed Australian Crime Commission, which was formerly the National Crime Authority, and the Australian Federal Police, from the law enforcement perspectives. In respect of our paedophilia jurisdiction, we work quite closely with the office of the Children's Commission. These partnerships, and regular liaison, eliminate duplication of effort between agencies and ensure that our limited resources are used in the most effective manner.

I mentioned a minute ago monitoring crime markets. We apply a risk assessment methodology to the various markets within Queensland, identifying those that pose the most significant threat. This methodology was something devised by Project Krystal in the former QCC days, and it continues to be quite applicable to the work we do today.

Where the SIU identifies matters of concern, it either provides advice to the appropriate stakeholders or, alternatively, it may develop a target proposal recommending the commencement of an investigation. In terms of target development, a very useful benefit arising out of the merger of the QCC and the CJC has been that the SIU provides a bridge between the misconduct and the crime jurisdictions. I think you heard earlier of some possible concerns about the two areas being in the same organisation. You also heard earlier that we keep those jurisdictions separate and managed by different areas of the organisation.

If you like, the Strategic Intelligence Unit sits in between those two areas and works on both misconduct and crime matters. There are occasions where a crime investigation will uncover corrupt activities or, vice versa, an investigation that starts off investigating corruption may lead to organised crime activities. That is particularly so in cases where we are looking at possible corruption in the Police Service, where they tend to have a close association with the criminal fraternity. With knowledge of what is going on in both areas of the house, the SIU can pick up if there is a matter of concern and raise the issue with the other side, so that dialogue occurs and we do not have two areas looking at the same patch from different perspectives.

Another important aspect of that area's work is the production of intelligence advice and publications. You are aware from our regular reporting to you that that includes intelligence briefing papers that support the internal decision-making process, more formal strategic

intelligence assessments which are sometimes quite extensive. They will be disseminated to other organisations where appropriate within Australia and occasionally overseas if the assessment touches on activities in a different country.

There are also two other publications. The first is Intelligence Digests, which are designed to provide advice of emerging trends. These are widely disseminated as in-confidence law enforcement publications to our colleagues in other agencies. The second is Crime Bulletins, which are produced more for public information designed to heighten community awareness of organised crime issues within Australia. The feedback that we have had from clients in respect of those publications has always been very positive, and I am quite convinced that they are now very well regarded within the law enforcement community as useful documents.

I touched on dissemination earlier and said I would come back to it. As you are aware, the act requires us to have an intelligence database within the organisation and to share intelligence with our colleagues and other relevant clients. The commission considers the sharing of intelligence a very important contribution to its coordinated approach to organised crime with other agencies. I can give an example. During the past 12 months the commission has placed almost 600 source documents on its intelligence database. Almost half of those documents have been shared with other agencies, either by electronic dissemination to the Australian Criminal Intelligence Database or by hard copy dissemination to particular agencies where we want to specifically draw attention to something or there might be some urgent need for action.

Without going into operational details, the committee is aware from my previous reports to you in private that some of these disseminations have resulted in quite useful results. In Queensland, for example, two particular disseminations resulted in the detection of three illicit amphetamine laboratories within Queensland where information came from contacts that we had which was more appropriately dealt with by the police rather than by ourselves.

I said I would be brief, so in summary I would suggest that the commission finds its intelligence function to be a vital and integrated part of its jurisdiction and its approach. The commission also enjoys an excellent relationship with other agencies in respect of the collecting and sharing of intelligence and looks forward to continuing doing so in the future.

They are my brief remarks and I am happy to answer any questions the committee has.

**The CHAIR:** Thank you very much.

**Mr HOBBS:** Obviously you share your intelligence through the use of a database. I presume that different agencies do have access to that and they can look at what you are doing. I was wondering: say you are starting off an investigation—how do you know that you are not duplicating somebody else on that investigation?

**Mr Roger:** I might answer that question in a couple of different parts. Our own internal database is not accessible to other agencies. That is primarily because it contains our current operational data as well as our corruption data. But we have designed an electronic pipeline—we call it a pipeline—which allows us to electronically copy data from our database to the Australian Criminal Intelligence Database, which is utilised by a number of other agencies in Australia, including the Queensland Police Service, for its intelligence. Our database is very similar, so there is no duplication of effort or rekeying of anything. We simply press a button and it goes across to the other database. We have access to the ACID database in full, so we can see what other agencies are putting on that database.

We also have regular liaison meetings with a number of key clients, particularly the QPS, at various different levels. You heard Mr Callanan mention earlier about some of the strategic management level meetings that he attends together with the Director of Crime Operations. Intelligence staff—the Deputy Director of Intelligence and the principal intelligence analysts—also attend regular meetings, some weekly, with people in these agencies where we actively and quite openly, through a spirit of trust, discuss targets that we may be looking at on the crime side of the house—we do not necessarily discuss our misconduct targets—and clearly look at who has which slice of the cake. Where we have a common interest we will work in partnership, and where we do not have a common interest we will support each other in our endeavours so that we are all heading in the same direction and getting the maximum use of resources.

**Mr HOBBS:** Thank you.

**The CHAIR:** Thank you very much, Mr Roger. I now call Ms Rynders.

**KATHY RYNDERS**, examined;

**The CHAIR:** Good afternoon, and thank you very much for coming.

**Ms Rynders:** Thank you very much for the invitation, and good afternoon to yourself and the other members of the committee.

**The CHAIR:** Would you like to briefly address us on the witness protection area and related areas and then we will move to some questions and answers.

**Ms Rynders:** Thank you very much. The Witness Protection Act came into effect on 9 March 2001. Since that time members of the program have been diligently working with members from other agencies to have our legislation declared as complementary within all of the other jurisdictions in Australia. With the exception of the ACT and the Northern Territory this has now been achieved, and this allows us to work closely in partnership with agencies from other jurisdictions and to cooperate on various operations.

The new legislation allowed for the provision of a new identity for protected witnesses. Unfortunately, the machinery arrangements did not come into effect until recent times with the signing of an MOU between the chairman and the Registrar of Births, Deaths and Marriages. Our program is now in the process of assessing all protected witnesses within the program to determine their suitability for a new identity. Those recommendations will be considered by the Witness Protection Advisory Committee, which will then make subsequent recommendations to the chairman. In the two years that the legislation has been in effect, officers from the program have identified a number of issues where legislative amendments will enhance the effectiveness and efficiency of the unit. We have outlined those in our submission. Very briefly I would just like to address those.

There is a need for another classification of witness protection, namely court security only. Often times these matters are brought on at very short notice, which requires the staff from the program to conduct a new threat assessment and then to try, in a very short time, to arrange an appointment with the chairman to sign off on that protection agreement. The recommendation from my staff is that the legislation be amended to reflect the fact that the chairman's authority for court purposes only can be delegated down just as interim protection has been.

We have also identified that there is a need for the suspension provisions to be introduced where the protectee's conduct threatens the integrity of the program. Currently the chairman does not have the authority to suspend a protected witness where their conduct could impact adversely on the integrity of the program. For example, a witness may commit a criminal offence. Under the legislation the chairman can terminate the protected status of that witness, but only after the conviction of that particular witness. Take, for example, a witness who is guilty of a serious offence but has not yet been convicted of a serious offence. We believe that letting that person remain on the program does adversely impact upon the integrity of the program and the image of the commission.

We are also looking at specific provisions to authorise the use of covert identities for witness protection officers to facilitate the protection of a protected witness. At the moment the legislation is very generic, and we interpret section 15 in a way which will enable us to do that. At the moment there is an Australiawide move to talk about the provision of covert identities for police involved in investigation and intelligence purposes. We think that this national move should also be reflected in the legislation of the Witness Protection Act to specifically allow for witness protection officers to utilise covert identities in the course of protecting protected witnesses.

**The CHAIR:** Can I just ask: is that what will be happening in the other states? This move nationally, would you expect it to be reflected in their domestic legislation in the other states?

**Ms Rynders:** It is certainly an issue that is being discussed by all of the witness protection jurisdictions at the annual conferences that they hold. Whether or not the jurisdictions are going to go ahead with it is obviously dependent on the parliament in each of those jurisdictions. The witness protection officers from all of the jurisdictions have expressed concerns that the new legislation is being very specific in relation to covert identities for investigation or intelligence purposes, but there are other purposes where those needs also need to be identified.

**The CHAIR:** Thank you.

**Ms Rynders:** The officers from the program have also identified the need for broader disclosure of offence provisions. At the moment it is an offence to disclose information in relation to a protected person. However, there are a number of other ways where the integrity of the program can be compromised. For example, this can happen by divulging information in relation to the way in which a court security exercise is conducted or in relation to the identity of a witness protection officer or the location from which they may operate. We are looking for a broader definition in relation to those disclosure provisions.

One other area where staff have identified there is a need for amendments is in relation to the Crime and Misconduct Act. At the moment, witness protection officers do not have the right to seek, for example, the financial records of a witness. This could come in very handy if a witness had disappeared without any knowledge of the case officer. In trying to locate the witness and determining whether they are still safe it would be an advantage for us to have access to financial records to see whether or not they are operating a credit card in an environment outside the area where they are supposed to be living. That is another issue that has been identified.

The final issue I would like to address relates to the profile of the witness protection program nationwide. In June-July 2002 the witness protection unit conducted the first course in Australia based on the nationally approved competencies for witness protection officers. The witness protection unit at the commission continues to set the national benchmark. At a workshop hosted by our witness protection unit in June of this year, among the recommendations that were accepted by representatives from throughout Australasia was that Queensland would be the lead agency for the Australasian training program and that a program would be developed nationally based on the Queensland course for introduction in February 2004. Once again, the work of the witness protection unit from the commission over the last 12 or 18 months is setting the tone for witness protection units throughout Australasia.

The effectiveness of the unit will also be further enhanced by research currently being conducted by two of the officers from the unit who have conducted a study of witness protection units in Europe, North America and Asia. They are bringing back information to the unit to review all of our policies and procedures in line with the information received from overseas. That is the end of my submission. I would welcome any questions from members of the committee.

**The CHAIR:** Is there any interaction between witness protection legislation and people who might come under it and the whistleblowers legislation and people who may be whistleblowers or potential whistleblowers?

**Ms Rynders:** Not specifically, as far as I am aware. The people referred to our program are referred to us by law enforcement agencies generally rather than agencies who have whistleblowers within them. For example, the Queensland Police Service has an internal witness support program. Sometimes they seek information from our people in relation to methodologies to enhance the safety and security of members within the QPS who may be whistleblowers. I am not aware of interaction with other agencies in relation to that issue.

**The CHAIR:** Are there any arguments in favour of the witness protection functions being relocated to the QPS rather than the CMC? Are there particular reasons it would be preferable to stay as it is or go the other way?

**Ms Rynders:** Interestingly enough, when the witness protection agencies from other jurisdiction came to Queensland earlier this month they were talking about how beneficial the arrangement was in Queensland with the witness protection concept being located apart from the QPS. It provides what is called a Chinese wall between the policing agency and people who may be on a protected program. Because we are entirely separate from the QPS there is no possibility that the staffing levels or the resource levels of the function can be impacted upon due to other priorities that may exist within a policing service. That is something they find in a number of other jurisdictions. Sometimes the resources can be affected by other policing decisions. Within the commission we are listed as a separate output of the commission. We are fully resourced to effectively do our job.

**The CHAIR:** What about the interaction of personnel from the CMC involved in witness protection with QPS officers within the QPS?

**Ms Rynders:** Generally interaction is limited to the relationship between the arresting or investigating officer and the case officers who may be attached to a particular witness. We do

also run a number of marketing programs and education programs for investigators. For example, we lecture at all the detective training programs to advise the new detectives about the service that we operate, how to make an application and the associated matters. We regularly conduct marketing exercises when we are in other areas of the state conducting particular operations. There is very close cooperation that fosters both a willingness to use the program and information sharing between QPS staff and commission staff.

**The CHAIR:** What number of police and non-police personnel are there within the witness protection unit?

**Ms Rynders:** The witness protection unit actually has 20 officers headed by an inspector of police. Other than the administrative staff within the unit, all of the staff are police officers.

**Mr HOBBS:** What is the description of a person eligible for witness protection? Is it that their life is in danger or is it harassment? What happens to the ones at the lower end of the scale? Can they get some sort of assistance at all?

**Ms Rynders:** We have five threat levels within the program—one being the highest and five being the lowest. For example, a person may be under general threat. That means a person who may be the subject of police inquiries may have a history of violence but has never made a direct threat against the individual. They receive a certain level of protection. Other people are actually the victims of the threat. They may have been assaulted or the victim of a more serious offence and their threat level is higher. The level of threat determines the conditions under which we provide the protection. For example, a person at a very low threat level may have very regular contact with their case officers but it is not necessary to look at the issue of a different identity for them. For somebody whose life is at risk we will look at an identity change, relocation and all of the other things that we can assist them with for them to get on with their lives. We have various levels of response.

**Mr HOBBS:** Is there growing demand for witness protection? Is there a need to expand it?

**Ms Rynders:** We continue to monitor the trends within the unit. We have peaks and troughs. I am not sure whether or not these are related to increased activities by a range of agencies that we service. It has been fairly steady with the exception of January and February this year when we had a very strong peak. That related to activity actually conducted by the commission in relation to the crime arm that closed down a number of operations. We did get a number of people from those sorts of things. We continue to monitor the workload. If it were necessary to raise the staffing levels of the unit I would certainly speak to the chairperson. If I were not able to adjust the staffing levels within the areas under my control, it would be necessary for me to put forward a submission, but, at the moment, the staffing levels are sufficient to effectively provide the service.

**The CHAIR:** Earlier I was asking some questions about the interaction between the witness protection unit and the QPS. How do you manage the interaction between the witness protection unit and the crime side of the CMC when, as a result of the crime sides activities, you actually generate demand from individuals seeking refuge within the witness protection unit? Is there any chance of the Chinese wall that you spoke of before disappearing because both units are inside the CMC?

**Ms Rynders:** The witness protection unit operates off site. Everything that they do is self-contained. They have their own database. They manage their own records system. There is still a very distinct divide between everything that they do and the other parts of the commission, although there are cooperative arrangements for a range of operational reasons.

**The CHAIR:** So the contact that you explained before between the witness protection unit and the QPS—namely, between the arresting officer in the QPS and the case officer in the witness protection unit—would that still apply if the witness came to you out of a major organised crime initiative of the major crime section of the CMC?

**Ms Rynders:** Yes.

**Mr Butler:** It is very important that the decisions that are made about the protection of witnesses are made wholly on the basis of the criteria in the Witness Protection Act and are not affected by the requirements or the desires of the investigating agency. At times the interest of the protected person might deviate from the investigating agency. That is why it is very useful to

have a witness protection unit that is independent, self-contained and protected from the sorts of pressures that might arise in a situation where, say, an investigating agency wanted to put pressure on a witness for some reason. That would be inappropriate.

The way in which the witness protection unit operates is that its officers carry out their assessments quite independently based on the criteria under the act. They make the risk assessments and they determine the level of risk. The decisions that are made about whether or not a person is accepted are made on the basis of that information which comes through the division to the relevant committee who make recommendations to me. Ultimately, I make the final decision about whether or not a person is accepted into the program. That is a transparent process that provides for accountability and avoids any suggestion that any improper pressure has been brought to bear.

**Mr McNAMARA:** Can you give me some idea of the number of times witness protection officers have needed to assume a false identity? How often does that happen?

**Ms Rynders:** It happens all the time. The concern I expressed earlier relates to the fact that the national legislation is moving towards identifying particular classes of people who should be able to use covert identities. They have not included witness protection officers among them. I am concerned that there may be a tendency to interpret our legislation in a different way simply because there is seen to be a need to identify classes of people who should have covert identities.

**Mr McNAMARA:** And that would be a legitimate concern given the thinness of the basis upon which you are proceeding under the current legislation to otherwise protect a protected witness?

**Ms Rynders:** That is a concern for us once that new legislation comes in.

**Mr McNAMARA:** It is not absolutely clear, is it?

**Ms Rynders:** No.

**The CHAIR:** Is this uniform template legislation that is being drafted across the country that each state would need to pick up?

**Ms Rynders:** There is a cross-border working party in relation to the investigation of crime that covers a whole range of things including covert identities.

**The CHAIR:** I take it other jurisdictions like ours are making submissions to that process drawing attention to the point you have just made that witness protection officers themselves often need to be able to assume a covert identity.

**Ms Rynders:** That is correct.

**Mr Butler:** That is correct. This is part of the national investigative powers move whereby the federal government has been trying to encourage a national approach to developing interstate powers. The working group has representatives from Queensland. Our general counsel, Theresa Hamilton, has been regularly attending that. We have had input into the process, but because there are a lot of jurisdictions involved, it is always a bit uncertain what the bill will look like when it comes out of the process.

**The CHAIR:** Thank you very much Ms Rynders. We much appreciate your time.

**PAUL MAZEROLLE**, examined:

**The CHAIR:** Good afternoon and thank you, Dr Mazerolle, for attending this afternoon.

**Dr Mazerolle:** It is a pleasure to be here.

**The CHAIR:** I ask you to make a three or five minute opening statement and then we will proceed to questions.

**Dr Mazerolle:** Thanks very much and thanks for the opportunity to talk to the committee about the research and prevention program of the CMC. I think it is fair to say that our program is a highly diverse program. It is a program that has responded very well to the scope of the new legislative framework, in particular in moving us in the direction toward crime prevention activities as well as research into major crime. I should say by way of introduction that the research and prevention activities are highly committed to methodological rigour, evidence based approaches and practical outcomes as well as embracing partnership approaches where applicable. So those are some of the general approaches and themes that we are committed to in the research and prevention area.

What I thought I could do is give you just a very brief overview of the scope of the activities that we are involved with. They principally fall into six different areas which you, I am sure, will be familiar with. One is our policing research area. That is a very large area. It is committed to, in a broad sense, the continued improvement of the Queensland Police Service. It is committed to organisational reform. It is committed to promoting innovative police strategies and engaging in cooperative research partnerships where appropriate. That was a major staple under the previous commission and it continues to be a major part of what we do in research and prevention—that is, focusing on the QPS and looking at integrity and organisational performance. In broad terms, these activities focus on monitoring police powers, conducting integrity research and also monitoring public attitudes about the QPS. As was mentioned this morning by the chairman, the recent public perceptions of the QPS show a marked improvement over time in the attitudes towards the Queensland Police Service but also some areas which require further attention, particularly for young people.

A second area that I think is worth stating is the work of the commission looking at police strategies and service delivery methods, in particular promoting effective and innovative policing approaches such as beat policing. I am sure you are familiar with the fact that we just launched a report yesterday in Toowoomba, which Mr Shine attended. It was well received by the police, government and community members. I think that is an example of how work in research and prevention seeks to provide important answers to key questions about organisational performance but also scope for organisational improvement by the Queensland Police Service.

We are also involved in a series of other activities in policing such as looking at, for instance, Police Service delivery in the areas of domestic violence, which is a key area of concern across the state. We are also looking at issues of investigating sexual offences, what are best practice approaches and also looking generally at the area of police indigenous relations—that is, is there scope for further reform with respect to service delivery? Broadly, in terms of a third area of focus for policing, we are interested in looking at monitoring police use of force and we do this by undertaking research projects that are of concern in relation to the use of pepper spray or C spray, police high-speed pursuits and issues of deadly force and less than lethal force. Generally, that is another subarea of our police research and prevention program.

Let me move quickly to another major staple in the unit, and that is misconduct prevention activities. There are a range of activities that my staff are involved with in the area of misconduct prevention. They can be, I guess, disaggregated into four or five different activities. Firstly, we are involved in undertaking organisational systems research and identifying organisational weak points where misconduct prevention advice and materials can be provided. When complaints are brought into the commission, there is an opportunity to try to identify what are the preventive opportunities across the public sector and our prevention experts do that. They are also involved with providing advice to the public sector and liaising with key members across government sectors as well as the local government sector in particular.

Thirdly, our misconduct prevention officers are involved in producing advisory materials—advisory materials which have been identified as necessary to provide assistance to public sector agencies, whether it is in dealing with conflict of interest or procurement practices or



dealing with corporate charge cards or dealing with whistleblower protection systems. We are working at producing advisory materials which are trying to enhance the capacity of the public sector to not just deal with but also prevent these things from recurring.

In relation to some of those activities, recently we have conducted a survey of the public sector to try to identify in a broad sense what is the range of misconduct risks that the public sector is experiencing as well as its capacities to deal with and prevent these. The commission over the coming year, if not two years, will be producing a series of advisory documents consistent with the information that we have extracted from this important survey which was, I should add, modelled after the survey that was conducted in New South Wales by ICAC, and it was well received down there. We think it is an important way to go for the commission. So our misconduct prevention activities are really core business and fundamental. Historically, recommendations from misconduct prevention activities have been well received, put in place and really effected change in the public sector. As the chairman, Mr Butler, mentioned this morning, just this month we are seeking to have our misconduct prevention best practice web site put up on the CMC web site. That will be an important resource for agencies to access information.

Moving along, the other activity that we do, as I mentioned, is major crime research. This, as I said, is a new area for the commission but a very important area. We have had to start two new sections of research and we focus primarily on paedophilia and sex offending research and also research into drug trends and drug market issues. We are doing that because we think that is importantly related to issues concerning major crime and organised crime. It also importantly presents challenges for the Queensland community. What are the patterns of drug use? What are the purchase patterns? What are the drug market issues? We see this information as critically important for not only law enforcement priorities but also priorities in crime prevention. If we know what the problem is, we can identify preventive solutions. So we have a range of activities and projects that are trying to inform generally what the drug trends are and what the purchase patterns are.

On the paedophilia and sex offending side, our projects are looking for opportunities for prevention and enhancing criminal justice system responses. You are familiar with some of the work that we have been doing following on from the Volkert research report. We will be looking to produce that in the near future. That has the opportunity to really make some important statements about organisational systems reform in sex offending areas.

There are a couple of other issues I want to promote and communicate. One of those is our area of crime prevention. That is a new function for research and prevention and it is an exciting area for us. We have hired an officer and we have augmented it with some additional officers to focus on crime prevention activities, principally looking at sex offending, paedophilia, drugs and major frauds. In particular, we have officers looking at best practice in drug treatment and drug prevention opportunities. We have officers looking at sex offender treatment programs to see what is effective and how we can learn from the best available evidence and promote that in Queensland. We have crime prevention officers who are working in partnership with other parts of the commission, in particular in the major crime section, to try to understand the innovative and effective law enforcement practices used to reduce sex offending victimisation. So I am very excited about the crime prevention opportunities and activities that are ongoing.

Finally, and importantly, there is the work that we are doing for the indigenous community. The commission before the CMC—that is, the CJC—had an important commitment to indigenous stakeholders and an indigenous liaison and education program. We have continued that under the new commission, but I would argue that it has been expanded even further. It has been expanded further to broaden it beyond an educative function to also look at how we inform good governance across indigenous councils. Approximately six months ago the research and prevention section produced a fairly comprehensive series of materials titled *On the right track*. That was a series of publications and pointers to identify good practices for all councils, but was particularly contextualised to indigenous councils so that they can be promoted across indigenous communities and so that those good governance principles will be maintained.

We also have a consultative process with indigenous stakeholders. We seek their advice on a range of our projects that are related to indigenous concerns. Increasingly, this year into next year we are intending to embark upon an important prevention project looking at trying to

prevent child sexual abuse in indigenous communities. It is an important topic. It is a big topic, but our intention is to work in partnership with the key agencies—Families, DATSIP, Health, Police, the Children's Commission, et cetera—to try to have a multiple agency approach to deliver preventive opportunities for some of these communities.

That is just a very quick and broad overview of the range of activities we do in research and prevention. I think it is a highly diverse set of activities. I think the activities are really making a material difference across the areas of misconduct prevention, across the areas of police integrity and police organisational performance as well as these other areas of major crime. I think the R&P unit is well placed to continue to make important statements and important gains for the public sector.

**The CHAIR:** Thank you very much. I have a follow-up question in relation to the whistleblowers legislation. You mentioned the whistleblowers protection system or whistleblower protection systems. Can you inform the committee of the extent to which, according to your observation, there is support across the different government agencies for people who might seek to claim the protections of the whistleblower legislation? What is the extent of that support and is there a need for perhaps any changes in that area?

**Dr Mazerolle:** I think that is an important question. First, let me tell you about some of the things that the commission has been doing in that area, because I believe it is a key area for capacity development and enhancement across the public sector. Last year the commission was engaged with professionals from the Key Centre of Ethics Integrity and Governance at Griffith University to undertake a project looking at building favourable reporting climates within the public sector. Mr A.J. Brown has worked with us previously and we have a couple of draft documents that we will be seeking to publish in the next couple of months that actually identify what some of the key challenges are for the public sector to enhance reporting climates in relation to whistleblowing behaviour. But that is simply one first step of identifying advisory documents, because consistent with our misconduct prevention priorities we see this as an area of risk that needs more enhancement. What we have been doing over the last two to three months is consulting further with the key centre, in particular with Professor Charles Sampford, in trying to identify what the next step is. Through our broad consultations with Mr Butler as well, we have identified that there is real scope to better promote whistleblower protection systems throughout the public sector modelled on the QPS systems, which I understand are working quite well—that is, it is a coherent system but it could perhaps be modelled better throughout the public sector.

In relation to your question, I do not have an answer in that the public sector is not necessarily committed to it. But my answer is that it is an area for further capacity development and enhancement and we are talking to the right people to work in partnership to help promote that throughout the public sector.

**The CHAIR:** Could you briefly outline how the Police Service goes about it to the limit of your knowledge of that?

**Dr Mazerolle:** I think Brendan could comment on that.

**Mr Butler:** I think one of the issues we have identified is that at the moment protection for whistleblowers is delivered within individual departments. There is no coordinated standard across the public sector. We would like to work on it by providing perhaps a best practice model that departments could refer to that would help them judge the way in which they are carrying out this function at the moment against a model that has been validated in some way. We would need to look more closely at the police internal witness program, but all the feedback one gets is that it is operating fairly well. It is administered within the Police Service by dedicated people. There are support people such as psychologists and other support people so that when an officer, for example, reports misconduct against another officer they are there to speak to them and to offer them assistance if they feel they need it. If it needed to go so far as to relocate them or whatever, advice can be given from that independent unit to management. So it is a continuing process of providing support for officers who are in these stressful situations.

**The CHAIR:** Is the QPS approach to whistleblower support effective in your opinion?

**Mr Butler:** On all that I have heard and seen of it, yes, it is effective. We have not done a comprehensive analysis of it, so I am not able to compare it against world's best practice. But certainly there is a sense within the Police Service that it is effective. It does provide assistance to

quite a large number of officers over the period of a year and it seems terribly important to this culture that the commissioner spoke about earlier where increasingly there is a preparedness of officers to speak up if criminal or serious misconduct is seen. If you are going to ask that of officers—and it is very important to a proper integrity process—you need to have processes in place to protect them and assist them.

**The CHAIR:** I recall reading the UPA survey—the very big survey that you are conducting at the moment—but it is a very lengthy document and I cannot recall whether there was an element in it. Does it seek information from the various agencies you have circulated it to about what they do in support of whistleblowers?

**Dr Mazerolle:** I believe there are a couple of questions in there, but I can get back to you and confirm that. As you said, there are a lot of variables in that. I believe there was some attention to that in the survey.

**The CHAIR:** In terms of the way in which the commission is going about promoting capacity building in each of the agencies, to what extent do you build in that promotion the need to address the reality of whistleblowers in the workplace?

**Mr Butler:** One of the things we are introducing into capacity building is this component of how to deal with an investigation, both whether it is an internal investigation within the organisation or whether it is a CMC investigation. You would be aware that some time ago the CJC produced a booklet on how to manage a CJC investigation and we are in the process of upgrading that. It is going to be incorporated into comprehensive guidelines about investigations, providing assistance to departments by way of a manual, if you like, of how they can go about investigations. A component of that will be how to manage it so that the impact upon staff who might be the subject of allegations, complainants and other workers generally is taken into account.

It would be very useful in that context to have this added component of a structure to assist people. I have certainly raised it with the Public Service Commissioner as something that I think the PSM&E should have an interest in as the relevant agency responsible for whistleblowers protection legislation. We are obviously in the early days yet in terms of launching into that, but it is our next project.

**Mr FLYNN:** Dr Mazerolle, this morning we talked to the commissioner and in a written submission and in answer to a question of mine he spoke about management of the Police Service. This is not meant in any critical sense, except to say that the Police Service sees that—perhaps particularly your portfolio—it is duplicating or in danger of duplicating the areas that could be covered by the Police Service in areas of operational interests and that, although there may be some pertinence to your recommendations, in actual fact from a budget point of view they are totally unrealistic. The commissioner used a very simplistic example this morning in relation to the supply of tape-recorders to police officers. It was wonderful. It really demonstrated the point, but I think he would have liked to have said that there were other areas where perhaps recommendations that you make, one, infringe upon their ability to operationally run the service; and, two, you cannot afford it.

**Dr Mazerolle:** I think that is a really important comment. I certainly have some views on that and I am sure Brendan does as well. Our legislation empowers us to look at the continuous improvement of the QPS. That certainly orients a lot of our research activities. In doing so, in undertaking research projects it is inevitable that we identify areas which require reform and enhancement. It is important to point out that recommendations which emanate from research and prevention reports arise out of a consultative process internally and, most times, externally as well with the QPS. There probably are examples such as the commissioner raised this morning where actually putting in place taping could involve certain resource challenges. That is a fair viewpoint.

On balance, if you look over time, over the last 10 years, if not more, of the commission's work and see where the gains have occurred—real gains—with respect to organisational performance, organisational enhancement, public attitudes about the performance as well as corruption in the QPS, they are really material changes and trends. I think they have come because of concerted efforts in research and policing about best practice.

It is probably fair to say that there are some examples where recommendations have perhaps missed their mark or not necessarily fully taken consideration of some of the resource implications. But I think that, in the main, is the minority view. If you look at the body of work that that has involved our promoting innovative police strategies which are consistent with world's best practice, enhancing the integrity and the view of integrity of the Queensland Police Service—working with them in constructive ways—I think there is ample evidence, in particular in the Research and Prevention Unit of the commission, that we work very constructively with the QPS. I am certainly available to lots of officers and research officers and have good relationships with them. I am sure there are going to be some differences of opinions but I think that is more of a minority.

**Mr FLYNN:** I gather there have been a number of options offered by the Police Service. I am not across them all, I must admit. Is there a willingness on the part of your office to try to obliterate any possible duplication so the Police Service see that they have a valuable input into what you are doing?

**Dr Mazerolle:** If by duplication you refer to the fact that they have a research and evaluation unit and we do as well, there is overlap and there are also competing priorities. They have certain needs internally and we have needs as well. We identify sometimes where there are opportunities to work together. For instance, we are involved in a research project looking at police practices of C spray. The QPS would like some input into that and we value their input. Certainly, our resources are used across various areas. One is to promote continuous improvement. We have an opportunity to bring in things that they might not have considered. In my experience the QPS is quite open to the fact that we are working towards assisting them in organisational improvement. Can they do that internally? Yes, they do. Is the work that we do valuable to help them reach these ultimate goals that we share? I think it is. I think in the main it is highly valuable and I think the commissioner would agree to that.

**Mr Butler:** Could I just make a couple of comments on that topic? One is that we make recommendations. We have no power to enforce those. We do not exercise the power to enforce them. From time to time the Police Service does not accept our recommendations. We have found that in the majority of cases they have implemented them and they have found them useful. One of the important things about the work of our research division is that it chooses not to be theoretical; it tries to have practical outcomes and to value add for the organisations we are talking about.

If I could just turn to that example the commissioner gave of the hand-held tape-recorders. It is a matter that was raised over the course of many years by the CJC and successive officers in the CJC. It goes back a couple of chairpersons, I think, when it was first raised. It has been mentioned in CJC annual reports and so on as an issue. It was, I think, addressed also in Mr Carter's inquiry into police and drugs. More recently, in consultation with the Police Service it was agreed that a trial be carried out. A trial has been carried out in the Wynnum district where officers have been allocated the hand-held tape-recorders and data has been kept on the use of them, the costs have been monitored and so on. That trial has been evaluated within the QPS by their own research people. The results of that are not available as yet, although I understand it is fairly close to finalisation.

It is not a situation where, although a recommendation was made, the QPS were unable to have a graduated response to it. Indeed, in consultation with the commission and with my support this concept of a trial has proceeded. Once we get the results of that trial we will have some evidence based data that helps us all ask whether that was a good recommendation or not a good recommendation. Hopefully, that will inform good decision making in the future.

Normally, as we develop recommendations out of our major reports such as the one we will soon deliver in relation to dealing with sexual offences in Queensland, we consult widely. We consult with the QPS, we get their feedback in relation to matters that have been raised. Hopefully at the end of the day the recommendations we make are going to be practical and able to be implemented. There is no point in us as an organisation making recommendations to agencies that they are quite unable to implement or are so extravagantly expensive that they are unrealistic.

**Mr COPELAND:** As I recall, the research function was one of the areas that was affected with the change to the new act. Has that affected your ability to deliver your aims in any way, or has it changed the way that you operate dramatically?

**Dr Mazerolle:** No, it has not. Certainly, part of our research has been moved over to the Department of Premier and Cabinet. Three positions have moved over. The priorities of the commission are such that we have been supplemented because in other ways our research priorities have been expanded. So we have not been focusing on criminal justice system research, but we are focusing more on drugs research and paedophilia research. So in that sense, no, we have not been disadvantaged; we still have lots of important work to do. There has just been a slight refocusing from not focusing on criminal justice system monitors and things of that nature that the previous commission did.

**The CHAIR:** Could I take you to the issue of the negative attitudes of young people towards police and the treatment they perceive they receive from police and towards the complaints system, which was highlighted in the latest public attitudes survey regarding the Police Service. Where do you see that both research and proactive police initiatives could go to address the issue of young people and their relationship with police?

**Dr Mazerolle:** That is a great question, because when we produced this report we talked about what are the next steps with respect to learning from this report and how we can help inform service delivery to better reach young people. Just recently I have had staff in my department meet with members from youth advocacy centres to talk about these findings and to talk about strategies. One of the first things we can and are doing is to undertake a consultative process, to actually go out and talk to more young people and say, 'What really is the concern?'

We also need to talk to the police officers and try to understand the kind of customer service issues which are leading to higher levels of dissatisfaction. We do not pull back from the fact that part of this finding might be a function of the age crime curve—that young people are disproportionately getting involved with criminal activity and coming in contact with police officers. But at the same time, it does raise real concerns about the customer service, police-citizen interaction. I guess my answer is further consultation with the police and young people and advocacy groups to try to identify some preventive types of mechanisms to follow up on this important information.

**The CHAIR:** Thank you very much.

The committee adjourned at 3.30 p.m.

The committee resumed at 3.48 p.m.

**ROBERT SIBLEY**, examined:

**The CHAIR:** Good afternoon, Mr Sibley. Thank you very much for coming and giving us your time and your views. I want to also thank you for the additional material you have provided to us this afternoon in the six-page document that has just now been circulated to us. Could I invite you to, in the space of three to five minutes, identify a couple of the key issues that you think the committee needs to focus on that are relevant to your area and around which there might be some productive discussion by the committee? Take the document as read, but we will certainly give it careful consideration after today.

**Mr Sibley:** Thank you, Mr Chairman. I have covered a few issues that are focusing on the contact I have with the CMC in relation to my position as the Public Interest Monitor. The first point I have raised is one that was raised with me by Justice Moynihan, who is the Chief Judge Administrator, about the return of reports on covert search warrants. He conveyed to me the view of the Supreme Court judges that that should be simply a report back to the Public Interest Monitor, not to the judges. I have taken that submission to the Police Powers and Responsibilities Review Committee, of which I am also a member. I have detailed those discussions on that as well. So that will require an amendment, if it is accepted, to both the PPRA and the CMC acts.

The next matter is ensuring compliance with surveillance warrants. What was proposed by the judges—it was actually triggered by me—was that the monitor have some sort of general right of applying to a court for directions and also a general right to report to the court. At the present time, under the act, I report any non-compliance to the commission itself. I usually take the opportunity to also refer the matter to this committee. What I have suggested there is that I report to the committee as well and also that both acts be amended to incorporate that right to apply to a court for general directions and also to report generally.

The next matter I have dealt with is the adequacy of my functions under the act and also under the Police Powers and Responsibilities Act. That was in response to a letter I received from the committee. I have detailed the way in which I am able to know about whether compliance is taking place in any given case. There is no specific provision in the act that enables me to do that. I derive my information from the conditions of the warrants that are issued in any given case. Those conditions are pursuant to sections 125F and 141D of the act, which give both judges of the Supreme Court and magistrates a right to impose any conditions they like. These compliance conditions—there are several in each warrant—have evolved through that process, not through any specific part of the legislation.

I have also talked in general terms about dealing with materials that have been obtained if there is a breach of the warrant. I guess there are two types. There is exculpatory material, which must go to the defence, and there is inculpatory material which has been unlawfully obtained. It is usually real evidence. I have expressed my view that that ought to be destroyed. Those sorts of processes have been followed where that has occurred thus far.

**The CHAIR:** Has there been much incidence of that?

**Mr Sibley:** Thankfully, no. In my time, which is a bit over two years, there have been I think about three instances of it—and not all with the CMC, I might say. I deal with all of the agencies, of course.

I looked briefly at the proposed enhanced coercive powers that the CMC has suggested in relation to terrorism. I made some comments about that. I particularly focused on what appears to me to be seeking the power to obtain what are called general warrants under the common law, which are abhorrent to the common law and have been struck down generally.

**The CHAIR:** This is where you cannot identify a particular individual?

**Mr Sibley:** No, it is anybody. So you are identifying a particular activity or a particular thing. From memory, there have already been a couple of applications by the CMC seeking to do this, which the monitor has opposed and were refused by the court. I have made the point that it appears to me on reading the submission that it is sought in relation to not only what is clearly antiterrorist activity but also any major crime investigation so that the power to get a general warrant will be given in all circumstances, not just in relation to antiterrorism. That, in my view, is unwarranted. I suppose it is really a matter of policy for the government, but if it is thought that the terrorist attacks have fraught us with such danger that we need these additional powers, they

ought to be so carefully confined and the provisions will have to be carefully drafted so they do not apply across-the-board.

**The CHAIR:** I just ask you to pause there. That was a point of conversation earlier. You say that it is unwarranted. Would you like to elaborate on your reasoning behind that conclusion?

**Mr Sibley:** I do not see why, in the ordinary course of an investigation of major crime, there has been demonstrated any real need for a power to get a general warrant. I can accept the arguments that in the climate of antiterrorism that may be necessary, but certainly not by pointing to anything that I have seen in the past in the investigation of general major crime.

**Mr HOBBS:** How long would it take to get a warrant under normal conditions?

**Mr Sibley:** A few hours is the shortest time that I have been involved in. Generally they take at least a day or so, but they can be done more quickly if oral evidence is called rather than relying on affidavit material, which is the normal process. So instead of having to go through the machinations of preparing affidavit material, delivering it to me, giving me an opportunity to consider it, bringing it on before a judge and arguing it in that way, in an emergent situation it would be possible to bring it straight before the Supreme Court and call the witness to outline the grounds.

**The CHAIR:** And you are in attendance on that occasion?

**Mr Sibley:** Always in attendance, yes. I have two deputies and we are available 24 hours a day. I have been called out at 3 o'clock in the morning.

There is also the same point I have made in relation to emergent covert searches. If it is thought that they are necessary in antiterrorist activities, I do not accept that they are necessarily necessary across-the-board. When we talk of major crime we are talking about all sorts of major crime, not just antiterrorist activities. I think that point has to be carefully made in considering these. I cannot see any real problems with the other three proposals by the CMC under the rubric of antiterrorist powers.

**The CHAIR:** We had some discussion earlier today about a proposal by the CMC that the definition in the Police Powers and Responsibilities Act of 'serious indictable offence' be extended to include instances where there is only extensive destruction of property. The discussion centred around whether that was a proposal put forward in relation to terrorist activity alone or general criminal activity, including but beyond terrorist activity. Do you have a view about the breadth or narrowness?

**Mr Sibley:** The definition of 'serious indictable offence' in the Police Powers and Responsibilities Act is there principally to allow the issue of warrants under that act for class A surveillance devices—they have to involve serious indictable offences—or covert searches, which are issued only if there is organised crime by definition, which includes activities that are organised involving a number of people to commit serious indictable offences. So the real focus of that extended definition is for use under the Police Powers and Responsibilities Act. I might say that the definition of 'serious indictable offence' under the Police Powers and Responsibilities Act is in some respects generally unsatisfactory. It has a number of different parts to it, some of which do not make for a terrible lot of easy interpretation, such as serious theft. What is that? Your question is whether it is warranted in relation to antiterrorism?

**The CHAIR:** Not really. My question is: is it warranted in relation to criminal activity generally as distinct from a more limited extension, and that is in relation to terrorist activity?

**Mr Sibley:** I suppose then it introduces definitional problems of what is extensive damage to property?

**The CHAIR:** That issue arises no matter whether the extension of the definition is confined to terrorist activity or to criminal activity generally.

**Mr Sibley:** I see your point. I would be concerned that such an imprecise definition would give rise to a class A surveillance device in relation to non-terrorist activity. In other words, it would be unwarranted to extend it to non-terrorist activities.

**The CHAIR:** That is the question I am trying to crystallise—a bit like the earlier proposal—that is, whether there was a warrant for an extension in relation to terrorism. Yes, but perhaps not so in relation to criminal activity generally. Likewise with this particular proposal, confessing that I do not think the committee is really across the practical implications of what

happens now and what might happen in the changed proposals. Obviously, we are relying on people such as yourselves, the CMC and others to offer some expert guidance.

**Mr Sibley:** Again, I would suggest it is unwarranted to enlarge the definition if it is not in the face of an antiterrorist act. So it would have to be linked to antiterrorism. But where the proposal is laid out in the CMC submission it seems to be concentrating on antiterrorist activities alone. That is why I pointed out this problem with the reference then to major crime also. So if it is envisaged that that is to extend generally across-the-board, I would think it was unwarranted. And I do not know what it means.

**The CHAIR:** Thank you. You might proceed.

**Mr Sibley:** There are just a couple of other matters that I point out. One is a nuisance more than anything. One of the magistrates in Brisbane takes the view that no application can be made for a class B surveillance warrant unless the applicant is physically present.

**The CHAIR:** And a class B warrant is?

**Mr Sibley:** Just a tracking device. The Magistrates Court has power to issue only tracking device warrants.

**The CHAIR:** On this view, the applicant has to be?

**Mr Sibley:** The applicant for the warrant.

**The CHAIR:** So Mr Butler has to appear on behalf of the CMC?

**Mr Sibley:** Someone designated by him, usually a senior police officer. It is unnecessary in cases where neither I nor the issuer want to take issue with anything in the proposed grounds, and no Supreme Court judge has ever suggested that the applicant has to be present and no other magistrate has, either. But despite our attempts to persuade the magistrate to the contrary view, we failed. It unluckily seems not so much for the CMC but for the Queensland Police Service that this person is drawn. You have to then go away and get the applicant and bring them down to the Magistrates Court. Where they are out of the region it is virtually impossible. What I am suggesting is a minor amendment to both acts that makes it clear. Everyone is legally represented in these applications. The CMC applicant, the Australian Crime Commission applicant and the Queensland Police Service applicant all have a barrister or a solicitor appear for them.

**The CHAIR:** Who is likely to be the applicant? There are 70-odd magistrates. This is one magistrate.

**Mr Sibley:** That is not a solution, unfortunately. The Magistrates Court does not have organised chambers as such the way the Supreme Court judges do. So you have to attend at 10 to 9 or 10 to 2 on any given day and then they try to find a magistrate for you to deal with the application.

**The CHAIR:** What percentage of times has such an application been rejected?

**Mr Sibley:** A small percentage.

**The CHAIR:** Five per cent?

**Mr Sibley:** It would not even be that. It is only if you draw this particular person. So you keep your fingers crossed.

**The CHAIR:** So you make a call to the list clerk before you attend?

**Mr Sibley:** They do not know. When you roll up there they run around and try to find a magistrate. It is not a terribly well organised system. The Supreme Court is far, far better organised.

**Mr McNAMARA:** Would it be easier to organise an appeal than an amendment to the legislation?

**Mr Sibley:** You would have to judicially review the decision, I suppose—either myself or the agency involved. If there are amendments going through it might be easier to slip two words into the provisions.

**The CHAIR:** If there are otherwise amendments taking place.



**Mr Sibley:** If there are otherwise amendments taking place. The other matter I have dealt with is the problem that I have raised in both of my annual reports, that is, how we deal with the material that is used to found these applications. In the Supreme Court the affidavit material is sealed in an envelope with a copy of the warrant. Some of the application material is quite voluminous. It is then marked 'not to be opened except upon the order of a Supreme Court judge' and then finds its way down to a secured part of the registry of the Supreme Court. Since 1997 we have been having these sorts of applications made. The material is gathering and gathering. The same with the Magistrates Court. They do not keep it in any central place. They keep it in the individual magistrate's safe. That was a conscious decision. I suggested that they be kept all together somewhere, but they are not. There is extremely sensitive and dangerous material in there. These are materials that have to be kept from other agencies as well. For example, the misconduct division would not want the crime division or anyone else in the Police Service to know what it is up to, obviously. But I think inevitably something has to be done to deal with that. I take this opportunity to raise it yet again. I do not know. Perhaps there is a secure position somewhere where archives are kept. You cannot access these under the Archives Act, but maybe there is a secure repository somewhere.

**The CHAIR:** Does the legislation deal with creating secure places? In relation to the Supreme Court matters that come before the Supreme Court—

**Mr Sibley:** No, not these acts.

**Mr FLYNN:** I realise it was mentioned in a somewhat humorous vein earlier, but the issue of hunting around and finding the right magistrate was quite a serious problem pre-Fitzgerald in relation to getting the attentions of particular judges. I think a couple of judges lost their careers over it. Do you see it as being in the public interest to have a situation where if you do not get a satisfactory decision from one magistrate you try to shop around and find another one? I do not know whether that falls under your portfolio?

**Mr Sibley:** A bit of forum shopping?

**Mr FLYNN:** Yes.

**Mr Sibley:** It always has its dangers, because the person or the organisation will be doing the forum shopping. If they perceive that some judicial officer takes a harsher line than another, they will seek to bring matters on before another.

**Mr FLYNN:** I think it is a very dangerous line.

**Mr Sibley:** Yes. I think each matter should be dealt with on its merits. A vigorous process is gone through, which I dealt with in detail in my annual report and which I provided to the committee some months ago. I think ultimately the agencies should take things as they come.

**The CHAIR:** This is not a matter so much of one magistrate having a harsher view than another but of a magistrate having a view of the law applicable that he or she is to apply that differs from another magistrate. So it is a matter of a different legal interpretation being reached by different magistrates. It would seem that, from a practical point of view, an applicant who is faced with a decision that they disagree with should consider ways of appealing that matter by whatever avenue there is?

**Mr Sibley:** It is probably a lot easier, if there is time, to get the applicant down to the court.

**The CHAIR:** Unless you want to solve the problem for the longer term?

**Mr Sibley:** Yes. The other way perhaps might be to write to the chief magistrate and suggest that the matter be considered and a direction given.

**The CHAIR:** I do not think this committee is in a position to do that, nor would I.

**Mr Sibley:** No. That is why I suggested a provision.

**The CHAIR:** Anything further?

**Mr Sibley:** No, that is a summary of what I have reduced to writing pretty much.

**The CHAIR:** Thank you very much for that. We will read the full detail of your document with interest. Are there any further questions?

**Mr COPELAND:** One issue that continually comes up and one that I am sure we will be addressing again is the issue of telecommunications interception. What is your view on that?

**Mr Sibley:** I have always supported it. I made that point in both of my annual reports. I see consistently joint operations with the Australian Crime Commission, the QPS and the CMC where they are routinely getting telephone intercept material under lawfully issued warrants. It is invariably far less intrusive than having a microphone or a video in your house for days or weeks on end recording every conversation that you have. It is generally far more focused and more useful. I cannot understand why the power has not been given to the agency in Queensland.

**The CHAIR:** Are there any other questions?

**Mr McNAMARA:** In your annual report you noted that in relation to the previous CJC where you detected some non-compliance your report was made to the predecessor of this committee, but under your new legislation you now report non-compliance by the CMC to the CMC. Do you see that as a problem?

**Mr Sibley:** To date it has not been. But looking at it from a matter of first principles, I do not think it is desirable. I have actually made the point that I should report to this committee. I do have the opportunity, as I said, and I have utilised it, to refer the matter also to this committee when I am referring it to the commission.

**The CHAIR:** We appreciate you taking that approach.

**Mr Sibley:** Yes, I think it should also come back as a matter of course to the committee as well.

**The CHAIR:** In your annual report—and I think you touched on this in your earlier comments—you talk about class A surveillance, or listening, devices. You note in your annual report that the CMC Act suggests that a listening device can be obtained only in a public place, which would appear to have been the intention of the parliament. Do you have any views about that?

**Mr Sibley:** Yes. The legislation is not perfectly drafted. I do not think it is a real problem, because no-one has seriously challenged the right to get a listening device in a private place. It is just that when I read it I think it is capable of that interpretation.

**The CHAIR:** Is that how it is applied?

**Mr Sibley:** No.

**The CHAIR:** It is open to that interpretation and, therefore, the argument?

**Mr Sibley:** With any piece of legislation like this it is better if it is crystal clear, in my view. But I certainly would not suggest for a moment that the interpretation of the act as a whole would not allow the issue of a warrant for a listening device in a private place. It would make a nonsense of the whole scheme of the act.

**The CHAIRMAN:** Thank you very much, Mr Sibley.

**ROBERT NEEDHAM**, examined:

**The CHAIR:** Mr Needham, welcome to the committee, and thank you very much for your attendance, I think virtually all day so far. We very much welcome your contribution this afternoon.

**Mr Needham:** Thank you.

**The CHAIR:** As with the previous witnesses, we are happy to hear from you briefly for three to five minutes, and then we would be happy to discuss matters that you might have raised either now or in your comments to us a couple of days ago.

**Mr Needham:** If I can just make some general comments on the monitoring aspect, where I assist this committee as its agent in monitoring the commission, in the 18 months that I have now been in this position.

If I can look at it in the macro level, the larger level, one of the things that is heartening to see is that in my experience there appears to be an appropriate culture existing within the CMC amongst all its staff that I come in contact with with respect to the importance of the need for their duties to be carried out in a fair, impartial, independent way and in accordance with law. This is evidenced, amongst other things, by the response that I get to my particular role when I am carrying that out. The staff at the commission could see me at best as a nuisance and at worst they could see me perhaps as a threat because I am investigating things that they have done and I am reporting to yourselves. However, I am happy to be able to report that I almost invariably receive nothing but full cooperation from all of the staff at the commission. In particular, I have received that without any qualification from all the senior staff at the commission.

That culture of the commission is reinforced by an appropriate set of manuals and guidelines which are in place and which are being updated, guiding the commission officers in the appropriate performance of their duties. I was pleased to see that it was supported by the submission from the Queensland Police Union, on the attitude of the present commission, and in particular by the chairman, Mr Butler, towards any comments or criticism that can be made of the commission. There are two ways, of course, that criticism can be taken. It can be taken as a threat or it can be taken and received in a constructive way to take on board if it is worthwhile criticism, to adopt it and to use it to improve the commission. I have only even seen Mr Butler approach it in the latter way.

At the micro level, it is a much harder level to monitor any organisation. That is where you are looking for those human errors that can occur and those inevitable problems that can arise, be it as simple as a file going missing. Monitoring those can be difficult, both for someone such as me in my role, and also of course for the management of the commission. The potential for those sort of errors can only be overcome, as I see it, by staff training and by the putting in place and the implementation of systems to detect these sorts of errors, hopefully before they turn into serious errors.

I am satisfied on the system side that the commission is working very hard in that regard. In particular, I applaud the use that they are making of computerised case management. You heard some of that from Mr Lambrides this morning, where he was talking about the use of tasking on the Compass computer system. To use the simple example I mentioned before, if a file or a document goes missing, if it is left to someone without any backup, then that file can go missing and it can perhaps be weeks or months before it is noticed that it is missing and nothing has been done. If it is in the computer as being a task that someone must do with respect to that file or that document, then of course the fact that it has gone missing, to use that simple example, will be noted; it will be picked up and it will be rectified before it becomes a problem. These systems are very important. From what I can see, they appear to be being progressively improved.

With respect to human errors, that is more difficult. The only steps that I can see towards their avoidance would be a combination of training and supervision. I could note that of the six matters that I have investigated in my 18 months with respect to the commission, there are only two where I found any real serious problem. On one there was a systems aspect, but on both of them there was a human error aspect, each of them in the assessment of complaints. Two is a very small number, as Mr Lambrides said this morning about the number of problems. Two is a very small number compared to the total number of complaints that would have been assessed

during the time that I have been looking at it, because it is not just 18 months; a lot of these things have gone back earlier. But it is an area requiring continual vigilance by the management and the individual staff within the commission.

If I can just comment very briefly on the submissions received, I have considered with interest the submissions made to this committee. I have made some written comments which the committee has received. I will not go through those. It is heartening to see that many favourable comments have been made about the CMC, but it is of concern that the most common expression of concern made in the submissions is in respect of lack of timeliness, as I saw it, mainly in the areas of assessments and in finalisation of investigations.

In regard to timeliness in assessments, we have heard this morning how that is being looked at. It is a matter that I want to look at further in my audit which is under way but unfortunately has been delayed somewhat. Timeliness in its investigations appears to be a matter that is coming very much under control. On the figures that are expressed on pages 56 and 57 of the CMC submissions—and they were supported by what Mr Lambrides said this morning—hopefully this cause for complaint will be largely removed, if not entirely removed. Those are my comments at this stage.

**The CHAIR:** Thank you very much. Could I take you to an issue that has been discussed earlier today, and that is the suggestion I think made by the Police Union and maybe elsewhere as well—I think also in the Justice Department submission—about the CMC charging and/or prosecuting matters that they have themselves investigated. Do you have any comments you want to make about that?

**Mr Needham:** Yes. I can understand the commission wanting to keep itself aloof from the prosecutorial role, and I think it is appropriate that they do. It is something on which I know the various chairmen, when they have held that position, have all taken that same view. However, I do not see that if they use police within the commission to charge, that that is taking on the prosecutorial role. The investigation side of the Police Service then lays charges either by way of an arrest or by way of a complaint and summons. It is then handed over within the Police Service to the prosecution side if it is going to be a committal that is done outside Brisbane. As I understand it, the Director of Public Prosecution's office now does all prosecutions in Brisbane and in some other areas. Then, of course, all criminal matters are prosecuted by the DPP at superior court level.

If the commission was to use its own internal police officers to lay charges, I would not see that as the taking over of a prosecutorial role. All they would be doing is finalising the investigation by laying the charge and then handing over the brief to the appropriate organisation that would then pursue that charge through prosecution. I can understand that in some cases, somewhat in line with that letter of understanding between Mr O'Regan and Mr Miller when he was the DPP, there are some matters that understandably could be referred to the DPP before charges are laid. Serious matters, matters involving politicians, judges, prominent people, matters in which the commission itself feels there could be the need for the exercise of the prosecutorial discretion as to whether or not to prosecute—I could understand those being referred to the DPP, because it would not be much sense to have the commission commencing a charge which it is thought might eventually be dropped by the DPP. That could reflect in fact quite unfavourably on the commission.

However, with the run of the mill matters, the matters of, say, a public servant who has been investigated and has been found to be embezzling money, stealing in effect as a public servant—a run of the mill sort of case—I can see no real reason why that charge could not be commenced by a police officer within the commission exercising the powers that he retains as a police officer, then the brief is forwarded to the appropriate prosecution authority to take the matter on to committal and on from there.

**The CHAIR:** Whether or not the prosecution role is taken on by the CMC is one issue.

**Mr Needham:** Yes.

**The CHAIR:** And the argument is about keeping distinct those two roles—the prosecution on the one hand and investigation on the other—but that is not the only argument.

**Mr Needham:** No.

**The CHAIR:** Another argument is that for the CMC to pass on to another agency—the QPS or the DPP—the decision whether or not to charge, whilst it has a cost in terms of maybe extra delay and duplication, that is an arguable cost in return for the benefit of the CMC being even further removed from the charging process, but it also works as a vetting system of the CMC and so adds to the checks and balances. Would that not be lost if they were able to charge, or do you have a view that the benefit acquired is not worth the cost in acquiring it?

**Mr Needham:** In so far as the CMC needs a vetting process on its decision to refer a charge, that process is already there within our criminal justice system. Any of the more serious matters will go through a committal, and that in itself is a vetting process. If the magistrate forms the opinion that there is not a prima facie case, then the matter is not sent on for trial. Then when it goes on to the DPP, there is always the discretion in the DPP that even though the matter might perhaps have an arguable prima facie case, it is a matter that should not go to trial. Those checks and balances are there anyway. I do not really see why it needs particular approval from the DPP before the charge is commenced except, as I say, for those particular individual matters that I referred to earlier, the more serious matters.

**The CHAIR:** With ordinary matters that are investigated by police and then prosecuted by the DPP, the police make a decision to charge or not.

**Mr Needham:** Yes.

**The CHAIR:** Having made a decision to charge, the DPP then prosecutes, and maybe at that point exercises a discretion whether or not to prosecute. So you have a twofold check. Where the CMC undertakes the investigation, and they do not make the decision whether to charge or not, then in a sense there are three layers of checks.

**Mr Needham:** Exactly.

**The CHAIR:** Both at the investigator level, where a recommendation is made, because, as I understand it, the brief of evidence goes to the QPS or the DPP with a recommendation. So you are actually adding a third level of check to the system that presently already provides two levels of check, so would run the argument.

**Mr Needham:** Quite frankly, I can see no real reason for it. I have not seen one put forward.

**The CHAIR:** Would you see any distinction between the misconduct side of the CMC and the crime side of the CMC in regard to the observations you are now making?

**Mr Needham:** The only distinction I would see would be that on the crime side I can see very little reason why it should go to the DPP in any case. If it is a major crime, they finish the investigation and there are either charges or there are not. That should be able to go straight through to charge without going to the DPP. On the misconduct side, I can see that there could be some cases where, because of the nature of the charges, more particularly the person being charged—the type of office that person held or the notoriety of that person—there could be occasions when it were thought worth while to send it to the DPP to ensure that the DPP were happy for the charge to go ahead. On the major crime side, I can see no real reason why that should ever arise.

**The CHAIR:** Would you see any value or would it be appropriate for officers at the CMC other than police officers to also have the power to charge or should that power to charge be left to the police officers?

**Mr Needham:** I would see no need to extend it beyond police officers.

**Mr HOBBS:** The CMC have recommended some changes in relation to terrorism, particularly in relation to surveillance warrants. You said in your submission that you support their proposed changes. Would you support those changes for terrorism type activities only or across the board?

**Mr Needham:** Some of these I would support only for terrorism. The matters raised earlier about the serious indictable offence—I would agree with Mr Sibley that I would see no reason to

extend the extensive damage to property beyond terrorism. If an amendment were to go through, I would like to see it worded in such a way that it was limited to terrorism. Quite frankly, even apart from that, it is fairly difficult to envisage too many situations where a criminal would be looking at causing some serious damage to property that was not also likely to endanger life. Putting that aside, the difficulty with it is that unless you were to word it very cleverly it leaves it very open to interpretation as to what is meant by serious damage to property. It does mean that it enlarges the powers of police officers rather extensively if you were to so change that definition.

**The CHAIR:** I think in the Police Union submission they raise a point about the desirability of the Parliamentary Commissioner having an own notion power to investigate matters of the Parliamentary Commissioner's choice as well as in response to requests and reference from the parliamentary committee. Do you have any views about the suitability or appropriateness of that additional power?

**Mr Needham:** That is not a power I have ever sought. This committee is the committee charged with overseeing the CMC. I think it is better for members of the public or any organisation that has a complaint to make about the CMC to make it to this committee as the parliamentary representatives. Then if it is a matter that this committee feels is worth while, you feel you need the assistance of investigation by me, it can be referred on. If a matter came to my attention that I thought should be investigated, then there is no difficulty in me bringing it to the attention of this committee. If it were a matter that I thought should be investigated, there is a way I could have that done. I do not feel that my role is constrained in any way because I do not have an own notion or own initiative power.

**Mr FLYNN:** I and the union concur with the absolute necessity of your position. I think it may be more of a political statement by the union rather than a practical solution. Certainly you do not feel any necessity to be granted that power. Have you had any instances where you should have been able to initiate it or is it perhaps a question that if you did have the power to initiate your own investigation then it would neuter the effectiveness of this committee?

**Mr Needham:** I would not think it would neuter the effectiveness of your committee. In response to the first part of your question, I have not had any instance where I wanted to investigate anything of my own initiative. I do not receive phone calls, but I know the staff who work with me at times receive phone calls from members of the public wanting to raise matters of complaint. They are referred to the secretariat of this committee so that their complaints are directed through the appropriate body. But, as I say, if at any time a matter did arise or I became aware of a matter that I thought should be looked at, then I would refer it to this committee. Bear in mind that I have an audit power referred to me by the committee which is not referred to me with any time limit. So generally if it were a small matter it would probably come within my audit power. I would be able to look at it in that way. If it were something that came up immediately after I had put in an audit report, then I would refer it to the committee if I felt that I otherwise could not deal with it appropriately.

**Mr FLYNN:** Given that your position is supported and you do not find any conflict, the submission from the Police Union falls over?

**Mr Needham:** I think so. I do not think it is necessary. I have always felt that there has been good cooperation between me and this committee. I have never felt that this committee has stopped me in any way doing anything that I thought needed to be done; on the contrary.

**The CHAIR:** There is one other item that you drew our attention to in a submission you made to us in the last few days. It relates to an issue that the Police Union raised about the Police Service reviews—the Commissioner of Police Service reviews. They express concern about those reviews being supervised by one of a number of the present part-time commissioners of the CMC or former commissioners of the CMC when circumstances may be such that the principal evidence involved in the review has actually been gathered by the CMC in relation to an officer who is appealing. Do you have any comments you want to make about that?

**Mr Needham:** I have commented in my submissions to this committee that I can understand entirely the feeling that a police officer placed in that position could have—that his appeal is not being considered by a person who is independent of the process that has led to the decision being made against him. My view would be that it would be much better if the person

who was to sit on that appeal was one who had no direct contact certainly as a present or even as a past commissioner of the CMC or the CJC. There is the power to appoint people to that position who have not been members of the CMC or the CJC. I would feel it wise to have at least one person at all times appointed to that position who has not held such a position and could sit on those particular appeals. The old adage that justice must not only be done but also be seen to be done is important. Those people have the right to feel that their matter is being dealt with properly, independently and without any preconceptions.

**The CHAIR:** Thank you, Mr Needham, for your time and the submission you provided to us. It was very helpful.

The committee adjourned at 4.40 p.m.